

## The complaint

This complaint is about an interest-only buy-to-let (BTL) mortgage Mr P holds with The Governor and Company of the Bank of Ireland (BOI). He says BOI misled him in a conversation in April 2022 about when he would be eligible to apply for a new interest rate on the mortgage.

## What happened

The broad circumstances of this complaint are known to Mr P and BOI. I'm also aware that the investigator issued a detailed response to the complaint, a copy of which has been sent to all parties, and so I don't need to repeat all the details here. Our decisions are published, and it's important that I don't include any information that might result in Mr P being identified.

Instead I'll give a brief summary in my own words, rounding the figures, and then focus on giving the reasons for my decision. If I don't mention something, it won't be because I've ignored it. It'll be because I didn't think it was material to the outcome of the complaint.

Mr P's BTL mortgage started in 2003 with an initial sum of £250,000; he took three additional further advances in 2006 and 2007, since when the mortgage has been comprised of four sub accounts totalling around £329,000. All four accounts are interest-only, and all were due for repayment in full at various dates between May and July 2023. Mr P has told us all four accounts had been on BOI's standard variable rate (SVR) for many years.

BOI wrote to Mr P in February 2022 reminding him that the mortgage was approaching its expiry and asking him what plans he had for repaying it. Mr P called BOI on 8 April 2022, wanting to know what his options were. Initially, he spoke to two different members of the maturities team; I'll call them S and L. After speaking with L first, Mr P was transferred to S, who explained in some detail what could potentially happen if he didn't repay the mortgage when it fell due the following year. Ultimately the bank could take legal action for possession of the mortgaged property. In the same conversation, Mr P confirmed that he didn't have a repayment vehicle for the mortgage.

Mr P says he was then told – initially he said it was S who told him but now believes it was a third person that S transferred him to – that he needed to wait until four months were left to speak to the bank about agreeing a new fixed interest rate for the mortgage. Mr P called the bank again in February 2023, to discover that what he'd apparently been told in April 2022 was incorrect. He could have requested a new rate at that time, albeit he would also have needed to request, and be granted, a term extension as well, because all of the fixed rate products offered by the bank ran for longer than the mortgage had left to go.

BOI ran a term extension application for Mr P, and it was turned down on affordability, meaning he wasn't eligible for a new rate either. Mr P complained; in its final response BOI said there wasn't any record of a continuing conversation after Mr P has spoken to S, so it didn't uphold the complaint.

Mr P referred his complaint to us, where an investigator didn't recommend it be upheld. The case was initially closed, but re-opened later after Mr P contacted us to say he'd now received new information in the form of call recordings. In fact, these recordings were the same as those we'd already received from BOI, but Mr P also provided a screenshot of his office dialler indicating that the call to BOI on 8 April 2022 had lasted longer than the call recordings accounted for; he also supplied the hand-written notes he'd made during the call.

The case was looked at again by a different investigator; taking everything into account, she concluded that there had most likely been a further conversation during which Mr P was incorrectly informed that he needed to wait until February 2023 to arrange things. The investigator recommended BOI pay Mr P £150 compensation for having most likely misled him, but didn't propose any further redress. The reason for this was because she concluded that even if Mr P had received the correct information in April 2022, he'd still have ended up in the same situation – that is, being turned down for a term extension and therefore ineligible for a new fixed rate – albeit he would have been told sooner.

Both parties rejected the investigator's recommendation; BOI because it didn't believe it had misled Mr P in April 2022, Mr P because he thought the proposed compensation wasn't enough for the anxiety and stress he and his family had been exposed to. He also said that if he'd been given the correct information in April 2022, he'd have immediately taken advice and started looking for another lender to re-finance the BOI mortgage.

### **What I've decided – and why**

I'll start with some general observations. We're not the regulator of financial businesses, and we don't "police" their internal processes or how they operate generally. That's the job of the Financial Conduct Authority (FCA). We deal with individual disputes between businesses and their customers. In doing that, we don't replicate the work of the courts.

We're impartial, and we don't take either side's instructions on how we investigate a complaint. We conduct our investigations and reach our conclusions without interference from anyone else. But in doing so, we have to work within the rules of the ombudsman service, and the remit those rules give us.

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

Where the evidence is incomplete and/or contradictory, I'm required to reach my decision on the basis of what I consider is most likely to have happened, on the balance of probabilities. That's broadly the same test used by the courts in civil cases.

I'll start with the "missing" conversation; Mr P continues to press his case for why we should believe there's another element to the 8 April 2022 phone call (that's not been recorded) in which he was misled. I understand how strongly he feels about this, but he no longer needs to, because our investigator has already made a finding on the balance of probabilities that this did happen.

I would also say that, despite BOI's continuing protestations to the contrary, I have reached the same conclusion. The notes Mr P made of the call includes annotations consistent with what S told him during the recorded part of the conversation, as well as the annotations of the disputed information he says he was given during what I'm persuaded is the missing part. Also, Mr P's actions in waiting until February 2023 to pick things up again are consistent with him having been told what he says he was told. That said, for reasons I'll get to shortly, I don't find that Mr P needed to have waited until February 2023 in reliance on BOI telling him to.

That takes me to what BOI should do to put things right. The starting point is to assess how Mr P's position might have been different if he hadn't been misled. He has said, in an email dated 13 February 2024 that if he'd known in April 2022 that he couldn't extend the term and get a new deal with BOI, he could have taken advice on finding a new lender at a time when rates were much lower than they are now. But Mr P could have done that anyway, regardless of what BOI did or didn't tell him.

Mr P's mortgage was on Standard Variable Rate (SVR), and had been for many years. At any time during the years he was paying interest to BOI at SVR, it was open to Mr P to seek advice about getting a better deal somewhere else. He didn't need to wait until BOI wrote to him about the approaching term end in February 2022 to do that. Nor did he have to wait until February 2023 to do so either. Mr P could also still have sought advice about re-financing on better terms elsewhere after the April 2022 phone call rather than wait until February 2023 to re-approach BOI.

The conclusion that leads me to is that Mr P hasn't lost out on securing a better rate on his BTL mortgage solely because of an act on BOI's part. It's also partly because of an omission on his part; that omission constituting a failure to mitigate.

In legal terms, mitigation requires a person to take steps to minimise their loss and to avoid taking unreasonable steps that increase their loss. A person can't recover damages for any loss (whether caused by a breach of contract or breach of duty) which could have been avoided by taking reasonable steps. A person is said to have a "duty to mitigate".

This isn't a duty that's enforceable by anyone, rather it is a recognition that if a person fails to do so, their capacity to seek redress will be affected by that failure. In my view, that's relevant and appropriate here.

Nonetheless, Mr P should be compensated fairly for the stress and worry caused by BOI having misled him. Assessing compensation isn't an exact science; everyone's reaction to events is unique to them. It's clear from his testimony that Mr P has found this episode hugely upsetting, and I appreciate that. In his request for a review of the complaint, he's pointed to our published approach to compensation, drawing attention to how long he has had to deal with the worry.

Mr P says the matter has been going on since April 2022. I can see why he's saying that, but of course he only became aware there was a problem in February 2023. Meanwhile, BOI told him in May 2023 that it wouldn't provide a term extension to resolve his complaint, and has since confirmed that the mortgage was repaid at the beginning of August 2023. Mindful of this, and that Mr P always had the incentive and opportunity to re-finance at any time, my conclusion is that the investigator's assessment of compensation at £150 is fair in all the circumstances.

### **My final decision**

My final decision is that I uphold this complaint in part. In full and final settlement, I order The Governor and Company of the Bank of Ireland to pay Mr P £150 compensation for his time, trouble and upset.

My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 15 April 2024.

Jeff Parrington

**Ombudsman**