

The complaint

Mr and Mrs D complain that Bank of Scotland plc trading as Intelligent Finance unfairly applied a consent to let fee to their mortgage. They ask that the fee is refunded.

What happened

Mr and Mrs D have a residential mortgage with Intelligent Finance. In 2016 Intelligent Finance found out, via a third party, that the property was being let out. It wrote to Mr and Mrs D saying it would apply a consent to let fee.

Mr and Mrs D say they didn't receive the letter, which was sent to the security property. They didn't realise the fee was being applied until early 2025. They say the fees applied since 2016 amount to more than £15,000. Mr and Mrs D say they'd have taken out a buy to let mortgage if they'd known about the fee, as this would have been cheaper.

Our investigator said Intelligent Finance was entitled under the mortgage terms and conditions to apply the consent to let fee. He said it had written to Mr and Mrs D at the address in its records.

Mr D said it's inconsistent for Intelligent Finance to rely on third party information when it applied the consent to let fee but not to update their address. He disputes the 1% consent to let fee, which he says is an unfair term under the Consumer Rights Act 2015 and doesn't reflect the actual cost or risk. Mr D says he will take the matter to court.

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.

While we take relevant law, regulation and good practice into account, I make my decision based on what's fair and reasonable in the circumstances.

Mr and Mrs D took out a residential mortgage. The mortgage terms and conditions say they *"must use the property as your only or main home unless we agree otherwise"* and *"must get our permission before you...let any part of the property"*.

The mortgage terms and conditions say Mr and Mrs D must tell Intelligent Finance immediately if they change their postal address.

Intelligent Finance found out in mid-2016 that the property was being let out. It wrote to Mr and Mrs D at the address in its records – the security property – with consent to let forms for them to complete and return. The letter said letting the property without consent was a breach of the mortgage conditions and it would apply a letting fee of 0.5% of the balance every six months.

I don't think Intelligent Finance made an error when it wrote to Mr and Mrs D at the security property. Mr and Mrs D hadn't contacted Intelligent Finance to change their address.

I wouldn't expect Intelligent Finance to update its records based on information from a third party. While it could have tried to contact Mr and Mrs D in another way, such as by email, I can't fairly find that it had to do so. It wouldn't have known whether or not Mr and Mrs D were receiving post. Mr D told us they had a postal re-direction in place for about 12 months in 2016. So it's unclear why they didn't receive the letter from Intelligent Finance.

If Mr and Mrs D didn't receive correspondence about the mortgage, they ought reasonably to have been aware of this. Intelligent Finance says it sent all correspondence to the security property, including annual statements and letters notifying them of interest rate changes. I think it's reasonable for Intelligent Finance to expect Mr and Mrs D to update their correspondence address when they moved out of the property – especially if they were not receiving post sent to the property. Ultimately, it was Mr and Mrs D's responsibility to contact Intelligent Finance and update their address.

The mortgage terms and conditions say *"If we believe you have let the property (with or without our permission) ...we may...charge you an added rate of not more than 2% a year or a charge every six months of not more than 1% of the mortgage debt"*.

Interest rates and other costs (such as product fees) are generally higher for buy to let mortgages than for residential mortgages. That reflects the different risks involved and that letting property is a business. Intelligent Finance agreed to offer Mr and Mrs D a residential mortgage, on the basis they'd live in the property. It was Mr and Mrs D that wanted to change how they used the property, to let it out.

I think Intelligent Finance was entitled, under the mortgage terms and conditions, to apply the consent to let fee. I think it was fair to do so. There's no dispute that Mr and Mrs D were letting out the property.

Intelligent Finance wrote to Mr and Mrs D in August 2016, to tell them it would apply the consent to let fee. It sent annual mortgage statements which set out the consent to let fee. I think Intelligent Finance took reasonable steps to make Mr and Mrs D aware of the fee.

Mr and Mrs D say they missed out on the opportunity to take out a buy to let mortgage, which they say would have been cheaper than staying with Intelligent Finance.

I don't know if Mr and Mrs D would have been able to secure a buy to let mortgage or if this would have been cheaper. There was nothing to stop them looking into this when they started to let the property.

Mr and Mrs D haven't said why they didn't apply for consent before letting the property. They didn't tell us why they didn't update their address with Intelligent Finance when they left the property, or make arrangements for post to be forwarded to them. Had they done any of these things they'd have been aware of the consent to fee.

I can't fairly find that Intelligent Finance is responsible for Mr and Mrs D not taking out a buy to let mortgage sooner. I don't think it's fair and reasonable to require it to refund the consent to let fee.

Mr D says he's received legal advice that Intelligent Finance has breached the Consumer Rights Act 2015. He says the consent to let fee is an unfair term and doesn't reflect the actual cost or risk. Ultimately, whether a law has been breached and whether a contract is enforceable is a matter for a court to decide. If Mr and Mrs D don't accept my decision they will be free to raise the matter in court.

My final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D and Mrs D to accept or reject my decision before 2 October 2025.

Ruth Stevenson
Ombudsman