

The complaint

Mr W complains about the way that Bank of Scotland Plc (BoS) has administered his mortgage once its term had ended.

What happened

Mr W has an interest only mortgage with BoS. The term ended in March 2020, but Mr W did not repay it.

Mr W complains that BoS has not treated him fairly:

- BoS did not tell him what the payments were when the interest rate changed.
- BoS threatened legal action on three occasions despite an application for an equity release mortgage to repay the mortgage proceeding,
- BoS sent debt collectors and called him to recover the debt. It either denied that it knew the mortgage was being repaid or admitted mistakes.
- As a result of the threatened legal action and loss of trust in BoS he felt he had no choice but to see the property at auction.
- BoS never provided a detailed breakdown of the accounts prior to redemption.

Mr W said he suffered a financial loss in pursuing a fruitless application for an equity release mortgage and in selling the property at auction for at least £70,000 less than it was worth.

I issued a dismissal decision saying that we'd already considered a complaint from Mr W about the steps taken to recover the debt. I found we had dealt with part of the subject matter of this complaint – at least in respect of events up to the end of December 2023 in January 2024. There was no material new evidence that I consider is likely to affect the outcome of the complaint that has subsequently become available to Mr W. So we should dismiss the part of this complaint we'd already dealt with.

The investigator thought that BoS's offer to refund the difference between what Mr W paid to redeem the mortgage and what the balance was at the end of term in March 2020, pay interest on that amount at 8%, pay Mr W £600 and refund solicitor's fees of £100.50 was a fair way to resolve the complaint.

Mr W did not accept what the investigator said. He responded to make a number of points, including:

- The investigator had not answered his complaints. BoS broke its agreement not to start recovery action while his equity release application was proceeding. It did not tell him that recovery action was not proceeding. As a result, it caused him a financial loss and loss of retirement income. If it had acted correctly he would still be living in the property that was sold and collecting rental income on the property he now lives in. He initially

estimated the loss between £70,000 to £100,000. But he later said it was actually £279,000.

- BoS did not provide the information to verify the redemption figure. That included all interest charges and the date of those changes throughout the mortgage term.
- BoS did not act in line with its obligation to treat customers fairly.
- BoS admitted mistakes with affordability. Those mistakes meant it would not offer him another mortgage. But the BoS mortgage was meant to be like for like as the Birmingham Midshires mortgage it replaced. We should address those points.

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.

I've taken into account the relevant rules (amongst other things) in determining what I consider to be fair and reasonable in the circumstances. That includes the Financial Conduct Authority's Principles for Business, that include the requirement to pay due regard to customers' interests and to treat them fairly. Taking that into account I agree that BoS has not always treated Mr W fairly. But as I will explain I think the amounts it has already paid Mr W are a fair way to put things right and I don't think it needs to do any more.

Interest rate changes

BoS said when the term of Mr W's mortgage ended, system limitations prevented it recalculating the payment that was due when the interest rate changed. It said it wrote to Mr W to say that *"We haven't worked out the new payment for you because some or all of your term has ended. So your existing total monthly payment will stay the same but it won't be enough to cover the change in the interest rate, if you pay by direct debit, we'll continue to collect your existing payment using the usual reference"*. The letter invited Mr W to contact it if he had any questions about the letter.

I do not consider BoS has treated Mr W fairly. There was considerable potential harm to Mr W by not amending the payment when the interest rate changed, he could either pay too much or too little. Bearing in mind that BoS ought to have known that there was a degree of vulnerability here – Mr W had reached the end to his term and could not repay his mortgage – that was not fair or reasonable.

Further, its communication was not sufficiently clear, fair or not misleading. I can see how a borrower could understand that there was nothing they could do to amend their payment. The letters merely said they could contact BoS if they had any questions. It did not say it must contact it to amend the payment.

BoS has refunded the difference between what the balance was at the end of term in March 2020 and the amount Mr W paid to redeem the mortgage and paid interest at 8% simple on that amount. It has also paid Mr W £300.

Our usual approach would be to put Mr W in the position he would have been in had he made all of the payments that were due and on time. If he had done so, his mortgage balance would not have increased from the amount that was due at the end of term. So I consider the offer is fair.

We would not usually award compensation for distress and inconvenience in these

circumstances, because Mr W has effectively made a saving by paying less than he should have towards the mortgage – and the amount of those savings is greater than what I would have awarded to reflect any distress or inconvenience caused by the unfair treatment. So the amount paid is greater than I would have awarded.

Legal action

In May 2024, Mr W discussed his circumstances with BoS. He said that he had started the process of looking into an equity release mortgage and that he was speaking to a number of advisers, including one with links to BoS, K.

On 26 June 2024, BoS considered the account and it said that Mr W had said since expiry that he would either sell the property or remortgage his buy-to-let property and take an equity release mortgage. But none of those options had been completed so it instructed solicitors to begin legal action. On 27 June 2024, BoS sent Mr W a letter stating that it was starting repossession action.

On 29 June 2024, Mr W spoke to BoS. He said he was still pursuing an equity release application with K and provided evidence of that.

On 4 July 2024, BoS sent Mr W a final response. It said in line with a phone call on 1 July it had stopped legal action while his equity release application went ahead. It said it should have checked with Mr W before starting legal action. It paid Mr W £100 to apologise for its error.

On 17 July 2024, BoS's solicitors wrote to Mr W and said the full balance of the mortgage was due within 14 days. Mr W said he spoke to the solicitors and they told him that the legal action was continuing. But he said he later spoke to BoS and it said action was suspended, though it did not confirm that in writing.

It appears there had been a breakdown in communication between departments and legal action had not been put on hold. BoS told the solicitors to place a 30 day hold from 20 July 2024.

On 10 August 2024, BoS wrote to Mr W and said the recent litigation action had resulted in a charge of £100.50. Mr W said he spoke to BoS on 16 August 2024 who confirmed legal action was being taken. BoS's notes of that call are unclear. They do not support that it told Mr W that legal action had been suspended, nor do they confirm that it told him it had been. I can see that following that BoS did agree further holds on legal action until 15 October 2024.

On 20 August 2024, Mr W wrote to BoS and said that he had no option but to withdraw from the process (presumably of arranging an equity release mortgage) and to put his property up for sale by auction. He said he contacted BoS shortly before the auction went ahead and it confirmed that legal action was proceeding.

There has clearly been an avoidable breakdown in communication here that is largely BoS's fault – both in its internal communications and with Mr W.

BoS has accepted that it was wrong to commence legal action on June 2024. But it clarified the correct position on 1 July 2024. It made the same mistake again on 17 July 2024 but then assured Mr W the action was on hold.

The difficulty I have is that the letter of 10 August 2024 did not say that BoS was taking legal action. Rather it said that it was applying legal fees for past legal action. While I understand

Mr W was concerned bearing in mind what had happened, I don't consider the letter could reasonably be interpreted in that way.

What was discussed in the call that followed between Mr W and BoS is unclear. Mr W said he was told that legal action was continuing. But BoS's notes of the conversation do not support that it told Mr W that legal action was continuing.

Mr W then wrote to say he was auctioning the property. And BoS reasonably in my view considered that he'd abandoned his plans to take an equity release mortgage I consider that was reasonable.

I agree that the communication from BoS has been poor. It has not shown that it set out in a clear, fair and not misleading way that legal action was not continuing after 16 August 2024. But on the other hand, there is no clear evidence to support that Mr W was told that legal action was continuing before he made the decision to put his house up for auction.

In any event, I can't reasonably say that BoS was responsible for Mr W's decision to sell the property at auction. Ultimately that was his decision. While I understand the difficulties he faced communicating with BoS and the impact of that on him, there was nothing to prevent him continuing to clarify the position with BoS. But even if he did that, it is not clear that BoS would have continued to put legal action on hold.

I say that because it had already exercised forbearance in not taking action for over four years since the term ended. While Mr W might have had an offer for an equity release mortgage I understand that was not sufficient to repay the mortgage in full and that refinancing of another property was also required. It is not clear if that could have been arranged or if it could that it would be arranged in a suitable timescale. So even if BoS had given Mr W more time, it might have commenced legal action in any event.

In all the circumstances, I do not see how I could reasonably find that BoS is responsible for the losses Mr W is claiming. It has refunded the £100.50 in solicitors fees it charged with interest. And it has paid Mr W a total of £600 for any distress and inconvenience caused.

This matter went on for around four months. I accept it will have caused Mr W a great deal of anxiety and stress. But some of that would have been because of the difficult position he was in – his mortgage had reached the end of term and the lender would not be required to offer him forbearance indefinitely. Overall I consider the amount BoS has paid is fair.

Redemption statement

There was no requirement for BoS to provide a detailed breakdown as requested by Mr W.

I am satisfied BoS notified Mr W when the interest rate changed and sent annual statements confirming the position of the account

Further mortgage

Mr W said that BoS maintained from the outset that he was not eligible for a further mortgage at the end of term in contradiction to the original Birmingham and Midshires mortgage. BoS should explain why a further mortgage was not offered at that time.

While I accept Mr W made this point in his complain to BoS dated 20 August 2024, he did not include it in his complaint form. So it was not clear he wanted us to consider it.

Nevertheless, I think this complaint was considered or excluded before and I dismissed it

without considering its merits. I say that because in the previous case the investigator considered whether it was reasonable for BoS to extend the term of the mortgage. The investigator also dismissed the complaint that there had been a mistake regarding the term of the mortgage.

I think that any complaint about the term set when the mortgage began or the failure of BoS to offer him an extended term have already been dealt with and were dismissed in line with my dismissal decision.

Even if it were a separate matter, it has no prospect of success. There was no obligation for BoS to offer Mr W a further mortgage. While it could consider an extension It was always required to consider whether it was in his best interests overall – and that was addressed in the previous case.

I have not seen any evidence that Birmingham Midshires guaranteed it would offer another mortgage at end of term. In my experience it would have been unusual for a mortgage lender to do that. And in any event, it would not have been fair to agree an extended term without applying similar considerations to BoS when it declined his requests.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 1 October 2025.

Ken Rose
Ombudsman