

complaint

Mr and Mrs T complain that their mortgage lender Bank of Scotland Plc (BoS) hasn't done enough to help them during their financial difficulties. They complain that BoS:

- won't let them set up a new payment arrangement;
- sent a threatening letter in October 2018; and
- hasn't done anything to help them during their financial hardship.

Mr T has managed the complaint throughout.

background

In 2007 Mr and Mrs T took out an interest only mortgage with BoS through a mortgage broker. The mortgage was for around £665,000 over 19 years. The mortgage was initially on a tracker rate which expired in 2010.

In 2010 Mr and Mrs T transferred to another tracker rate that expired in 2013. Since that time their mortgage has been on BoS' home loan rate (or its standard variable rate or SVR). They now owe around £32,000 on a capital repayment basis and a further £662,000 on an interest only loan.

The mortgage fell into arrears when Mr T lost his job a few years ago. Mr T has also had serious health problems shortly after losing his job and he hasn't been able to work since. The mortgage arrears are now around £50,000.

In October 2018 BoS sent Mr and Mrs T a letter saying it was considering legal action. Mr and Mrs T complained to BoS but it didn't uphold their complaint. It gave its final response on 2 November 2018 and Mr and Mrs T brought their complaint to us.

Our investigator looked into the matter. She thought Mr T and BoS had been in regular contact and that BoS had explored options with Mr T. Overall she didn't think BoS could have been expected to do more to help Mr and Mrs T in all the circumstances. She said she hoped that Mr T's decision to release money from his pension might help resolve things in the short term.

Mr T disagreed with the investigator's findings. He said he'd been bullied into paying part of his mortgage off with his pension and that we should be on his side. He asked that an ombudsman look at the complaint again and make a final decision on the matter.

my findings

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

First, I should explain that we're an informal dispute resolution service, set up as a free alternative to the courts. We're not a consumer champion or an industry regulator. We're also not on the side of either party when a complaint is brought to us. We look at the particular circumstances of each complaint and try to determine whether a business has made a mistake or caused a consumer financial loss or suffering by unfair treatment. Where possible we look to put a consumer back in the position they would have been in, but for the mistake of the business – if we find there is one.

I'm sorry to hear about the problems Mr and Mrs T have faced in recent years. The loss of Mr T's job followed by his ill health must have made this an incredibly difficult and stressful time for Mr and Mrs T. It's evident from the contact history of the mortgage account that Mr T, in particular, has gone to great lengths to keep BoS up-to-date with their efforts to sell their property and try to repay the BoS mortgage.

I've thought carefully about the support that BoS has given to Mr and Mrs T in recent years and since October 2018 when it decided to send the letter saying it was considering legal action. When looking at this complaint, I've considered relevant regulation and legislation surrounding consumers in long term arrears, including recent guidance from the Financial Conduct Authority on this matter.

Mr T's told us that BoS had agreed to repayment arrangements in the past – for around 18 months after he lost his job and became unwell. He's said that these payment arrangements were set up to pay an amount each month that was well below the contractual monthly payment. BoS wouldn't agree to extend this arrangement. I can see why BoS wasn't content to let the arrears continue to escalate. The arrears on this mortgage account have now reached a significant level. I appreciate that Mr and Mrs T know this – it's precisely why they've been trying to sell their house. They want to repay their mortgage. I also see that this will be a growing concern for BoS and that is why it had considered legal action.

I'm satisfied that Mr and Mrs T are doing all that they can to try and sell their home. It sounds like they have a substantial property and they're trying to sell in a difficult economic environment. It's very encouraging that there's been recent interest in the property. It's also good that Mr T is updating BoS about this regularly.

I can see why Mr and Mrs T would have been upset by the letter received from BoS dated 8 October 2018. I've looked at this letter and considered its content. The letter which is entitled 'non-payment of your mortgage' contains a sobering message. I think it's fair to say it's written in a way to get the reader's attention and highlight how serious the arrears position has become on their mortgage account. I can appreciate why Mr T didn't feel he needed reminding of the position he and Mrs T are already trying to sort out. But, it's a standard letter and it's important that BoS reminds its consumers of the consequences of their mortgage arrears before it takes any legal action. I don't think it was unfair of BoS to send this letter to Mr and Mrs T when it did. I can see why BoS was seriously considering what steps it should be taking when arrears have escalated to the extent they have.

I've listened to the phone calls between Mr T and BoS on 7 December, 13 December and 17 December 2018. I wanted to hear what level of customer service Mr T was experiencing when he called BoS, and how helpful and supportive BoS was being to his situation. I also wanted to get a feel for how receptive BoS was to exploring a payment plan going forward. Mr T has now released some money from his pension. This has meant that he's been able to make a payment to BoS in December, and then commit to making a similar payment or around £3,600 for the next three months. BoS explored whether such an arrangement would be affordable to Mr and Mrs T. It thought about all Mr and Mrs T's income and their other bills and checked they could meet the payments. This is what I would expect BoS to have done in such a situation.

BoS had agreed to put its legal action on hold while Mr T had a complaint with us. It also confirmed that any action would be on hold while Mr and Mrs T are making the payments agreed under the payment plan set up in December 2018. Mr T plans to draw further money from his pension in April to he can make a series of further repayments to his mortgage while he sells his property. Assuming Mr T can achieve this, it gives him and Mrs T some breathing space in which to sell their property. Again, this all seems reasonable to me.

Mr T has said that he was 'bullied' by BoS into drawing money from his pension. I haven't found any evidence that supports undue pressure was placed on Mr T. However I can see why Mr T may have felt that he had little choice at the time.

Mr T has also complained that he hasn't got a single point of contact at BoS. He's unhappy he has to explain his situation every time he calls. The three calls in December were all with different call handlers. And, I don't think the customer service, or outcome reached on the calls, would have been different if Mr T had been given one contact. In fact, it may have become more difficult for Mr T to access a single point of contact (dependent on their working hours, Christmas leave etc). I don't think it's unreasonable that BoS hasn't given Mr and Mrs T a single point of contact in the circumstances.

While I understand what a difficult time this has been for Mr and Mrs T, I'm satisfied that BoS appears to have treated them fairly. For the time being they've found a way forward that is agreeable to BoS. This is admittedly a relatively short term fix and it does rely on Mr and Mrs T managing to sell their property soon. For the avoidance of doubt, I think it would be unreasonable if BoS had been taking no action to encourage Mr and Mrs T to try to manage their arrears. It could be seen as irresponsible if a lender let arrears escalate indefinitely. If BoS took no action, I don't think this would be helpful to Mr and Mrs T in the medium to long term.

Mr T has also mentioned that their situation isn't helped because their mortgage is on BoS' SVR, which is currently around 5.2%. Mr T considers this is too high. I appreciate the point that Mr T makes, and I can see the impact that any movements to the interest rate will make to their mortgage. This is especially true as most of the mortgage is on an interest only basis. Mr and Mrs T are on the standard reversionary rate that any BoS customer would go to if they haven't taken out another interest rate product. This is the rate that the mortgage offer in 2010 said their borrowing would revert to for the rest of the term. BoS considered Mr T's request for a lower rate of interest but it decided not to make a discount available as a forbearance measure. I don't think it was obliged to do so. Overall I think it's reasonable that Mr and Mrs T remain on the SVR until they sell their home. I hope this happens in the near future.

my final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs T to accept or reject my decision before 8 May 2019.

Emma Peters

ombudsman