

The complaint

Mr K and Mrs B complain that they were sold a Sharia (Islamic) mortgage by Gatehouse Bank Plc without being fully informed from the outset about the possible tax implications involved in the transaction.

What happened

In early 2024 Mr K and Mrs B applied to Gatehouse for a Sharia mortgage, also known as a Home Purchase Plan (HPP). They were remortgaging from a different lender. Information and advice about the mortgage were given by Gatehouse as the lender.

Mr K and Mrs B say that they asked Gatehouse from the outset whether the transaction would have any tax implications – to which Gatehouse replied no.

Mr K and Mrs B went ahead with the application incurring an application fee and a valuation fee totalling £793. At offer stage they were told:

“The Client must take independent legal advice on the Transaction and should, in particular, take advice on the tax consequences of entering into the Transaction. In the case of a refinance Transaction, the Client will be selling an interest in the property to the Bank that might result in the Client realizing a capital gain and theoretically incurring a tax liability if Private Resident Relief does not apply. We do not believe that it was the intention of Her Majesty’s Treasury to impose a tax liability in this scenario and we consider that this is an unintended consequence of the current capital gains tax rules when applied to a refinance Transaction using the Diminishing Musharakah structure.”

Unhappy that this was not explained to them sooner, Mr K and Mrs B complained. Gatehouse didn’t uphold the complaint. It said that it’s under no obligation to provide tax advice and it said that information about potential tax implication was given at the correct stage of the process.

Concerned about the potential tax liability involved in the transaction, Mr K and Mrs B didn’t go ahead with their remortgage application. They’re unhappy that they’ve lost out on the non-refundable fees paid.

Unhappy with Gatehouse’s response to their complaint, Mr K and Mrs B came to our Service. An investigator looked into things and didn’t think that Gatehouse had acted unfairly. The complaint wasn’t upheld.

Mr K and Mrs B remained unhappy and asked for an Ombudsman to make a decision on their case.

I issued a provisional decision explaining why I’d reached a different outcome to our investigator. I said:

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

This mortgage was sold to Mr K and Mrs B by Gatehouse. Information and advice about the mortgage were therefore given by Gatehouse. Gatehouse has an obligation to communicate in a way that is clear fair and not misleading, and to treat Mr K and Mrs B fairly.

With conventional mortgages, refinancing generally doesn't count as a disposal – therefore avoiding any capital gains tax on a main residence. However, under Sharia-compliant structures, refinancing may effectively trigger a disposal, crystallising a taxable gain. Whilst Private Residence Relief (PRP) could apply on a main home, this can become a cost concern.

I agree with Gatehouse when it says that it's not responsible for providing specific tax related advice with regard to the transaction. That's the role of a Chartered Accountant. That said, Gatehouse was aware of the potential tax implication specific to this type of structure. And as the professional and experienced party in this transaction, I think that as part of its recommendation, it should have told Mr K and Mrs B that they must seek specialist tax advice before committing to the HPP.

This information was only given to Mr K and Mrs B at offer stage. The fact that the wording in clause 1.5 of the offer says that "The Client must take independent legal advice on the Transaction and should, in particular, take advice on the tax consequences of entering into the Transaction..." this to me sounds like it's a condition of the HPP.

It's unclear what action Mr K and Mrs B would have taken had they been given this information upfront and it's unclear whether they would have in fact incurred a tax liability had the transaction gone ahead. But at the very least they should have been given all the available information from the outset so that they were in a position to make an informed decision about how to proceed. To conclude I agree that the information given to Mr K and Mrs B at offer stage should have been provided to them at an earlier stage in the journey.

Having realised the potential tax liability at offer stage, Mr K and Mrs B chose not to proceed with the HPP. As a result, they've lost out on the non-refundable application and valuation fees paid. I think these should be refunded in the circumstances.

In addition, I consider a compensation award of £150 to recognise the distress and inconvenience caused by Gatehouse's actions to be reasonable and in line with this service's guidelines on such compensation.

My provisional decision

My provisional decision is that I uphold Mr K and Mrs B's complaint against Gatehouse Bank Plc and I direct it to put things right as set out above."

Mr K and Mrs B accepted my provisional decision. Gatehouse Bank Plc didn't respond within the deadline given.

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 note that neither party has made any new arguments, or provided any new evidence, that I've not already considered when reaching my provisional decision. So, I see no reason to depart from what I provisionally decided.

My final decision

My final decision is that I uphold Mr K and Mrs B's complaint against Gatehouse Bank Plc and I direct it to put things right by:

- Refunding Mr K and Mrs B the application fee and a valuation fee they paid totalling £793; and
- Paying Mr K and Mrs B £150 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K and Mrs B to accept or reject my decision before 25 September 2025.

Arazu Eid
Ombudsman