

## The complaint

Mr and Mrs T complain that Bank of Ireland (UK) Plc (BoI) didn't honour the offer of a lower interest rate on their buy to let mortgage.

## What happened

Mr and Mrs T have several buy to let mortgages with BoI. I'll refer to the mortgage at the centre of this case as NC7. The mortgage was coming to the end of a preferential interest rate, so in April 2023 Mr and Mrs T booked a new rate of 4.99% fixed for five years, with a £1,995 product fee. BoI sent out a rate switch offer, which Mr and Mrs T accepted and returned.

A few days later, Mr and Mrs T asked about rates for their other mortgages. During that conversation, they learned that the 4.99% rate they had accepted for NC7 had since been reduced and was now 4.84% and also had a lower fee. Mr and Mrs T asked if they could take that rate instead of the 4.99% rate. The adviser they spoke said they could do this, and generated a new rate switch offer. Mr and Mrs T signed and returned this offer.

In May 2023 Mr and Mrs T contacted BoI to ask why their mortgage hadn't been switched to the 4.84% rate. BoI initially said it had no record of the call in which they'd been offered 4.84%. So Mr and Mrs T complained.

BoI said it could not offer 4.84%. Mr and Mrs T brought their complaint to us. During the course of the investigation BoI accepted that Mr and Mrs T had been misled. It said they should never have been told that the 4.99% rate could be removed and replaced with a 4.84% rate – once Mr and Mrs T accepted the 4.99% rate they were bound by it and could only get out of it by paying an early repayment charge. BoI accepted that they had been given wrong information about this, and shouldn't have been told they could switch or sent a new offer. It offered £300 compensation, which our investigator thought should be increased to £400. BoI accepted that but Mr and Mrs T didn't. They asked for an ombudsman to review their complaint.

## 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.

When Mr and Mrs T first applied for the 4.99% rate, BoI sent them a rate switch offer. The rate switch offer said:

### **Your right to withdraw**

You are free to decline this offer but we may not refund any fees you have already paid to us.

If you accept this offer you can still withdraw from the contract providing you tell us you have changed your mind before the 19th of the month prior to the new rate

becoming effective (see special conditions). On or after the 19th the rate switch is agreed and you can only repay the mortgage subject also to payment of any fees and early repayment charges shown in the mortgage illustration.

The reason for this (as the special condition referred to said) was that if the rate was to be effective for the start of the following month it needed to be confirmed by the 19th. If it wasn't confirmed by the 19th Bol couldn't guarantee it would be in place for the next month and it might not start until the beginning of the month after that.

The offer was sent to Mr and Mrs T on 14 April 2023. They signed and returned it on 20 April, and the rate was implemented with effect from 1 May. It was later on 20 April, after having returned the form, that they had the conversation about the 4.84% rate.

I don't think it was unfair that Bol wouldn't agree to remove the 4.99% rate that Mr and Mrs T had accepted and replace it with a 4.84% rate.

Mr and Mrs T had accepted the offer of 4.99%. The offer made clear that they wouldn't have the right to cancel after the 19th – and Mr and Mrs T accepted on the 20th knowing that. If rates had increased just after Mr and Mrs T accepted I wouldn't expect Bol to cancel that rate and replace it with a higher one. Taking a fixed rate guarantees stability of payments – but comes with the risk that interest might have been lower, as well as the protection against it being higher. It's unfortunate that rates reduced just after this offer, but that can happen. It wasn't unfair that Mr and Mrs T couldn't cancel the rate they had accepted and replace it with a lower one, just as it would have been fair that Bol couldn't cancel and replace the rate if rates had increased not fallen.

Mr and Mrs T say they have a legal right to a 14 day cooling offer period. But I don't agree about that. There are cooling off periods in the distance selling regulations, but they exclude financial services contracts like this one. There is also a 14 day cooling off period in the Consumer Credit Act – but this is an unregulated buy to let mortgage, not a regulated Consumer Credit agreement, and so not covered by the Act. Finally, there is a 7 day cooling off period for mortgages, but that only applies to new regulated residential mortgages – not rate switches, and not unregulated buy to let mortgages.

That means that there's no legal right to withdraw beyond that set out in the contract itself, which as I've said above only gave Mr and Mrs T the right to withdraw up to the 19th of the month. On the 20th, and afterwards, they were bound by their acceptance of the 4.99% rate and couldn't cancel it unless they paid an early repayment charge. This was made clear when they chose to accept the rate.

That means that it wasn't unfair that Bol wouldn't agree to replace the 4.99% rate with a 4.84% rate.

However, it misled them into thinking that was possible and was going to happen. The advisor they spoke to got that wrong, and shouldn't have led Mr and Mrs T to believe it would happen. But that doesn't mean that Bol should honour that mistake.

### **Putting things right**

When a mistake like that is made, the appropriate way to put things right is to put Mr and Mrs T back in the position they would have been in had the mistake never been made – not the position they would have been in had the mistake turned out to be true.

That means Mr and Mrs T should never have been told they could take the 4.84%. But it's not appropriate to compensate them as if they had been able to take that rate when it was

never available. It's appropriate to compensate them for the upset of being wrongly led to believe they could take that rate only to find out later that they couldn't. For that reason, I don't think it would be fair and reasonable to require Bol to pay them the difference between interest of 4.99% and 4.84% for the next five years.

However, I am satisfied that Mr and Mrs T were caused considerable distress and inconvenience by being led to believe they could replace the 4.99% rate with a lower one. They spent considerable time, and many phone calls, trying to find out why the lower rate hadn't been implemented, and they then had to deal with the disappointment of finding out that they'd been misled and could never have taken that rate after all. I'm satisfied £400 compensation is fair in all the circumstances.

### **My final decision**

For the reasons I've given, my final decision is that I uphold this complaint and direct Bank of Ireland (UK) Plc to pay Mr and Mrs T £400 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T and Mrs T to accept or reject my decision before 5 April 2024.

Simon Pugh  
**Ombudsman**