

## **The complaint**

Mr B complains that Bank of Scotland plc (trading as Intelligent Finance) wouldn't put legal action to repossess his property on hold, despite him providing evidence that he would soon be able to repay his mortgage. He also complains that it was difficult to reach Intelligent Finance over the phone.

## **What happened**

Mr B took out a mortgage with Intelligent Finance in 2008. He borrowed £399,595.38 on an interest only basis with a term of just over seven years – by which time the mortgage balance was due to be repaid.

When the term of Mr B's mortgage ended in March 2015, he couldn't repay it. Some discussions took place between Intelligent Finance and Mr B around this time and the term of the mortgage was extended to February 2018. Intelligent Finance arranged additional term extensions up until August 2019.

Further discussions took place after this, during which Mr B told Intelligent Finance he was looking to sell the property or to obtain a lifetime mortgage to repay the outstanding balance. And Intelligent Finance allowed him more time to do that. However, Mr B had some challenges with his plans. For example, it appears a sale of the property was agreed in 2021 but it later fell through.

Intelligent Finance wrote to Mr B in March 2022 asking him to get in touch to repay the mortgage as the term had ended. It wrote to him again in October 2023 with a 'final warning' and then in November 2023, where it told Mr B that it had begun taking legal action to repossess the property. Around the same time, Mr B told Intelligent Finance that he was seeking independent financial advice. Intelligent Finance told him that it would consider pausing legal proceedings if he provided a copy of a mortgage offer to them – showing he was able to raise the funds he needed to repay this mortgage.

Mr B told Intelligent Finance in December 2023 that he had received a mortgage offer, but the interest rate was too high, so he was exploring other options. He provided a copy of an agreement in principle to Intelligent Finance in January 2024, but it said it wouldn't hold legal action based on this. It said Mr B needed to provide a full mortgage offer for it to consider pausing legal action.

Towards the end of February 2024, a court hearing was scheduled to take place on 22 March 2024. A short time later, on 4 March 2024, Mr B told Intelligent Finance he had a mortgage offer in place and he was checking it had received the copy he had sent them by email. Intelligent Finance told Mr B to talk directly to its solicitors because of the proximity of the court hearing date. It didn't agree to cancel the court hearing as Mr B had requested. At this point, Mr B raised a complaint with Intelligent Finance.

Mr B called Intelligent Finance again on 19 March 2024 to provide the completion date of 25 March 2024 for his new mortgage. Despite Mr B providing this information, the court hearing went ahead on 22 March 2024, which he attended. Mr B has said the Judge put the matter

on hold. On the next working day, 25 March 2024, his new mortgage completed and the mortgage with Intelligent Finance was repaid in full.

Intelligent Finance responded to Mr B's complaint in May 2024. It agreed with Mr B's complaint that he had difficulty getting through to its End of Term Team. But it didn't agree that it had made an error in proceeding with litigation action. It said it had given Mr B several years to repay the mortgage since the term had ended, and an additional three months to repay it before it arranged a court date. And it felt it had acted fairly and reasonably at the time. It also noted that it had paid legal fees after Mr B's mortgage had been redeemed, which would otherwise have been added to Mr B's mortgage. Mr B didn't agree so he asked the Financial Ombudsman Service to look into his complaint.

Our Investigator didn't recommend Mr B's complaint should be upheld. He said Intelligent Finance could have started litigation action sooner than it did, considering that the agreed term of the mortgage had ended several years ago. And because of this he felt Intelligent Finance had given Mr B the expectation that no action would be taken with his mortgage. But the Investigator didn't think this had a detrimental impact on Mr B, because he had received the benefit of remaining in his home for around eight years after the originally agreed term. He also didn't think it was unreasonable for Intelligent Finance to have continued with the court hearing when Mr B provided a copy of his mortgage offer, as the hearing date had already been set. Mr B didn't accept that and asked for an Ombudsman to decide on their complaint. So, the case was passed to me to decide.

### **My provisional decision**

I thought Intelligent Finance ought to have arranged for the court hearing to be adjourned on receipt of the full mortgage offer. And that, if it had acted fairly, Mr B wouldn't have experienced embarrassment, distress, and inconvenience by being worried about and having to attend the court hearing. I said:

The starting point is that Intelligent Finance was entitled to expect Mr B to repay his mortgage within the agreed term. However, if he was unable to do so I'd expect it to show reasonable forbearance and work with him to reach a point where it can be repaid within a reasonable time. Intelligent Finance agreed to extend Mr B's mortgage term several times, allowing Mr B several additional years to put a plan in place to repay what he owed. Unfortunately, by October 2023, Mr B's previous plans to sell the property or to obtain a lifetime mortgage to repay what he owed hadn't come to fruition. Because the mortgage was still outstanding and it didn't appear there was a credible plan to repay it in the near future, I consider it was reasonable for Intelligent Finance to commence legal proceedings in November 2023.

I don't think it was unfair or unreasonable for Intelligent Finance to arrange a court hearing either. Mr B told Intelligent Finance he had secured a new mortgage, so it asked him to provide a copy of his formal mortgage offer within two weeks. But after seven weeks, he hadn't done that. So, by the point it decided to start that process, it had given Mr B several opportunities to arrange the finance he needed to repay the Intelligent Finance mortgage and he hadn't done so. Mr B did send a formal mortgage offer to Intelligent Finance, but this wasn't until after it had arranged the court hearing.

Intelligent Finance has said that it asked its solicitor to delay the court hearing and that once a court hearing has been arranged it can't be cancelled. It has said it's up to the Judge to decide if the hearing should be adjourned. It's also said that in cancelling – by which I believe it means to adjourn – the hearing, it would lead to additional costs being incurred.

I accept that Intelligent Finance would have needed to apply to have the court hearing adjourned. It has said it asked its solicitor to delay the hearing, but I've not seen any evidence that its solicitor, acting as its agent, went on to seek adjournment. While there are additional costs associated with applying for an adjournment, they are likely to be less than the costs of attending an unnecessary hearing. I don't think it's likely a court would have refused an adjournment if one was requested by a lender to allow more time to try and avoid repossession – though, given the short notice, it's possible the court wouldn't have considered any application before the hearing was due to happen. With all that in mind I consider that Intelligent Finance should have asked for an adjournment at the point Mr B provided a copy of the full mortgage offer for the new mortgage. I'll explain why.

The relevant rules and guidance say, among other things, that a lender must not repossess the mortgaged property unless all other reasonable attempts to resolve the position have failed. In other words, repossession should be a last resort. Here, I'm not persuaded Intelligent Finance considered all reasonable attempts to resolve the matter, before deciding to continue with the court hearing.

As I've explained above, Intelligent Finance was entitled to expect repayment of Mr B's mortgage. However, he had shown them by 9 March 2024 at the latest (when I can see Mr B's email was added to Intelligent Finance's notes system) that he had received a credible mortgage offer which would enable him to repay what he owed. I consider it's reasonable to expect that Intelligent Finance, as a lender itself, would understand that it takes time from a mortgage offer being issued to completion. And I'm aware from my knowledge of the mortgage market that the conveyancing process involved can take anywhere up to twelve weeks – longer in some cases. So, I think that Intelligent Finance ought to have allowed Mr B more time to see through the plan he'd put in place. The court hearing was just two weeks away by this point. But even so, had Intelligent Finance requested an adjournment once it received the mortgage offer there was a real possibility the hearing wouldn't have needed to go ahead. So, I'm not persuaded Intelligent Finance acted fairly based on the information it had been provided.

I can see from Intelligent Finance's perspective that it had been patient and had allowed Mr B many years to put in place a repayment plan, albeit I think it could have been more pro-active in its pursuit of repayment at times. But that doesn't mean that after it began litigation action, that it shouldn't fairly consider the credible evidence that Mr B now had a way to resolve the matter – without the need for a court hearing. I consider it ought to have arranged for the hearing to be adjourned once it received a copy of Mr B's formal mortgage offer. That would still have led to some costs. But, in any case, Intelligent Finance has said that it paid the litigation costs totalling around £430 rather than reclaiming them from Mr B – I think it's most likely these included those costs that resulted from the court hearing. I can't see that any legal costs were added to Mr B's mortgage prior to redemption. And as I've concluded that Intelligent Finance were reasonable in starting the litigation process initially, some costs would always have been incurred before the court hearing, which Intelligent Finance could have sought repayment of from Mr B. So, I'm not persuaded Mr B incurred a financial loss in relation to the court hearing.

However, Mr B has described how having to attend the court hearing made him feel embarrassed and that it caused him several sleepless nights leading up to the hearing, worrying about what might happen. He was also having difficulty reaching Intelligent Finance over the phone, which I can see is something it has accepted in its response to his complaint. I can see how the situation would have led him to feel the way he's described, and I'm persuaded at least some of the worry, distress and

embarrassment could have been avoided, had Intelligent Finance acted fairly – by arranging for the hearing to be adjourned on receipt of the full mortgage offer. I've kept this in mind when thinking about what Intelligent Finance should do to put things right.

### **Putting things right**

As I think what's happened caused avoidable distress, inconvenience, and embarrassment to Mr B, I provisionally consider that a fair way to put things right is for Intelligent Finance to pay £300 to Mr B to recognise the impact of this.

If Mr B feels he incurred other financial losses because of the court hearing, then where it can be evidenced these costs are because of Intelligent Finance (and its agent's) actions, he should set them out when he responds to my provisional decision so I can consider whether Intelligent Finance should fairly be required to cover those costs. However, in doing so, it will be entitled to offset those costs against the amount it could reasonably have charged Mr B for the litigation action (on the basis the court hearing ought to have been adjourned), where it didn't otherwise do so.

I invited Mr B and Intelligent Finance to let me have any further comments or evidence they wanted me to consider before I make my final decision.

Mr B accepted my decision and said he accepts the £300 I provisionally recommended Intelligent Finance should pay to him. He didn't wish to provide any further evidence of costs as he'd like to draw a line under the matter and move on.

Intelligent Finance also accepted my decision.

### **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.

As both parties have accepted my provisional decision, I see no reason to depart from it.

### **My final decision**

My final decision is that I uphold this complaint and Bank of Scotland plc must:

- Pay Mr B £300, for the trouble and upset he's experienced.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 14 January 2025.

Keith Barnes  
**Ombudsman**