

## **The complaint**

Mr and Mrs W's complaint is about their mortgage with Bank of Ireland UK Plc (BOI). They are unhappy that when they applied to port (transfer) their mortgage interest rate product onto another mortgage on a new property they were buying, they were told shortly before completion that there was an issue with both Mr and Mrs W and the seller using the same solicitor. This caused upset, distress and expense, as the seller then had to instruct new solicitors at a cost of £500.

To settle the complaint, Mr and Mrs W would like BOI to reimburse the £500 costs incurred by the seller and pay them compensation for all the upset caused.

In addition, Mr and Mrs W are unhappy about BOI's complaint-handling process.

## **What happened**

I don't need to set out the full background to the complaint. This is because the history of the matter is set out in the correspondence between the parties and our service, so there is no need for me to repeat the details here. In addition, our decisions are published, so it's important I don't include any information that might lead to Mr and Mrs W being identified. So for these reasons, I will instead concentrate on giving a brief summary of the complaint, followed by the reasons for my decision.

In 2024 Mr and Mrs W were purchasing another property and had applied to port their mortgage interest rate onto the mortgage they were taking out on their new property. The property they were purchasing had been owned by Mr W's grandfather who had passed away. Mr W's father was the executor of the estate and was selling the property to Mr and Mrs W.

The transaction was proceeding as expected with completion fixed for early August 2024. On 2 August 2024 BOI received the Certificate of Title (CoT) from Mr and Mrs W's solicitors, a firm I will refer to as N. However, this did not show the name of the seller's solicitors, which was information BOI required. The direct debit mandate had also not been sent by the solicitors.

On 5 August 2024 N confirmed that it was also acting for Mr W's, represented by a different person in the firm. On 6 August 2024 BOI explained that, in line with BOI's policy, either Mr W's father would have to instruct separate solicitors at his expense, or alternatively BOI would instruct its own solicitors, the cost of which Mr and Mrs W would have to pay.

On 7 August 2024 BOI was informed that Mr W's father had instructed new solicitors, the details of which were provided to the bank. The funds to complete the purchase were released on 8 August 2024 and the purchase completed shortly thereafter.

On 6 August 2024 Mr and Mrs W complained, saying that BOI's actions had caused unnecessary delay, upset and expense. BOI looked at what had happened and issued its final response letter on 29 August 2024.

In the final response BOI said it hadn't been made aware that N was acting for both Mr and Mrs W and Mr W's father until 5 August 2024. The bank noted that a promised phone call hadn't been made to Mr W, and paid Mr W compensation of £50 for this.

Mr and Mrs W brought their complaint to our service. An Investigator looked at what had happened, but didn't think BOI needed to do anything further.

Mr and Mrs W asked for an Ombudsman to review the complaint. They say that BOI was aware the seller was Mr W's father. Mr W said that he hadn't mentioned the solicitor situation, as it hadn't crossed his mind that this would be an issue and that at no point did BOI advise him of its policy about the need for buyer and seller to have separate solicitors. Mr W also said that BOI hadn't responded to the complaint for four months.

### **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I've reached the same conclusion as the Investigator, for broadly the same reasons.

I will begin by explaining that, in addition to acting for Mr and Mrs W on their purchase, N had also been instructed by BOI to put the mortgage in place. So as well as owing a duty of care to Mr and Mrs W, N also owed a duty of care to BOI, and as such was required to act in BOI's best interests, as well as those of Mr and Mrs W.

BOI is required to comply with anti-money-laundering regulations, and as a result, the bank will only allow solicitors to act for both buyer and seller in certain circumstances.

BOI's policy is as follows:

- the full purchase price is being paid;
- a separate fee-earning solicitor is acting for both parties and they are of equal standing in the firm;
- there must be no conflict of interest for either party and the solicitor must ensure there isn't any personal or business connection between the seller and purchaser;
- **if there is a connection between the seller and purchaser, the solicitors must notify BOI immediately so the bank can instruct its own solicitor to act as separate representation at the applicant's expense or a separate law firm is chosen to represent the seller.** (my emphasis)

In this case, there was a personal connection between the seller and purchaser, and so N should have informed BOI as soon as N received the mortgage offer in January 2024 that this was the case. Mr W says that BOI was told about this, but it wasn't until 5 August 2024 that BOI became aware that N was acting for both Mr and Mrs W and Mr W's father.

I agree with Mr W that BOI knew he and Mrs W were purchasing the property from his father. That in itself wasn't an issue. I also agree that Mr and Mrs W wouldn't be expected to know BOI's rule against both parties using the same solicitors in the transaction, so of course they wouldn't have thought to mention it to the bank. However, it's something N would have been aware of, as conflicts of interest in acting for related parties are covered in both the Law Society of Scotland's rules and the UK Finance Conveyancer's Handbook. It is reasonable to assume that N was therefore aware of its obligations in this regard.

I'm satisfied that N didn't properly complete the CoT with the seller's solicitors' details when it was submitted on 2 August 2024. BOI's records are quite clear that it chased N for this information, and for the direct debit mandate which N had also not sent. I'm satisfied that it wasn't until 5 August 2024 that N told the bank it was also acting for Mr W's father. In the circumstances, I'm satisfied BOI was entitled to withhold release of the funds until either Mr and Mrs W or Mr W's father instructed separate solicitors.

Because N didn't tell the bank about this until shortly before completion, this led to the urgency of Mr W's father instructing new solicitors so that the transaction could complete (as there was a property chain). The alternative would have been for BOI to instruct a separate firm to represent it, at Mr and Mrs W's expense.

Ultimately Mr W's father instructed another firm, and incurred additional costs of £500. I'm not persuaded there is any basis on which BOI is required to reimburse these to Mr W's father. I say this for the following reasons.

It was N's responsibility to inform BOI on receipt of the mortgage offer that it was also acting for the seller in the transaction. I'm satisfied that if N had told BOI the true position when it received the initial mortgage offer in January 2024, the situation would have come to light much earlier. At that point either Mr W's father could have instructed a separate firm or, if he didn't want to do that, BOI would then have instructed a separate firm to act for it on the mortgage. So either way, the need to instruct separate solicitors would still have arisen, whether these were acting for Mr W's father or BOI.

It's unfortunate N didn't tell BOI it was acting for both seller and purchaser when it received the mortgage offer in January 2024. If it had done so, the urgency of instructing new solicitors a few days before completion could have been avoided. Mr and Mrs W might want to take this up with N. But in the circumstances, I'm unable to find that BOI has done anything wrong in requiring separate representation, in line with its policy, of which I am satisfied N was, or ought to have been, aware.

In relation to complaint-handling, Mr W says that BOI failed to respond to his complaint for four months. He raised his complaint by telephone with BOI on 6 August 2024 and in an online submission on 9 August 2024. BOI had eight weeks to respond to the complaint, and issued its final response letter addressing the complaint on 29 August 2024. This is well within the eight week timescale. I therefore don't uphold this part of the complaint.

BOI paid Mr W £50 for not returning a phone call on 6 August 2024. I am satisfied this is fair and reasonable and I don't require the bank to do anything further.

### **My final decision**

My final decision is that I don't uphold this complaint.

This final decision concludes the Financial Ombudsman Service's review of this complaint. This means that we are unable to consider the complaint any further, nor enter into any discussion about it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs W to accept or reject my decision before 23 July 2025.

Jan O'Leary  
**Ombudsman**