

The complaint

Mrs K complains about the way that Bank of Scotland plc has administered her mortgage.

What happened

In 1999 Mrs K took out a mortgage with Bank of Scotland. In May 2000 Mrs K took out an “Adaptable Mortgage Plan Plus” – an interest only mortgage repayable over 15 years. The mortgage offer said it superseded the previous offer from 1999. It said the amount of loan was £211,000 plus fees. The offer said that the initial tranche of borrowing would be £150,000 with the balance of £61,000 to be drawn down using a chequebook facility.

Mrs K complains that Bank of Scotland has mismanaged the mortgage and has not treated her fairly over the life of the loan:

- It did not apply an overpayment she made in 2002 of £100,000 correctly. She said the bank applied it to the chequebook facility balance – but she disputes that she ever agreed to that facility. The bank has not given her a copy of the agreement, or evidence that it was sent to her solicitor. And the chequebook facility should not form part of her mortgage.
- She has not been treated fairly when she was unable to repay the mortgage at the end of its term.
- She was mis-sold payment protection insurance (PPI).
- The legal fees applied are unfair.

I issued another decision explaining why we shouldn't consider a complaint about the following issues as they were subject to current court proceedings.

- The £100,000 was misapplied.
- There was no solicitor involved in the second facility.
- That there is an unfair relationship under section 140A of the Consumer Credit Act 1974.
- Inconsistent treatment of accounts
- Excessive solicitor costs in respect of the legal action taken by the bank.
- Failing to take account of Mrs K's medical and financial vulnerability.

I said we should consider the complaint about PPI and any legal fees that were not applied by Bank of Scotland in respect of the ongoing court proceedings.

I explained to Mrs K that the complaint about PPI had no prospect of success. But I did not think it was fair for the bank to pass on legal fees it incurred in dealing with this complaint.

But Bank of Scotland's offer to refund the legal fees that it incurred in dealing with the complaint was a fair way to put things right.

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.

PPI

None of the paperwork and evidence I have seen supports that PPI was sold with the mortgage. I am not persuaded that PPI was sold alongside the mortgage.

Legal fees

Bank of Scotland has incurred a significant amount of legal fees in taking legal action against Mrs K. I explained in my dismissal decision that those fees were subject to ongoing court proceedings so it would not be appropriate for me to deal with those fees as part of this complaint. And bearing in mind that the fees were incurred in respect of that legal action, I would likely find that any question about the fairness of the fees would be better dealt with in court.

But as part of my investigation it came to light that Bank of Scotland had sought legal advice in how it should deal with this complaint and that it intended to pass on its costs in doing so to Mrs K. I do not consider that is fair. I will explain why.

We are a free and informal service intended to allow consumers to have complaints considered without incurring legal costs. It would go entirely against that if financial businesses were permitted to incur legal fees in defending complaints brought to us and to pass those costs on to a complainant. That is not fair and it is not in line with my experience of what is good industry practice.

When I put that to Bank of Scotland, it said:

“Specifically in regards to costs incurred in relation to the complaint, where Mrs K's complaint points relate to particular actions by the Bank (including court action) we have had to refer to our solicitors for their expertise, which incurs a cost. We have only engaged advice or support from our solicitors for the complaint when it has been necessary to do so. We do not see any error in this.... We will not confirm that no further fees will be charged in relation to this, so it will depend on whether we need to refer back to our solicitors. If you should ask a question that I am not qualified to answer, which requires legal knowledge, I may need to refer this to our solicitors and that would be a genuine cost. We are attempting to avoid this where possible.”

It is up to the bank whether it seeks legal advice in respect of the complaint or not. But I have explained that it is not fair or in line with good industry practice to pass on any costs it incurs in doing so. Bearing in mind its position, the bank should also give a written undertaking to Mrs K that it will not pass on any further legal costs to Mrs K that it may have incurred or will incur in respect of this complaint. That would not prevent Bank of Scotland from passing on any reasonable legal fees it incurs in taking repossession proceedings or dealing with Mrs K's defence.

Bank of Scotland has agreed to refund legal fees of £942.24 it said it incurred for work related to this complaint. I think that is a fair way to settle this complaint.

My final decision

My final decision is that Bank of Scotland plc should:

- Refund legal fees of £942.24. If any interest has been applied to those fees it should be reversed.
- Provide a written undertaking to Mrs K that it will not pass on any further legal costs it has incurred or may incur in relation to this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 19 February 2026.

Ken Rose
Ombudsman