

## The complaint

Mr and Mrs B are complaining about a development loan they have with BFS Home Loans Limited to enable them to self-build their home. They have said:

1. The mortgage was mis-sold as it was unsuitable because it was misrepresented as flexible and that funds would be provided quickly. However, following the first drawdown, they were denied use of the contingency fund, which they consider inflexible.
2. They were not provided with a binding offer, which they believe they should have been, rather than a Facility Agreement.
3. BFS told them not to follow its normal procedure and use 'utilisation request forms' when drawing down funds, as it meant that BFS didn't have set timescales in which it had to provide those funds.
4. BFS severely delayed their building project by not paying out a drawdown for the timber frame to allow its build, delivery and installation.
5. BFS didn't provide their new lender with a redemption statement when requested, which resulted in them paying an exit fee and additional interest.
6. Interactions with BFS have been delayed, incompetent and have demonstrated a lack of expertise.
7. The complaint process was drawn out and didn't provide any form of resolution or answers to the issues raised.

## What happened

Mr and Mrs B completed an application form for short term funding from BFS in September 2021. They applied for £425,000 to build their new home. It was detailed that the advance was to be staged and the term was ten months – seven for the build and a further three months to allow refinancing, as moving to a standard mortgage was the plan for repaying the loan.

BFS required Mr and Mrs B to receive advice before it would consider their application. They spoke to an independent broker in November 2021. It recommended that Mr and Mrs B take a "Development Loan" to enable them to build their property. The amount of the loan recommended was £551,250, with £54,874 of those funds to be retained to cover the interest that would accrue. It was confirmed that the interest rate would be 1.25% per calendar month, based on an assumption that the loan would be in place for twelve months.

A decision in principle (DIP) was issued on 16 November 2023 which confirmed the details of the loan and that the interest due during the twelve-month term would be retained from the advance. In relation to what would happen if the loan was not repaid on time, it was stated:

*'In the event of default, non-discounted lending charges will be incurred being an increase in the monthly interest to 3.00% per month and the Redemption Fee will be charged at 1.00% of the loan amount borrowed.'*

Also documented was that no redemption fee was payable if the loan was repaid 'Any time between 3 and 12 months'.

In the 'Covenants' section of the document it was detailed that '*Funds are released in arrears after work is completed.*'

Mr and Mrs B accepted the recommendation and signed the DIP on 22 November 2021.

The loan agreement completed on 24 February 2022 with a term of twelve months from the date of the first drawdown.

Facility agreement:

## 8. INTEREST AND OTHER CHARGES

...

(c) *a fee of 1% payable to the Lender on redemption of the Loan, which the Lender waives the right to collect if the Borrower does not have any arrears of interest or does not otherwise breach the terms and conditions of the Finance Documents;*

...

(e) *interest on the Loan together with any sums owing by the Borrower to the Lender under the Finance Documents (or the outstanding balance thereof), until such time as the Lender has been repaid in full all sums owed by the Borrower, at the rate of 3% per calendar month calculated on a daily basis, payable monthly in arrears from the date of drawdown and compounded on a monthly basis if unpaid and paid to the credit of the account of: [BFS]*

...

*Interest payments during the Facility will be retained by the Lender from each gross Loan drawdown. If the Loan is not repaid by the Repayment Date, any interest accruing on the Loan Balance must be paid calendar monthly and failure by the Borrower to do so will be a breach of this Facility Agreement.*

It was also confirmed that drawdowns were to be made in arrears.

The first drawdown was paid out on 24 February 2022. Further drawdowns were made and an increase to the lending agreed. However, when Mr and Mrs B asked for a drawdown in May 2022 in order to pay in advance for a major stage of the construction, BFS reminded Mr and Mrs B that this was not how the loan worked – funds were paid out in arrears. BFS confirmed on 7 June 2022 that it would not release the funds in advance of the work being done. However, subsequently, BFS agreed to release the funds in advance on provision of a 'vesting certificate' from the business involved in that stage of the build. The funds were paid on 20 June 2022.

Further funds were drawn down by Mr and Mrs B and in the spring of 2023 the term was extended by consent to end on 23 June 2023. A 2% fee was chargeable for the loan being extended, but BFS waived it.

On 13 June 2023 the lender (hereafter referred to as the 'new lender') Mr and Mrs B were re-mortgaging the property to contacted BFS. It said '*Please supply a redemption statement covering all secured accounts with an undertaking (valid for 28 days) for the above-named clients as soon as possible.*'

Two days later BFS forwarded the redemption figure to its solicitors to be issued to the new lender. As the new lender hadn't specified a date for the redemption, BFS assumed that the

loan would be paid off at the end of the term and calculated the funds needed to clear the loan as at 23 June 2023. However, as additional legal costs had been incurred during the discussions in the spring of 2022 regarding Mr and Mrs B being allowed an advance payment, BFS' solicitors didn't send the new lender the redemption statement. This was because Mr and Mrs B needed to be informed of the additional legal costs that would be included in the redemption amount. It was not until 23 June 2023 that Mr and Mrs B were informed about the additional cost.

In the meantime, on 21 June 2023, the new lender again requested a redemption statement and undertaking (valid for 28 days) to be sent to it. It asked that the request be dealt with as a matter of urgency. BFS produced a new redemption amount. As the new lender again didn't specify a date for redemption BFS produced one assuming a redemption date of 30 June 2023. This was forwarded to BFS' solicitors on 21 June 2023 to be forwarded to the new lender.

The amount required to redeem the mortgage was higher than previously as an exit fee was payable and additional interest would be payable for the extra days the debt would be outstanding. As the matter of the extra legal fee had not been communicated, it was not until 26 June 2023 that BFS' solicitors sent the redemption statement to the new lender.

Mr and Mrs B and the new lender chased BFS on numerous occasions about the redemption statement over the days before the end of the term and immediately after. During that period Mr B forwarded an email from the broker who had arranged the new mortgage. It said that the valuation had been received by the new lender at 1.25pm on 22 June 2023, which meant the case could be signed off and the mortgage offer issued. Late in the afternoon of the following day Mr B's mortgage broker emailed him again. It confirmed that the new lender was ready to issue the mortgage offer, but needed the redemption statement to do so.

The redemption statement was sent to the new lender mid-afternoon on 26 June 2023. The new lender responded with some questions about the Land Registry charge on Mr and Mrs B's property being released. It advised BFS' solicitors that as Mr and Mrs B didn't have a solicitor acting for them, BFS' solicitors would need to send the relevant form to Land Registry on their behalf. BFS' solicitors agreed to do so in the circumstances.

The new lender contacted BFS' solicitors again on 26 June 2023, but outside of normal working hours. It asked that the redemption statement and undertaking be reissued to it on the solicitors' letter headed paper. This was done just before mid-day on 27 June 2023. However, despite that, Mr B believed that there was outstanding information on the case and chased BFS on several occasions that day. Indeed, BFS' solicitors contacted the new lender over the following two days, but only received confirmation there was nothing outstanding on 28 June 2023.

The new lender has confirmed that the mortgage offer was produced on 28 June 2023. The new mortgage completed on 30 June 2023 and the BFS loan was paid off.

Mr and Mrs B requested some information from BFS following the loan being repaid and began questioning the time taken to provide the redemption statement and the amount they had been required to pay. Mr and Mrs B also made a data subject access request (DSAR). A significant amount of correspondence was exchanged between the parties over the following weeks.

BFS' solicitors issued a response to Mr and Mrs B's complaint by email on 11 August 2023. The content of the email did not fulfil the requirements of a final response letter. The complaint was declined. It was confirmed that the redemption statement could not be

produced when it was initially requested because the solicitors needed to get confirmation the additional legal fee could be added to the redemption amount. It was confirmed that BFS had provided a full breakdown of the redemption statement, which should answer the questions about it. In addition, it was confirmed that utilisation request forms were often not used and that sped up the process of requesting funds.

Mr and Mrs B were not satisfied with the response and referred their complaint to this Service.

Mr and Mrs B's new lender was contacted during our investigation. It confirmed that it received an acceptable version of the redemption statement and undertaking to remove the charge from BFS on 27 June 2023. It then issued its offer the following day and the mortgage completed on 30 June 2023. It confirmed that it believed that, had it had the redemption statement and undertaking before 23 June 2023, the mortgage could have completed on that day.

One of our Investigators considered the complaint. She explained that BFS was not responsible for the sale of the loan and so we could not consider Mr and Mrs B's concerns about that matter against BFS. The Investigator also upheld the complaint in part – in relation to the exit fee, delays in providing the redemption statement and the service BFS provided following Mr and Mrs B raising their complaint.

BFS accepted that there had been delays in providing the redemption statement and that Mr and Mrs B had wanted to redeem the loan on 23 June 2023. However, it was not persuaded that the delay in providing the redemption statement was the reason the loan wasn't repaid on 23 June 2023. It provided a copy of an email from Mr and Mrs B's broker for the new mortgage, which confirmed that the valuation had only been received by the lender at 1.25pm on the 22 June 2023, and there was a process at the new lender to go through, before a mortgage offer could be issued. BFS also questioned the timescale for redeeming the loan once the redemption offer was received. It highlighted that it had taken four working days for the loan to be repaid after the redemption statement was received by the new lender, which would imply the redemption statement was not key to when the loan was redeemed. BFS also highlighted that a redemption statement would not usually be required for a lender to issue a mortgage offer, complete the necessary legal work or issue a mortgage deed.

Mr and Mrs B questioned that the broker was responsible for the sale of the loan, which the Investigator confirmed was the case. They also said that when they repaid the loan they were short of the amount of the exit fee and the additional interest, and so had to arrange additional borrowing to pay those amounts, for which they wanted the interest reimbursed. They reiterated their comments about the new mortgage being unable to be processed without the redemption statement.

The Investigator considered what BFS had to say, but she didn't change her mind. It remained that BFS didn't accept the Investigator's conclusions and it was decided that the complaint should be referred to an Ombudsman for consideration.

I issued a provisional decision on 11 October 2024, in which I set out my conclusions and reasons for reaching them. Below is an excerpt.

*'Initially I would confirm that I will not be considering Mr and Mrs B's concerns about the loan having been mis-sold and misrepresented in this decision. That is because the advice they received to take the loan was given by an independent mortgage broker, which means that broker is responsible for whether the loan was suitable for them or not, and their understanding of how it worked.'*

*I would also explain that we are not the regulator of financial businesses, and we don't supervise their internal processes and systems, or how they operate generally; that's the role of the Financial Conduct Authority (FCA). We deal with individual disputes between businesses and their customers. We have no power to sanction, punish or fine businesses – that's the role of the FCA.*

*In addition, if Mr and Mrs B are unhappy with the way their DSAR was handled, the appropriate body to refer their concerns to is the Information Commissioners Office (ICO).*

*Mr and Mrs B have said they were not issued with a binding mortgage offer as they believe they should have been. As the Investigator explained, the loan Mr and Mrs B was not a regulated residential mortgage on which a lender would be expected to issue a binding mortgage offer. However, they were issued with an equivalent document that set out what BFS was offering them and they were also given the terms and conditions that went along with that offering.*

*As for the recommendation from BFS not to use 'utilisation request' forms when drawing down funds, and this meaning that it didn't have set timescales to release the funds, I am not persuaded that Mr and Mrs B have been disadvantaged by this. It appears on most of the drawdowns the funds were paid fairly quickly and it was only where there were issues that complicated things that the requests took longer.*

*In relation to the drawdown for the timber frame, that drawdown did take a considerable amount of time to be paid. However, that was nothing to do with a utilisation request form not being used. Rather it was due to the fact that Mr and Mrs B wanted something from BFS that the contract they had entered into with it didn't allow for. BFS could have simply applied the terms and conditions and said no to the request, but it didn't. It looked at how it could help Mr and Mrs B in the situation they found themselves and eventually a way around the issue was found. The fact that this took some time to arrange, does not mean that BFS did anything wrong and I don't propose to uphold this aspect of the complaint. As such, I also can't find BFS responsible for the delay in the build or the fact that the term of the loan needed to be extended.*

*I now turn to the matter of the redemption statement. I would firstly comment, for Mr and Mrs B's benefit, that their new lender didn't specify a completion date of any description when it asked for redemption statements. It simply asked for a redemption statement and undertaking that would be valid for 28 days. This was the case on both 13 and 21 June 2023, indicating that a specific date for completion was not anticipated and had not been agreed on. Indeed, it would appear that at the time of both requests there was key information outstanding in the form of the valuation, without which the new lending would not have been agreed.*

*That said, from the information BFS has provided us with, it would usually try to issue a redemption statement within three working days of a request. The first request was made on 13 June 2023 and BFS assumed the redemption would be made at the end of the loan term. It is unclear why a specific date was selected, given that the new lender asked for a redemption statement that would be valid for 28 days. While it is slightly unusual for a specific date not to be selected by the party acting on behalf of the new lender/borrower, that is not to say that the request was unreasonable. Although the way in which the amount needed to repay the loan would be calculated slightly differently before and after the end of the term, that could have been detailed in a single redemption statement, which would have allowed the new lender to calculate the amount payable on any particular date during the date range requested.*

*BFS provided details of the amounts that would be outstanding to its solicitors, for the solicitors to issue the redemption statement to the new lender. However, due to the additional work that had needed to be done during the process to release funds in advance for the timber frame in 2022, some additional legal costs had been incurred. These needed to be added to the redemption statement, but Mr and Mrs B had not previously been told about them. As such, there was a delay in processing the redemption statement until Mr and Mrs B had been told and received an explanation. I don't consider there should have been a delay caused because of this – Mr and Mrs B should have been told when the costs were incurred.*

*When a financial business makes a mistake or error, we attempt to determine what would have happened, but for that mistake or error. In this case, that would be the position that Mr and Mrs B would have been in, but for the delays in the redemption statement being provided. I am satisfied that a redemption statement should have been issued to the new lender around 16 June 2023.*

*It has been assumed that had the redemption statement been received by the new lender when it should have been, the new mortgage would have completed by 23 June 2023. Indeed, the new lender has said that would have been the case. However, I am not persuaded it would have been.*

*Based on the information we have about the timings of the actual mortgage arranged, the offer was issued the day after the last of the information the lender needed was received. The letter-headed redemption statement was sent to the new lender in the morning of 27 June 2023, along with the undertaking the new lender wanted. The mortgage offer was issued the following day.*

*Had the redemption statement been provided to the new lender when it should have been, and it had covered the timeframe requested, the last substantive piece of information the new lender needed to issue an offer would have been the valuation received in the afternoon of 22 June 2023. Based on the actual timeline for the new mortgage, this would indicate the earliest the mortgage offer would have been issued to Mr and Mrs B is 23 June 2023. This is supported by Mr and Mrs B's broker's comments late on 23 June 2023 saying that the lender was now ready to issue the offer, but for not having received the redemption statement. As it took a further two working days for the loan to be repaid in the actual timeline, I think it reasonable that this is the timescale that should be applied to the hypothetical determination of when the loan would have been paid off. That would take the loan repayment date to 27 June 2023.*

*As such, while I think it likely that the BFS loan would have been paid off earlier than it was, but for the delay on BFS' part, I don't consider it would have been paid off within its term. I am, therefore, satisfied that the exit fee would have been payable in the circumstances. However, Mr and Mrs B would have started to pay interest on the debt, at what I assume was a lower rate on their new mortgage, three days earlier than they did.*

*As such, I am minded to require BFS to pay Mr and Mrs B a sum equal to A minus D, where:*

- A. The amount paid on 30 June 2023.*
- B. The amount Mr and Mrs B would have had to pay to redeem the loan on 27 June 2023.*
- C. The amount of interest Mr and Mrs B would have paid on the amount in A, but charged at the rate charged on their new mortgage.*
- D. B plus C*

*Interest\* should be added to the resultant sum from 27 June 2023 to the date of settlement, as Mr and Mrs B have been deprived of the use of the money.*

*Mr and Mrs B have provided details of an unsecured loan they took out, which they have said was taken to enable them to pay the additional interest and the exit fee, charged because the loan was repaid late. I have reviewed this document and it shows that the loan was taken out on 17 August 2023, more than six weeks after Mr and Mrs B have said they had to find additional funds to cover the additional interest and exit fee. Given the disparity in dates, I am not persuaded that I can reasonably conclude that the loan was taken to assist with the repayment of the BFS loan.*

*Mr and Mrs B have also asked that I make an award to lower the interest rate on the loan, as compensation for their experience with BFS. They have asked that the interest rate payable on the loan be reduced by 4%. I don't consider that this would be a reasonable form of compensation, even had BFS made other errors. I say this as Mr and Mrs B entered into the loan in the full knowledge of the interest rate that would be charged. They were provided with the facility they asked for, and in the case of an advance payment in spring of 2022, received more than the contract said they were entitled to.*

*I now move to consider whether any compensation for non-financial loss should be paid to Mr and Mrs B. When considering this subject, I must make it clear that I can only make an award for the additional stress and inconvenience BFS caused, on top of that which would generally exist in the circumstances. I have not found fault with BFS in general until the point of the redemption statement being issued and I am satisfied the delay that caused was minimal. Furthermore, some of the chasing and concern Mr and Mrs B had following the redemption statement being issued was not caused by BFS, but rather them having been given inaccurate information about there still being outstanding information by either their broker or the new lender. However, I accept that the uncertainty created by BFS would have caused them worry and frustration. I, therefore, consider that BFS should pay Mr and Mrs B £200 compensation.*

*I am aware Mr and Mrs B are unhappy with how the complaint was handled. Our rules set out the matters that we can look at as being; regulated activities, payment services, lending money, paying money by plastic card, and ancillary banking services. In addition, we can consider complaints about ancillary activities carried on in connection with the above.*

*The handling of complaints is not itself a regulated activity. It's something that the regulator requires financial businesses to do. However, that isn't enough to make it a regulated activity within the meaning of the rule; that is, one from the list of activities set out in the legislation from which we derive our powers.*

*We are able to consider concerns about complaint handling in some limited circumstances, for example, if we're upholding the underlying complaint that a consumer believes was mishandled and the complaint handling was an extension of that mishandling. While I am proposing to uphold one aspect of this complaint, I don't consider that the complaint handling was ancillary to that issue. As such, I don't have the power to consider Mr and Mrs B's concerns about how BFS handled the complaint.'*

Both parties acknowledged receipt of the provisional decision and BFS requested that Mr and Mrs B provide information about their new mortgage interest rate so that it could calculate the redress. The information was requested, but not provided.

Mr and Mrs B didn't accept my provisional decision. They reiterated their previous commentary about the events and errors on the part of BFS. Mr and Mrs B said that all parties knew they were working toward a redemption on 23 June 2023 and that would have been possible had BFS provided a redemption statement in time. They said it was not appropriate to apply the actual timings for their mortgage completion as their deadline had

already been missed; implying there had been less urgency to complete the new mortgage after the deadline than there was before.

In relation to the exit fee, they said they believe that BFS had always intended to charge them that fee and this was unreasonable as BFS has made no effort to help them meet the requirement to repay the loan by the end of its term. Furthermore, as no redemption statement was provided within the term of the loan, despite requests, Mr and Mrs B considered this prevented them from fulfilling their part of the contract. As such, they were prevented from paying off the loan on time and they should not be charged a '*contractual penalty*'.

Mr and Mrs B also reiterated that the loan they provided information about, which was taken out in August 2023, was arranged to cover the cost of the additional interest incurred and the exit fee. They have said they used funds that had been earmarked for final invoices for building works to pay the exit fee and additional interest, and then had to take out a loan to pay the building invoices. This is why there was approximately six weeks between the loan repayment and the loan being taken out. Mr and Mrs B were asked for various pieces of evidence to support this, but didn't provide everything requested.

### **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.

I will not comment on most of Mr and Mrs B's response to my provisional decision as it reiterates what was said before I considered the complaint and reached that decision. So it was fully considered. What I will confirm is that I remain satisfied that, but for delays BFS is responsible for, Mr and Mrs B's new lender should have received a redemption statement by around 16 June 2023.

Mr and Mrs B have said the only thing needed to complete the new mortgage was for them to agree the offer and sign the deed, which could have been done in time for the money to be released and the BFS loan redeemed on 23 June 2023. I understand what Mr and Mrs B are saying and why they wish to believe that. However, the contemporaneous information shows that the final information the new lender needed to approve the mortgage was not received by the new lender until the afternoon of 22 June 2023.

I have noted that Mr and Mrs B have said that I have misunderstood the content of the email from their broker about the valuation. As Mr and Mrs B's broker told them, the new lender had to consider the content of the valuation information received on 22 June 2023, approve the mortgage if that content was acceptable, and complete its internal process before the mortgage offer could be produced. It was not until late in the afternoon of 23 June 2023 that Mr and Mrs B's broker told them that the new lender was in a position to issue the mortgage offer as soon as the redemption statement was received. I remain satisfied that 22 June 2023 is the appropriate date to start the determination of when the BFS loan would have been repaid. As such, I am also satisfied that the earliest the mortgage offer would have been produced, if BFS had provided a redemption statement when first asked, is 23 June 2023. So the BFS loan could not have been repaid within its term.

While Mr and Mrs B have told us the mortgage could have completed within 24 hours of them accepting the offer and signing the mortgage deed, that has not been evidenced with documentation from the new lender. It took two working days for the mortgage to complete following the production of the mortgage offer, which in comparison to most mortgages would fulfil the definition of a fast-track arrangement. Although Mr and Mrs B have said the



urgency to redeem the BFS loan decreased following the end of the term passing, given the high rate of interest that was being charged on the BFS loan, that would seem unlikely.

I remain satisfied that it is appropriate to use the actual timescales when establishing a hypothetical repayment date for the BFS loan. As such, I do not intend to alter the redress I proposed in my provisional decision.

In relation to the loan Mr and Mrs B took out around six weeks after the loan with BFS was redeemed, I have considered the information they have provided to support that it was taken to effectively cover the cost of the additional interest and exit fee. Not all of the information we requested was provided and some of the documentation that was provided was heavily redacted by Mr and Mrs B. In light of this, it remains that I am not persuaded that the loan was arranged because of the mistake by BFS regarding provision of the redemption statement.

### **Putting things right**

BFS to pay Mr and Mrs B a sum equal to A minus D, where:

- A. The amount paid on 30 June 2023.
- B. The amount Mr and Mrs B would have had to pay to redeem the loan on 27 June 2023.
- C. The amount of interest Mr and Mrs B would have paid on the amount in A, but charged at the rate charged on their new mortgage.
- D. B plus C

Interest\* should be added to the resultant sum from 27 June 2023 to the date of settlement, as Mr and Mrs B have been deprived of the use of the money.

BFS should also pay Mr and Mrs B £200 compensation for the uncertainty, worry and frustration they were caused.

\*Interest is at a rate of 8% simple per year and paid on the amount specified and from/to the dates stated. If BFS Home Loans Limited considers that it's required by HM Revenue & Customs to deduct income tax from any interest due to Mr and Mrs B, it should tell them how much it's taken off. It should also give Mr and Mrs B a certificate showing this if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

### **My final decision**

My decision is that I uphold this complaint in part. In full and final settlement of the complaint, I order BFS Home Loans Limited to settle the complaint as detailed above in 'Putting thing right'.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs B to accept or reject my decision before 20 December 2024.

Derry Baxter  
**Ombudsman**