

The complaint

Miss W's complaint is about a mortgage she has with Bank of Scotland plc (BoS). Miss W's original mortgage was with another lender that is part of the same financial group as BoS. A re-mortgage was arranged to assist Miss W due to financial difficulties and Miss W believes that she paid around £1,100 for potential legal fees, and it would be refunded if it was not needed, but it has not been. She wants BoS to refund the money in settlement of the complaint.

What happened

In late 2021 Miss W had a mortgage with another lender ('Lender T') in the same financial group as BoS. The mortgage was due to be repaid in less than two years and was on Lender T's standard variable rate of interest as Lender T wasn't able to provide new interest rate products. The mortgage was in arrears and to aid Miss W to afford the monthly payments Lender T extended the term in the summer of 2022.

In February 2023 the arrears were capitalised on the Lender T mortgage and a re-mortgage to BoS was arranged. This meant that Miss W could be given a term extension and an interest rate product that would reduce her monthly payments and make them more affordable.

On 21 February 2023 Miss W had a telephone meeting with a mortgage adviser. They discussed her circumstances and what she wanted from the new mortgage arrangements. It was explained that the loan amount on the application had been rounded up by one monthly payment to ensure when the existing mortgage was closed, there was enough money to repay it. The mortgage adviser went on to confirm that if there was any money left over after the Lender T mortgage was repaid, it would be paid back to the mortgage. She then confirmed that the monthly payment would remain the same as on the illustration and it would result in Miss W making a minimal overpayment each month. However, if Miss W wanted the monthly payment recalculated to reflect the eventual mortgage balance, she could contact BoS and it would do that. It was confirmed that a letter would be sent to Miss W explaining all of this information after the mortgage completed. BoS has confirmed the letter should have generated, but did not.

BoS issued a mortgage offer, which Miss W accepted. The mortgage was for £150,360 over a term of six years. The mortgage was arranged on a part repayment and part interest-only basis. A five-year fixed interest rate product of 4.09% was attached to the mortgage, making the monthly payment during that period £584.70.

On the evening of 28 February 2023 Miss W made a payment to her existing mortgage of £1,097.10. In the telephone call with Lender T on 1 March 2023, she confirmed the money she'd paid was the monthly payment due on the mortgage. However, subsequently, Miss W said that this was an additional payment made to ensure that there would be sufficient funds from the BoS mortgage to clear the Lender T mortgage, and she would not have made the payment had she not believed it would be refunded if it was not needed.

The re-mortgage completed on 17 March 2023. BoS' solicitors wrote to Miss W on the same day with a completion statement. This detailed that after the mortgage balance of £148,822 had been paid off, there was a surplus balance of £1,538 from the advance. It was documented this sum was due to be paid to Miss W.

Miss W was told by the solicitors when she called it that the surplus funds had been returned to BoS and BoS would forward them to her. When she spoke to BoS initially she was again told the surplus funds would be returned to her. However, it was subsequently confirmed that was not the case and the surplus funds had been credited to the mortgage account as she'd been told it would be at the time of the application for the re-mortgage.

Miss W complained and BoS responded in a letter dated 30 June 2023. It explained that the surplus funds had been used to reduce the mortgage balance, as Miss W had been told at the time of the mortgage application. As for any overpayment Miss W had made to the Lender T mortgage, this would have been paid off the mortgage balance and had been factored into the redemption figure BoS had been provided with, so it was not refundable. BoS was satisfied it had done nothing wrong in relation to the administration of the mortgage. However, it accepted Miss W's account that it had provided incorrect information when Miss W had spoken to other members of its staff, and so it paid her £40 to compensate her for any inconvenience she'd suffered.

Miss W didn't accept BoS' response and referred her complaint to this Service. When she did so, she confirmed that she didn't remember being told any surplus funds would be used to reduce the mortgage balance.

One of our Investigators considered the complaint, but he didn't recommend that it be upheld. He was satisfied that Miss W had been told that any surplus funds after the Lender T mortgage was repaid would be paid off the BoS mortgage balance. He was also satisfied this was a reasonable approach from BoS and that Miss W hadn't suffered a financial loss. However, she had been given incorrect information about the surplus funds in a telephone call with BoS on 20 March 2023 and so a compensation payment was appropriate. He was satisfied the £40 BoS had paid Miss W was appropriate in the circumstances.

Miss W said she disagreed with the outcome. She explained that she had no intention of increasing her mortgage balance when she transferred to BoS. However, she had reduced the balance on the Lender T mortgage to ensure there was enough money in the new advance to clear it. She expected this amount to be refunded on completion if it was not needed. Had she been told that would not happen; she wouldn't have made the payment. She also reiterated that she didn't remember being told what would happen with any surplus funds in February 2023. Miss W suggested that if that conversation happened, she didn't remember it because she wasn't feeling well on the day of the mortgage interview.

In addition, Miss W said that she believed she was paying interest on the whole balance that was agreed to, and the credit of the surplus funds had not reduced the amount of interest she was paying. As such, she believed she had suffered a financial loss, as she didn't have access to the surplus funds, but was still paying interest on that amount.

The Investigator responded to Miss W's points, but they didn't alter his view of the complaint. He also confirmed that BoS had told us that a letter explaining what had happened to the surplus funds should have been sent to Miss W. It wasn't aware why this hadn't happened, but he didn't think that changed the fact that Miss W hadn't suffered a financial loss. He highlighted that the mortgage balance with BoS was the same as that on the Lender T mortgage on the day of completion.

Miss W remained unhappy with the Investigator's view of her complaint. She reiterated her comments about not remembering the conversation with the mortgage adviser from before she accepted the mortgage offer and the difference that knowledge would have had on her decision to make an overpayment to the Lender T mortgage. She asked that the complaint be referred to an Ombudsman.

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.

Miss W has complained because she has not received the surplus funds that were detailed by the solicitors assisting with her re-mortgage.

I would initially confirm that the point of the re-mortgage was to transfer Miss W's mortgage to a lender that could provide her with beneficial changes linked to her borrowing and help with her financial situation. It was made very clear to her at the mortgage interview that the balance of her borrowing on the re-mortgage date would remain the same – there would be no additional borrowing.

There was a discussion with Miss W about her making overpayments to the new mortgage, but no discussions were had in this regard to the existing mortgage. Miss W has said the 1 March 2023 payment was an overpayment, but it does not appear that was the case when it was paid - she confirmed to Lender T it was the normal monthly payment that was due on the first of the month. However, if it was an overpayment, BoS wasn't aware that Miss W intended to make it and so it couldn't have made her aware that the payment would simply be absorbed into the existing mortgage balance and wouldn't be refunded to her after completion. Miss W made an assumption that was not correct, and I can't hold BoS responsible for that assumption being wrong.

As for the conversations that did occur, I am satisfied that BoS explained how it decided on the amount of mortgage she should apply for and what would happen with any surplus funds after the Lender T mortgage was repaid. I am also satisfied that the amount of the surplus funds has been credited to the mortgage account and is taken into account when the interest is calculated. So Miss W is only paying interest on the amount she actually owes and, at the point of the re-mortgage, that was the same amount as she owed on the Lender T mortgage.

Not that it affects the outcome of the complaint, but Miss W has commented that she is paying the same amount each month as was detailed in the mortgage offer, and believes that supports that the c. £1,500 was not paid off the mortgage balance. As Miss W was told at the time of the sale of the re-mortgage, BoS has confirmed that the monthly mortgage payments can be altered to reflect the slightly lower mortgage balance if that is what Miss W wants. However, in the meantime the small extra amount being collected each month is being paid off the capital balance of the mortgage.

Overall, it doesn't appear that BoS made a mistake when it was administering Miss W's new mortgage or that it is due to refund any money to her. I am also satisfied that she was made aware of how the mortgage amount on the application was calculated and what would happen with any excess funds. BoS did make a mistake when it told her that she would receive the additional funds back as a cash payment. This raised Miss W's expectations for three days and I consider some compensation is due for that, as she was clearly upset when the correct information was confirmed. BoS has paid Miss W £40 for the effect of its error and, given how quickly the error was corrected, I am satisfied that is an appropriate and proportionate sum in the circumstances.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Miss W to accept or reject my decision before 29 March 2024.

Derry Baxter
Ombudsman