

## **complaint**

Ms O and Mr O complain about how Bank of Scotland plc (BoS) have handled their joint mortgage account. They divorced some years ago and want Mr O to be removed from the mortgage account. In addition, Ms O is concerned that the balance of the account is too high and that she's been overcharged interest.

## **background**

Ms O and Mr O took out their mortgage with BoS when they were together. They then separated and Mr O moved out of the property. They were formally divorced around five years ago. As part of their separation they agreed that in return for Ms O paying a lump sum to Mr O, he would have no further interest in the property. And they agreed that Ms O would try to have him removed from the mortgage and would pay the mortgage in the meantime – failing which the property would be sold. This agreement was confirmed in a court order.

Meanwhile, Ms O was struggling to maintain the mortgage on her own. Arrears built up and in 2014 BoS took repossession action. A court issued a suspended possession order and to assist Ms O, BoS agreed to convert the mortgage to interest only terms to reduce the monthly payments.

Ms O has, since then, been able to maintain the monthly payments without further arrears. She's applied several times to take the mortgage over in her own name. Most recently, in 2018, she applied to do that and to take some further borrowing. BoS agreed to allow her to take the mortgage over, but wouldn't agree any further borrowing.

However, the change couldn't go through. That's because it required the completion of a new mortgage agreement. And it required the registration of a new legal charge over the property, this time in Ms O's sole name. But there was a restriction on the property in respect of a separate debt owed by Ms O. Her solicitors couldn't get the creditor of that debt to agree to allow their charge to be postponed in favour of BoS so that BoS could continue to hold first charge. So the transfer couldn't go ahead. It seems that the debt was due to be repaid in a few months, so BoS said Ms O could re-apply once it was cleared.

Ms O complained. She said it wasn't fair that BoS wouldn't agree to the transfer, and wouldn't agree to lend her the money she needed to clear the other debt. She also said that the balance of the mortgage was too high and hadn't been reducing as it should have done over the years. She'd paid far more in interest than she needed to have done and the balance should be much lower by now. BoS should have offered her a new lower interest rate. And she said BoS had marked the account as in dispute and wouldn't agree to any changes to the mortgage without agreement from both her and Mr O.

Mr O also joined the complaint. He also wanted to be removed from the mortgage. But he said that he wasn't prepared to agree to any other changes to it that could affect his position until that had been done.

Our investigator didn't think BoS had acted unfairly. Ms O didn't agree, and asked for an ombudsman to make a decision.

## **my findings**

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

I've looked carefully at the history of this mortgage, and the concerns Ms O has raised about the balance – and in particular the level of interest that's been paid over the years, and the fall in the balance that's happened as a result.

The mortgage was taken out on a repayment basis in 2008. At the start of a repayment mortgage, most of the monthly payments are used to cover interest, and the capital only reduces by small amounts each month to begin with. The balance reduces more quickly towards the end of the term – it doesn't reduce at a steady rate each year. This is entirely normal and is how all mortgages work.

Secondly, the mortgage began to go into arrears. That means that payments have been missed – so not only does the balance not reduce because they haven't been made, it increases because of extra interest that's applied. And I can see from the transaction history that BoS applied various fees and charges to the mortgage as a result of the activity it took to try and resolve the arrears situation. They would have increased the balance too.

The arrears have since been capitalised – which means the unpaid payments are added to the mortgage balance so that Ms O doesn't have to catch them up. That increases the balance too.

And finally, since 2014 most of the balance has been on interest only terms. So even though Ms O is now up to date with the mortgage payments, the balance hasn't been reducing very much – because only around 10% of the balance is on repayment terms.

Ms O says that the balance shown on her credit file keeps changing. I don't think that's surprising – because it's only ever a snapshot on a given day. The balance changes from day to day as interest is applied and then as payments are made. For much of its recent history, Ms O has been paying manually rather than by direct debit – and so the payment dates have varied, again changing the interest position slightly day by day.

Having looked carefully at all this, I can't see that BoS has made a mistake in how the balance has been calculated. I can't offer a formal professional auditing service. It's open to Ms O to have the mortgage audited, though that would need to be at her expense. And if she does, and that identified problems, she could complain about those. But as things stand I don't think the balance is likely to be wrong.

If the mortgage had been on a fixed interest rate rather than the standard variable rate (SVR), Ms O would have had to pay less each month. BoS has said that it doesn't generally allow fixed interest rates where a mortgage is in arrears. That's because if the property ends up being sold or repossessed – as nearly happened in this case – an early repayment charge would be added to the balance if that happened during a fixed rate. I think that's a reasonable concern, and in the particular circumstances of this case, I don't think BoS acted unfairly by maintaining the mortgage on the SVR.

Once the arrears came off, Ms O would have been able to apply for a fixed rate. But there's no evidence she did so immediately. And more recently Mr O has said that he doesn't want any changes to the mortgage to be made until he's removed from it.

Both Ms O and Mr O were parties to the mortgage. Where there's a disagreement between them, as there was here, I can't resolve that dispute. All I can do is look at complaints that the bank has acted unfairly. But where Ms O and Mr O don't agree among themselves what they want to ask for, I don't think I can fairly criticise BoS, in the circumstances of this case, for not wanting to make a change where it wasn't sure both of them agreed to it while both were still parties to the mortgage. And I don't think it was unfair that it recorded that they were in dispute.

I think it's fairly clear that what's needed above all in this case is for Ms O and Mr O to go their separate ways – which means Mr O being removed from the mortgage so Ms O can take it over on her own.

Generally, where there's a change to a mortgage – or a replacement of an old one with a new one – which materially affects affordability, a lender should carry out an affordability assessment. That's the case here, since moving from a position where both Ms O and Mr O are liable for the mortgage (even if, in practice, only Ms O has been paying it) to a position where only Ms O is liable does materially affect affordability. If the change happens, there is only one person who can be required to contribute, one income from which to make payments, and one person who can be pursued if things go wrong.

However, where – as here – the original mortgage was taken out before April 2014, a lender can disregard the need for an affordability assessment if the change is otherwise in the borrowers' best interests. But that's only possible with the existing borrowing levels; any further borrowing would require a full affordability assessment.

I'm pleased to see that's what BoS did here. Although it had concerns about Ms O's finances and wider situation, it looked at all the circumstances and decided to allow Ms O to take the mortgage over on her own, despite those concerns. But it wasn't prepared to allow her to borrow any more money. I think that was a fair assessment for it to have made, and it does appear that it wasn't affordable for Ms O to increase the borrowing.

Unfortunately the transfer wasn't able to go ahead at the time. Ms O had a debt owed to a third party which had placed a charge over her property. She was paying off that debt in instalments, but hadn't quite done so – there was just under a year to go. Transferring the mortgage would mean removing the old charge over the property in joint names and replacing it with a new one in Ms O's sole name. Because that new charge would be taken out after the other debt, it would rank behind it. But BoS is only prepared to grant a mortgage where it can take first charge over the property – that's not unreasonable, and is standard practice for all mortgage lenders.

Therefore, the change could only go through if the third party creditor was prepared to agree to postpone its charge to allow BoS's to take precedence. It seems Ms O's solicitors weren't able to get it to agree. So the re-mortgage didn't go through.

I understand that more recently the debt has been paid off and the re-mortgage has gone through. I'm pleased to hear that – but I think that BoS acted fairly in expecting either a postponement, or a re-application once the debt had been paid off. I don't therefore uphold the complaint that the change should have gone through sooner.

Ms O has also said she'd like to convert the mortgage back to repayment terms. That's something she'll need to discuss with BoS, which will want to consider as part of its

assessment whether that's something that's affordable for her – because it will mean the monthly payments increasing.

**my final decision**

For the reasons I've given, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms O and Mr O to accept or reject my decision before 23 November 2019.

Simon Pugh  
**ombudsman**