

## **The complaint**

Mr P complains that Bank of Scotland Plc has not treated him fairly in respect of residential and buy-to-let mortgages he holds.

## **What happened**

This complaint is about a buy-to-let mortgage that Mr P took in 2001, where the term ended in 2021, and a residential mortgage that he took in 2004, where the term ended in 2019.

Mr P complains:

- Bank of Scotland has not offered appropriate support when the term of the residential mortgage ended. It did not contact him for a number of years and it will not agree a payment plan. He'd missed the opportunity to sell the property in 2020-2022 when the housing market was more favourable. And because of the delay he was now paying higher interest rates than if the mortgage was repaid sooner.
- Bank of Scotland instructed solicitors despite knowing the property was up for sale and it has not followed the pre-action protocol. The paperwork it issued in respect of its claim included the wrong names and included his mother who has no association with this mortgage.
- A missed payment was incorrectly recorded by Bank of Scotland. That has prevented him remortgaging.
- Bank of Scotland refused to provide the original contract terms - and the name on the contract is incorrect.
- Bank of Scotland will not provide its end of term policies.

Mr P wants Bank of Scotland to remove the adverse information it recorded on his credit file, provide all the documents he requested and to stop any legal action. He also wants Bank of Scotland to compensate him for what has happened.

The investigator did not think the complaint should be upheld. He thought bank of Scotland's offer of £150 was a fair way to resolve the complaint.

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

- The letter Bank of Scotland sent in 2019 was insufficient when the term ended and the balance was due. It should have communicated more often in view of the risk of repossession – and before the term ended.
- The mortgage was applied for solely by Mr P. If it applied to his parents too then their names should be on the paperwork throughout the life of the mortgage, not just at the repossession stage.

- By accepting payments of interest and failing to take any recovery action, the bank has waived its rights to immediate capital repayment or created an implied agreement to extend the interest only period.
- It was unfair for the bank to enforce the full repayment terms when it had not done so for several years.
- The bank had breached data protection laws to ensure data accuracy and the FCA's requirement to treat him fairly by recording incorrect information on his credit file. The offer of £150 was insufficient. The incorrect information had caused a financial loss – the missed opportunity to refinance.
- We had a duty to look at what was fair and reasonable in all the circumstances. That should include the bank's compliance with procedures – including the service of court papers and whether the incorrect name invalidates the legal process.
- The bank didn't carry out identification checks on him or the co-owners of the property when creating this mortgage. It has used multiple inconsistent versions of his name.
- The bank obtained guarantees from his parents without verifying their identities. Their names were added by hand writing them – and they did not guarantee the additional borrowing, only the original facility of £60,000.
- The legal charge is defective because the bank's name has changed.
- The bank had breached the mortgage terms by withdrawing the flexible options facility.
- The account was shown as paid off in 2009 but later reversed. That was not communicated to him or any reason 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 what Mr P has said about his parents' involvement in this debt. But he's brought this complaint in his own right. If his parents have guaranteed any part of the debt then they or their estates may be entitled to bring a complaint to us. But I am unable to look at the complaint from their perspective or make any award for any financial loss or detriment they may have suffered as they are not part of this complaint.

Mr P's main concerns appear to be in respect of the residential mortgage. I have concentrated on that – by for completeness I have also set out why I think the bank has treated him fairly in respect of the buy-to-let mortgage.

I also note that Bank of Scotland sent a final response to Mr P in January 2024 and that Mr P did not refer his complaint to us until October 2024, more than six months after the final response was sent. That would usually mean that we are unable to consider any complaints that were dealt with in the final response. However, that response did not address the specific points Mr P has raised here, so I have jurisdiction to consider this complaint.

### End of term communication

When Mr P took out the mortgage in 2004 he agreed a term of 15 years – that was set out clearly and prominently on the mortgage agreement. I'd usually expect a lender to show that

it had communicated early and more frequently as the mortgage was approaching the end of its term. The bank has not shown that it did that.

But I think the letter the bank sent in June 2019 set out clearly that the term had ended and that the balance was due. We have evidence that Mr P spoke to the bank after he received the letter and a two month hold was agreed to allow him to complete the sale of the property. So I am satisfied that Mr P was aware that the balance of the mortgage was due and needed to be repaid.

As far as I can see the bank did not contact Mr P again regarding payment of the mortgage until 2023. While I understand Mr P's point, ultimately it was his responsibility to make sure the mortgage was repaid as agreed. I've found he knew the term had ended and the balance was due. It was his decision whether to sell the property or not. So I can't reasonably say that the bank would be responsible for his decision not to sell it at an earlier point.

It is reasonable for the bank to apply interest until the mortgage is repaid in full. I do not see how requiring payment of interest or if Mr P made some of those payments it would prevent the bank from looking for the debt to be repaid as agreed. I can see no reasonable basis on which that could be interpreted as the bank agreeing to extend the term. I do not see how a mortgage lender could fairly or reasonably extend the term without carrying out further checks to establish if that was in the borrower's best interests.

#### End of term support

When Mr P took out the mortgage he agreed to a term of 15 years. It was reasonable for Bank of Scotland to look for the mortgage to be repaid at the end of term – and Mr P was in breach of contract when he did not do so. But Bank of Scotland was required to treat Mr P fairly. It should explore any options available and give him reasonable time to put in place any viable plans to repay the mortgage.

In August 2019, the bank agreed a two month hold to give Mr P time to sell the property. There was then no contact from the bank until March 2023. The bank said that Covid restrictions might have been the reason it ceased contact for a time, although that does not explain the full length of the delay,

But I can't see that Mr P spoke to the bank until early 2024. The bank rejected Mr P's request for more time to sell the property. I don't consider that was unreasonable bearing in mind he'd had over four years to do so at that point. And I note that the property had not sold before the legal action commenced

In October 2024, Mr P gave the bank details of his income and expenditure. But it did not support that the mortgage was affordable. While it might not be reasonable for the bank to apply a strict affordability test in these circumstances, I consider it was reasonable for the bank to consider the mortgage was not affordable or sustainable. It was reasonable for the bank to decide that it would not be in Mr P's best interests for the mortgage to continue.

I understand the bank gave Mr P a one year grace period on his buy-to-let mortgage. I don't consider it follows that the bank treated Mr P unfairly in respect of the residential mortgage. The term of the buy-to let ended around two years later than the residential mortgage. And he'd effectively had a grace period on the residential mortgage – the bank took no substantive action to recover the debt for around five years.

#### Legal action

I've already found that the payment of the mortgage balance was overdue and that the bank

had reasonably not accepted any of the proposals that Mr P had put forward to repay the mortgage. In those circumstances and bearing in mind the balance was due to be repaid in 2019, I consider it was reasonable for the bank to start legal action in March 2024.

I note the points that Mr P has made regarding whether the bank has followed the correct legal process. But that does not make any difference to my decision that it was reasonable for the bank to take such action. It is open to Mr P to defend the claim if he considers that it has not been made properly – but he should seek legal advice.

I note the points Mr P has made about the differences in his name and what he considers to be defects in the legal charge held by the bank. But he accepts that it was him that borrowed the money from Bank of Scotland, he has had the benefit of the amounts borrowed and the mortgages have operated as agreed. In those circumstances, I think it is reasonable for the bank to seek to recover the debt from him.

### Credit file

It isn't in dispute that the bank recorded incorrect information on his credit file in 2020 and that was a mistake. We'd therefore consider any detriment Mr P has suffered as a result of the error.

Mr P considers that he has been unable to remortgage and obtain credit because of the incorrect information. I accept that the incorrect information is likely to have been something a lender would take into account when making a lending decision. But for me to be able to uphold this part of the complaint I'd need to be satisfied that Mr P would have been able to obtain the credit, but for the incorrect information.

I do not have sufficient evidence to support that the incorrect information was the only reason that Mr P's applications were declined or that he would have been successful but for the information recorded by the bank. We know that the residential mortgage was overdue and that would likely be reflected on his credit file and that when the bank reviewed his income and expenditure the mortgage was not affordable. And lenders take into account a number of factors in deciding whether to lend or not.

In all the circumstances, I consider £150 is a fair amount to reflect the distress and inconvenience caused by the incorrect information record on Mr P's credit file.

### Information

It is for the information commissioner's office to enforce whether a business has complied with a subject access request or not. I'd note that the bank would only be required to provide Mr P's personal data it held – not any internal processes or procedures.

The bank should make sure that it has sent Mr P all loan agreements and associated terms and conditions for any mortgages he holds that are available.

### Buy-to-let

Buy-to-let mortgages are not regulated. The bank has given Mr P a reasonable amount of time to repay the mortgage when the term ended in 2021 – including a one year grace period from February 2024.

The debt has not been repaid and the bank is not obliged to extend the term or give Mr P longer to repay. And I can't see that the bank could reasonably be required to do any more in the circumstances.

### Other points

I can't see that the point about the withdrawal of the flexible facility formed part of Mr P's original complaint. As far as I can see it has not been investigated by the bank or us. Nor can I see that the point Mr P made about the loan being paid in 2019 and reinstated has been dealt with.

I don't think either of those points would change the outcome of this complaint, in respect of the fact that the terms of the mortgages have ended and that the bank is entitled to take action to recover the debts.

### **My final decision**

My final decision is that Bank of Scotland's offer of £150 was a fair way to settle this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 11 February 2026.

Ken Rose  
**Ombudsman**