

The complaint

Miss W and Miss W (who I'll refer to as Miss W1 and Miss W2) complain that Bank of Scotland plc treated them unfairly when the term of their interest only mortgage expired. Miss W1 has dealt with the complaint. She said she wasn't interested in compensation, but wanted Bank of Scotland to hold recovery action while she sells a commercial building.

What happened

The term of Miss W1 and Miss W2's mortgage expired in January 2017 with an unpaid balance. Miss W1 lives in the security property. Miss W1 says they intended to sell a commercial property to raise funds but the sale failed to progress during the Covid-19 pandemic.

In early 2022 Bank of Scotland reversed a hold on recovery action, saying there would be a shortfall after the sale of the commercial property and this hadn't been addressed. Miss W1 says this is unfair as she (and Miss W2) have other assets they could use to pay the shortfall, and Bank of Scotland could have asked her about this.

Miss W1 says because Bank of Scotland won't give them more time to sell the commercial property they'll have to sell it for less than they think it's worth. This will cause a loss and increase any shortfall when they repay the mortgage balance. She said Miss W2 will have to re-mortgage her home to contribute to the shortfall. And Miss W2 has agreed to remove herself from the title of the security property so that Miss W1 can apply for an equity release mortgage – so Miss W2 will lose her interest in the property. Miss W1 says while she's able to withdraw money from her pension towards the shortfall this would mean having to pay tax. Miss W1 and Miss W2 ask for compensation for their financial loss.

Bank of Scotland accepted it made an error in April 2022 when its solicitors sent letters about starting action for possession. It paid £150 compensation. It said it had received the evidence necessary for it to put a hold on action until the end of August 2022. It said it could look into a re-mortgage to cover the shortfall, but not until the balance had reduced and it had an accurate idea of what was required.

Our investigator said Bank of Scotland had made errors. She said it should have discussed the shortfall with Miss W1 before starting legal action in January 2022, and its solicitors shouldn't have sent letters about taking action for possession in April 2022. Our investigator said Bank of Scotland should refund legal charges applied to the account and pay another £200 compensation.

Our investigator didn't recommend that Bank of Scotland pay compensation for Miss W1 and Miss W2's financial loss. She said they did need to repay the mortgage and they'd had some years to plan for this.

Bank of Scotland agreed. Miss W1 said the compensation was derisory. She said her partner was unwell and the communications from Bank of Scotland resulted in her being hospitalised with a heart attack.

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.

While this complaint relates to what happened in 2022, I think the context of the complaint is important. So I've briefly set out what happened after the term expired in 2017. Where the evidence is incomplete, inconclusive or contradictory, I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

The term of Miss W1 and Miss W2's mortgage expired in 2017. Bank of Scotland's records show it was in contact with Miss W1 and Miss W2 about repaying the balance.

In April 2017 Bank of Scotland recorded Miss W1's proposal to repay the mortgage from the sale of a second property. Bank of Scotland made unsuccessful attempts to contact Miss W1 and Miss W2 during 2018 to discuss repayment.

In early 2019 Miss W1 told Bank of Scotland she was unable to sell the commercial property as there were no buyers and the equity wasn't enough to clear the mortgage balance. In mid-2019 Miss W1 said she was taking independent financial advice about re-mortgaging. Bank of Scotland looked into re-mortgaging or extending the term. It said this wasn't affordable. It said it couldn't offer a retirement interest only mortgage (RIO) as it wasn't affordable and didn't meet loan to value criteria.

In mid-2020 Miss W1 said she had a buyer for the commercial property and would take out a lifetime mortgage to cover the balance. In early 2021 and mid 2021 she told Bank of Scotland the sale was progressing. In late 2021 she said she was in the process of selling the building and the net proceeds would repay most of the mortgage with a shortfall of less than £30,000.

In late 2021 and early 2022 Miss W1 told Bank of Scotland her partner was attending hospital appointments. She said she was happy to manage the mortgage and communicate with Bank of Scotland about it.

Miss W1 spoke to Bank of Scotland in mid-January 2022. She said she was selling the commercial property and could use pension funds to cover any shortfall, which she expected to be about £13,000. Bank of Scotland told Miss W1 it would put a six-month hold on recovery action. However, it sent a letter only a few days later saying it had asked its solicitors to start legal action for possession.

Bank of Scotland said action shouldn't have been put on hold as it didn't have evidence Miss W1 could pay the shortfall from her pension funds. It said it isn't its usual process to contact customers when an account is taken off hold.

Miss W1's financial adviser gave a written confirmation that her pension would allow her to comfortably cover the predicted shortfall of £13,000 and Bank of Scotland put a 30 day hold on the account which ended in mid-March 2022. This was extended several times.

In late March 2022 Miss W1 contacted Bank of Scotland to say she wasn't happy with the offer she had for the commercial property and wanted a six-month hold so she could wait for a better offer.

Bank of Scotland's solicitors sent a letter in early April 2022 saying it had applied for a court hearing and applied a charge to Miss W1 and Miss W2's account. Bank of Scotland says the

letter was an error. Miss W1 received a similar letter in mid-May 2022 shortly after another 30-day hold was agreed. The solicitors confirmed the hearing had been adjourned.

When considering this complaint I must be fair to both parties. When Miss W1 and Miss W2 took out the mortgage they agreed to repay it, and they do need to do so. The term expired in early 2017. Bank of Scotland has been in contact with them since, to discuss their plans. It put holds on recovery action. It sent letters explaining the consequences if the balance wasn't repaid.

Understandably, Miss W1 wants to sell the commercial property for as much as possible. But she first told Bank of Scotland they intended to repay the mortgage by the sale of the property in 2017, about five years ago. Even taking into account restrictions during the Covid-19 pandemic I think Bank of Scotland allowed her a reasonable amount of time to market the property. I don't think it's fair to say Bank of Scotland pressured her into a quick sale, or to hold it responsible if she has to sell the commercial property for less than she thinks it's worth. I don't think it's fair to require Bank of Scotland to pay compensation for this.

I don't think it was unfair for Bank of Scotland to ask for evidence, such as about the commercial property that was to be sold. And I don't think it was unfair for it to ask for evidence of how the shortfall would be paid. Miss W1 says she always had to chase Bank of Scotland to check if the information provided was satisfactory. But I also think Miss W1 had some responsibility to provide evidence that did support what she said – for instance that she was entitled to the proceeds from the sale of the commercial property (given the title wasn't in her name) and the likely net proceeds of sale.

I think it was unfair for Bank of Scotland to tell Miss W1 there was a six month hold on recovery action and send a letter a few days later saying it had passed the account to its solicitors. I think, in the circumstances, Bank of Scotland should have first tried to contact Miss W1 or Miss W2 to ask for any information it needed.

Taking action for possession is a last resort, and Miss W1 and Miss W2 did have a proposal to repay the mortgage. However, to be fair to both parties, I need to bear in mind that the term of this mortgage expired in early 2017. Miss W1 told Bank of Scotland several times since that she had a buyer and the sale of the commercial property was progressing. She told Bank of Scotland she was taking independent financial advice about her options. I think, in fairness, there's a limit to how long it would be reasonable to expect Bank of Scotland to hold recovery action pending a potential sale of the commercial property. However, I think it should have been clear with Miss W1 and Miss W2 about what action it would take, what evidence they needed to provide and by what date.

Putting things right

I must be clear that I think it's fair and reasonable for Bank of Scotland to expect the mortgage balance to be repaid, and to ask Miss W1 and Miss W2 about their proposals to do this. I think Bank of Scotland allowed Miss W1 and Miss W2 reasonable time to sell their commercial property, take advice and look into refinancing options.

Bank of Scotland's error was to write (or allow its solicitors to write) to Miss W1 and Miss W2 saying it was taking legal action when it had told them that action was on hold. I think it's fair and reasonable to require Bank of Scotland to remove the legal costs applied to their account (of £88.80 and £511) and pay compensation for the upset caused.

I appreciate that Miss W1 and Miss W2 have found this matter stressful. Miss W1 has told us that her partner has a serious health condition and she has also recently been in hospital. Miss W1 says this was due to the communications from Bank of Scotland. It's likely most of

the stress relates to implementing their proposals to repay the mortgage. But Bank of Scotland's errors will have added to this. I've also taken into account that when Miss W1 called Bank of Scotland it put action back on hold or explained there had been an error. And it gave them more time to sell the commercial property. I think, for the *additional* upset and trouble caused by its errors, it's fair and reasonable to require Bank of Scotland to pay £200 (in addition to the amount it already paid).

My final decision

My decision is that I uphold this complaint and order Bank of Scotland plc to remove the charges and pay £200 compensation, as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W1 and Miss W2 to accept or reject my decision before 14 December 2022.

Ruth Stevenson
Ombudsman