

## **The complaint**

Mr B and Mr A complain that Bank of Ireland (UK) Plc trading as Bank of Ireland (UK) (BOI) has treated them unfairly following the end of the term of their buy to let mortgage.

## **What happened**

Mr B and Mr A took out an interest-only buy to let mortgage with Bristol & West Mortgages in 2008. The mortgage term ended in July 2021. Mr B and Mr A weren't in a position to repay the mortgage and they had a reliable tenant in the property, so they asked BOI to extend the term.

In late 2021 Mr B and Mr A say that BOI agreed to offer them a new five-year fixed rate deal, but it later reneged on that. They complain that it then forced them to put the mortgaged property up for sale. The property went on the market in early 2023 and Mr B and Mr A received an offer from a buyer in October 2023. The offer wasn't enough to cover the mortgage debt and BOI wouldn't agree to the sale.

In 2024 BOI instructed solicitors to take legal action to recover the mortgage debt. A court hearing took place in July 2024. A 28-day possession order was granted. The property was taken into possession on 16 October 2024 and has since been sold.

Mr B and Mr A complain that BOI treated them unfairly throughout this process, it gave them conflicting information, it failed to take account of their personal circumstances and acted illegally in taking them to court, and it didn't deal with their complaints properly.

BOI has issued multiple final response letters in reply to Mr B's and Mr A's complaints since 2022, as well as other correspondence about their complaints. On 31 October 2024 the complaint was referred to the Financial Ombudsman Service.

Our Investigator said he couldn't investigate some parts of the complaint because Mr B and Mr A hadn't referred them to us in time, and he didn't recommend that the parts of the complaint he could look into should be upheld.

Mr B and Mr A didn't accept that. They didn't think a proper investigation had been carried out and they said BOI and its solicitors have continued to treat them poorly.

## **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.

Mr B and Mr A clearly feel very strongly about the way BOI has treated them and I was sorry to read about the impact this matter has had on Mr B's health. I have to tell them however that I won't be upholding their complaint.

First of all, I agree with our Investigator that the complaints BOI responded to in its final response letters before the final response letter of 13 June 2024 are time-barred. We can't

generally consider a complaint that is referred to us more than six months after a final response letter is issued.<sup>1</sup>

The final response letters BOI sent Mr B and Mr A were clear that they were BOI's final responses and that Mr B and Mr A could refer the complaints to us if they were still unhappy, but they had to do so within six months of the date on each of the letters. They were also clear that BOI wouldn't consent to us looking into the complaints if Mr B and Mr A didn't refer them to us within that timeframe. I can set aside the time limits where the delay in a referral is due to exceptional circumstances, but I don't find that I can do so here. I've noted what Mr B and Mr A have said about the delay having arisen because of BOI's failure to send them a copy of the original mortgage deed and because of the dissolution of the solicitors who did the mortgage conveyancing in 2008. I see no reason why those issues should have delayed a referral. Indeed, Mr B and Mr A have since been able to refer this complaint to us without the deed and despite the solicitors no longer trading.

I can consider Mr B's and Mr A's later complaints, which BOI responded to in its final response letters of 13 June 2024 and 24 September 2024, as well as in its later complaint correspondence of 16 and 29 October 2024. Mr B and Mr A contacted us on 31 October 2024, within six months of these final response letters. I can also consider all the circumstances – which include BOI's earlier final responses, even where I have no jurisdiction to make findings about heads of complaint that are time-barred – and whether the issues Mr B and Mr A complain about have resulted in unfairness between them and BOI which BOI should put right.

I'll turn now to the merits of this complaint. Mr B and Mr A's mortgage reached the end of its term in July 2021. That was set out in the mortgage offer they accepted in 2008. The mortgage is not, as Mr B and Mr A have argued, a consumer buy to let mortgage; it was taken out before consumer buy to let mortgages became available in March 2016. It is an unregulated buy to let mortgage and so it isn't covered by the rules for regulated mortgages set out in the Financial Conduct Authority's Mortgages and Home Finance: Conduct of Business sourcebook (MCOB).

BOI should have treated Mr B and Mr A fairly even though their mortgage is unregulated. I've looked carefully at what it has done and the reasons why Mr B and Mr A consider it didn't do that.

BOI expected the mortgage to be repaid in July 2021. That's what Mr B and Mr A agreed to when they took the mortgage out, so I think it was reasonable for BOI to expect them to redeem the mortgage then. Mr B and Mr A have questioned BOI's entitlement to recover the mortgage debt. The Financial Ombudsman Service has no power to determine whether or not a contract is enforceable – that's a matter for a court to decide. A court has already decided that in this case – a 28-day possession order was issued in July 2024 entitling BOI, as the mortgage lender, to take the mortgaged property into possession.

I don't accept that BOI forced Mr B and Mr A to put the property on the market. It expected them to repay the mortgage and that was reasonable. It was for Mr B and Mr A to decide whether to do so by selling the property – bearing in mind that the mortgage was secured on the property and BOI could seek to enforce its security if no agreement for repayment could be reached.

By the time of the court hearing in July 2024, the mortgage was past the end of its term by nearly three years. Mr B's and Mr A's complaints about BOI's refusal to extend the term, its

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<sup>1</sup> See DISP 2.8.2 R in the Financial Conduct Authority's Handbook: <https://handbook.fca.org.uk/handbook/disp2/disp2s8>

decision to begin legal proceedings, and its decision not to agree to the offer Mr B and Mr A had received from a prospective buyer were dealt with in final response letters in March 2022, March 2023 and February 2024 respectively, so the complaints about those particular events are time-barred. But I don't consider that it was unfair of BOI to continue with legal action after February 2024.

By February 2024 BOI had told Mr B and Mr A that it wouldn't agree to a sale of the property which wouldn't generate enough to repay the mortgage unless both Mr B and Mr A agreed to it (it hadn't received completed paperwork from Mr A in order to consider the proposed sale further, or received completed paperwork from Mr B and Mr A to proceed with handing back the property – also known as voluntary possession). I'm satisfied that BOI had also been clear in correspondence that it would proceed with litigation if it didn't receive any acceptable proposals for repayment. It sent some letters which said the mortgage was in arrears when this was not the case, but it later corrected that and paid some compensation.

BOI's records show that it knew Mr B had medical conditions and it had noted that he was vulnerable. I would expect it to have taken this into account, and I think it did that. In its final response letter of 13 June 2024 it asked if there were any adjustments it could make to help him manage the situation. Mr B and Mr A wanted legal action to stop, but I don't think Mr B's health meant BOI should necessarily have done that. I don't consider that allowing matters to continue indefinitely with the mortgage remaining outstanding so long after term end would have been reasonable.

Repossession should be a last resort and, in the circumstances, I don't consider that BOI was unfair in proceeding with legal action when it did. This resulted in legal costs being added to the mortgage, about which Mr B and Mr A have also complained. BOI sent its final response to a complaint about legal fees in October 2023, so I can't consider the fees applied before that. I can look at the £1,245.50 fee Mr B and Mr A have complained about and which BOI notified them about in August 2024.

The terms of Mr B and Mr A's mortgage entitled BOI to recover from them legal costs it incurred in bringing legal proceedings in connection with the mortgage. I've seen a copy of the invoice from the solicitors dated 9 July 2024. It includes the court fee and other fees for the July 2024 hearing and fees for the work that led up to that. I think it was reasonable for BOI to pass on these costs to Mr B and Mr A, as provided for by the mortgage terms.

Mr B and Mr A's complaint about the court hearing itself isn't something I can decide, since that's a matter for the court, and I note that they have told us they are taking legal action against the bailiffs.

I have considered everything Mr B and Mr A have said about BOI's procedural failings, including in its complaint-handling, but in deciding this complaint I must keep in mind all the circumstances. Those include the volume and nature of the contact BOI received from Mr B and Mr A. Against this background I don't think it treated them unfairly overall and I think it responded in detail to their main complaints. It has apologised where it has found things have gone wrong and has offered £100 compensation by way of apology for its handling of one of their complaints. I think that offer is fair and reasonable for the annoyance and inconvenience caused.

I have also considered whether BOI's treatment of Mr B and Mr A gave rise to an unfair relationship, and I don't think it did. BOI was clear about the action it was taking to recover the mortgage debt and Mr B and Mr A had the opportunity to mitigate any unfairness arising from the complaints BOI responded to before June 2024 by referring those complaints to us. Mr B's and Mr A's strength of feeling about what has happened is very clear, but the Financial Ombudsman Service isn't the regulator. Where a financial firm has made mistakes

I can require it to take steps to put those right by way of a monetary award or other directions, but I can't issue fines or punishments. In all the circumstances, while I find BOI hasn't always got things right in this case, I don't find it was wrong to go ahead with legal action and or that I can fairly require it to do or pay more than it has offered.

I note that Mr B and Mr A are unhappy about BOI's and its solicitors' continuing treatment of them, including the responses they have had to subject access requests and requests for transcripts. They can make fresh complaints where they haven't done so already, and they may also be able to refer more recent complaints to us. I hope that they and BOI are able to find a solution for repayment of the shortfall on the mortgage following the sale of the property.

### **My final decision**

My final decision is that Bank of Ireland (UK) Plc trading as Bank of Ireland (UK) has made a fair offer of compensation. It should pay Mr B and Mr A £100 compensation if they accept this decision and if it hasn't done so already.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A and Mr B to accept or reject my decision before 24 November 2025.

Janet Millington  
**Ombudsman**