

### **The complaint**

Mrs N has complained about how Bank of Scotland plc has treated her in respect of her mortgage account.

Although the mortgage is in joint names, Mrs N is estranged from the second borrower, and they have played no part in this complaint. Any reference to Mrs N in this decision should be taken to mean her and the joint party where appropriate.

### **What happened**

Mrs N took out this mortgage in April 2003. The mortgage was for around £197,500 plus there was a flexible credit facility that allowed Mrs N to draw down further funds which Mrs N utilised.

In October 2003 the mortgage was transferred to a standard product with no flexible credit facility, and the total borrowing at that time was around £266,200. The new product was taken out on an interest only basis over a term of 24 years and 6 months. In September 2004 Mrs N borrowed a further £20,000.

I understand no payments have been made to the mortgage accounts since 2014.

There has been legal action over the years, and various court orders have been issued. But this has been a strongly contested issue and culminated in a court hearing in August 2023.

The judge set out the issues they were deciding upon as:

- (1) Whether [Bank of Scotland] is entitled to possession as a matter of law.
- (2) What sums were originally borrowed, both under the Main and Additional Accounts.
- (3) What interest rate was agreed.
- (4) What [the judge] might call the status of the mortgage for consumer credit regulation purposes and FCA purposes.
- (5) The evidential value of the bank statements relied upon by [Mrs N] and the Agreement of 15 October 2003. That comes about as a result of issues raised as to whether there had been false reconstructions.
- (6) Aside from capitalisation, what [the judge] might call accounting issues as to detailed entries in the mortgage accounts.
- (7) Whether there has been unilateral capitalisation.
- (8) An argument raised by [Mrs N] as to the introduction of an implied covenant which she contends for.
- (9) Whether the Bank has unilaterally changed the terms of the Mortgage.

- (10) The treatment of legal costs.
- (11) Unfair relationship issues; and
- (12) finally, the Application for a Time Order.

The judge was generally satisfied that the actions already agreed by the bank resolved the issues where the judge found fault. It was left that Bank of Scotland would remediate the accounts as it had agreed, and once it had recalculated the mortgage balance matters would be passed back to the court. The judge proposed a Possession Order for a period of three months be issued, and that the issue of costs would be dealt with on paper separately.

A court order was then issued on 26 October 2023 which ordered:

- Mrs N give possession of the property to Bank of Scotland by 25 November 2023.
- Bank of Scotland was not entitled to recover any interest that had accrued on the accounts between 1 January 2022 and 25 August 2023.
- The mortgage balance was around £309,180 (of which around £29,770 was arrears).
- Mrs N shall pay Bank of Scotland's costs of the claim as set out in the order. The costs payable shall be the subject of detailed assessment if not agreed, and once agreed or assessed may be added to the mortgage account.
- Mrs N shall pay £25,000 to Bank of Scotland on account of costs pursuant to CPR 44.2(8).
- Permission to appeal is refused. Any further application for permission to appeal should be made to the High Court.

Mrs N raised a complaint with Bank of Scotland in December 2024. She said she didn't think the bank had reworked the account in line with the court order, and by not providing a redemption statement to her the bank was delaying the redemption of the account.

Bank of Scotland responded to the complaint on 31 January 2025. It dealt with the various points Mrs N had raised, and said it was unable to provide a redemption statement until the court had decided on the level of the legal costs that should be added to the mortgage account.

A revised letter issued in April 2025 said "As you will know, we commenced detailed assessment in relation to these costs on 31 January 2025." It went on to explain that if a redemption statement was needed before the detailed assessment had been concluded, Bank of Scotland was entitled to include all the outstanding costs, even those which have not yet been applied to the mortgage and/or are subject to the detailed assessment. It said the current mortgage balance was £436,420 (excluding the legal fees that were still to be added).

Mrs N referred the complaint to us, setting out the points she was unhappy with.

Our Investigator said we wouldn't consider most of the points Mrs N had raised as those directly relate to things a court had already made a judgement on. He said we would consider the complaints about whether it was fair for Bank of Scotland to not provide a redemption statement, and whether it had reworked the account in line with the terms of the

court order. And having considered those two points he didn't think Bank of Scotland had done anything wrong and so he didn't uphold the complaint.

Mrs N didn't agree and so the case was passed to me to decide.

I issued a decision about which parts of the complaint we would be considering, and in that I said I would only be looking at two complaint points:

- Whether it was fair for Bank of Scotland to not provide a redemption statement.
- Whether Bank of Scotland reworked the account in line with the terms of the court order.

I dismissed the rest of the complaint as the underlying merits of it had already been decided in court.

I now issue this decision as the last stage of our process.

### **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.

Although I've read and considered the whole file I'll keep my comments to what I think is relevant. If I don't comment on any specific point it's not because I've not considered it but because I don't think I need to comment on it in order to reach the right outcome.

#### Was it fair for Bank of Scotland to not provide a redemption statement?

The court order of 26 October 2023 says:

"[Mrs N] shall pay [Bank of Scotland's] costs of the claim on the indemnity basis, to the extent that [Bank of Scotland] would be contractually entitled to demand the same and apply the same to the mortgage pursuant to clause 13.1 of the General Mortgage Terms were it to demand the same following final determination of the claim, save that in respect of any costs incurred by [Bank of Scotland] before 3 July 2023, [Mrs N] shall be required to pay no more than 75% of those costs. The costs payable shall be the subject of detailed assessment if not agreed. [Bank of Scotland] shall not add to the mortgage any costs of this claim not so agreed or assessed. Any costs so agreed or assessed may be added to the mortgage account following the agreement or assessment."

From this we can see that the judge ordered Mrs N shall be liable for some of the costs Bank of Scotland incurred, but if Mrs N didn't agree with the amount claimed then it would go back to court for a detailed assessment.

I understand from Bank of Scotland's letter of 23 April 2025 the detailed assessment was still not completed at that time.

A redemption statement sets out the full amount required to redeem a mortgage, and that would include such legal costs, so until the detailed assessment is finalised by the court then Bank of Scotland simply has no way of knowing how much those legal costs will be. It said if it were to provide a redemption statement before the detailed assessment was concluded, it was entitled to include all outstanding costs (including those subject to the detailed assessment). That doesn't seem unreasonable.

I'm satisfied Bank of Scotland didn't act unreasonably in saying a redemption statement couldn't be issued, because it had no way of knowing the exact amount of legal costs that were to be added to the mortgage account and which would form part of that redemption figure.

Did Bank of Scotland rework the account in line with the terms of the court order?

As I said in my decision about which parts of this complaint I would be looking at, I will only be looking at the evidence that is immediately available to me in terms of the reworking of the account. I will not be undertaking a forensic analysis of the accounting, and if Mrs N believes Bank of Scotland hasn't reworked the account in line with the court order then that is a matter she would need to take back to court to be enforced anyway.

The court said:

"... [Bank of Scotland] shall not be entitled to recover any interest that accrued on the Main Account [account \*905] or the Additional Account [account \*204] between 1 January 2022 and 25 August 2023."

It had also previously been agreed that Bank of Scotland would no longer be pursuing the £20,000 loan taken out by Mrs N in 2004 (or any interest that had accrued on it).

Mrs N has said that she's not seen any evidence of the bank closing down or writing off loan account \*204 as directed by the court. But that isn't a direction the court made. Bank of Scotland was to write off the £20,000 loan taken in 2004, but loan account \*204 didn't just contain that borrowing and the court didn't order the rest also be written off so I wouldn't expect to see that account be closed.

That £20,000 loan formed part of the overall balance of account \*204 but wasn't the whole of it. I understand from the court transcript that account also included the funds Mrs N had drawn down under the flexible credit facility before the mortgage was converted to remove that feature in October 2003.

Bank of Scotland has provided its account transactions and I can see it removed a total of around £34,330 across the two accounts, with those transactions being on 15 June 2023 and 30 October 2024. It isn't clear why Bank of Scotland split the amounts in the way that it did but, as both loan accounts are charged at the same interest rate and have the same remaining term, there's no financial detriment to that, so I've not looked into it any further.

As I said, we don't provide an auditing service or carry out a forensic analysis of loan records so it isn't our role to calculate whether those refunds are the correct amounts. Bank of Scotland say they are, whereas Mrs N says they're not.

As the reworking of the accounts was something a court ordered Bank of Scotland to do, if Mrs N feels Bank of Scotland hasn't carried out the calculations correctly then she would need to let the court know as we don't have the power to alter or enforce a court order, nor is it our role to investigate whether a business has correctly followed a court order. We can't advise on the process for that, or whether it is an action Mrs N should take, I leave it with Mrs N to decide what to do.

I can see how strongly Mrs N feels about this but having considered everything very carefully there are no grounds for me to uphold this complaint.

### **My final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs N to accept or reject my decision before 18 December 2025.

Julia Meadows  
**Ombudsman**