

## **The complaint**

Mr E complains about how Bank of Scotland plc trading as Intelligent Finance has treated him which meant his property is in negative equity but IF won't facilitate the sale to a potential buyer.

## **What happened**

Mr E says he has had considerable financial difficulties over the last 20 years associated with his service and resulting illness. Occasionally he had to rent out his property but says that IF charged him over £50,000.00 for doing so increasing the debt on it to over £210,000. Mr E says that IF told him it would consider agreeing to a sale at £155,000.00 to a potential buyer Mr E had contacted, subject to a valuation, but nothing then happened.

IF said that it agreed that the mortgage balance increased because of consent to let fees, legal fees, and arrears interest, but these were fairly charged. IF said that Mr E called them on 28 March 2023 telling them he had an offer on the property. It said that on 4 April 2023, its negative equity team wrote to Mr E asking him to complete a negative equity application form but by 2 June 2023 it hadn't been returned.

Our investigator didn't consider that IF had unfairly charged Mr E consent to let fees. He did think that IF had given Mr E false expectations that he could continue with a private sale when this was outside IF's policy and that IF should compensate Mr E £300 for that. Mr E says that IF told him that he could sell to the purchaser he had contacted and then took six months to tell him he had to put it on the market by which time his mortgage balance increased by £4,800.00 and he was having to sell for £20,000.00 less and that IF's system changed telling him that he would have to sign and return physical documents and then telling him that he didn't have to do that.

## **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.

This complaint raises a number of issues. Firstly, although this was a residential mortgage, in order to pay the mortgage, Mr E would rent it out. As a result, IF raised consent to let fees in accordance with its list of charges. I also see notes on the file that Mr E wasn't always paying the service charge and ground rent and to avoid forfeiture of the lease, IF would pay those fees and add them to the mortgage. I don't consider that IF has done anything wrong by adding these charges and indeed others where they are due, and I've seen nothing that would suggest they are not due or not fairly charged in accordance with the lender's terms and conditions.

Because of these and other charges the property went into negative equity. It seems that the mortgage balance increased substantially from 206. Mr E seems to have got a private buyer who was willing to pay about £155,000 but IF wouldn't let that proceed without a valuation and the property going on the open market and by that time the private buyer was no longer interested. Mr E feels that because of IF's requirements he lost a buyer who would have paid

more than the valuation, and this will mean he will have more of a shortfall than there should be.

I appreciate that this is a difficult time for Mr E, knowing that he's in negative equity. Lenders will have procedures about selling a property in negative equity to insure they get the best price for the property. This is normally to the advantage of both the lender and the borrower. So, I see nothing wrong with IF's process. Mr E says that in fact he had a buyer willing to pay more than the current valuation and feels that IF's policy prevented the sale. But in my experience offers to purchase do not always result in sales particularly if the purchaser is offering more than the valuation and an offer can be withdrawn at any time before completion of the sale. The purchaser would normally get a valuation and, if the offer was more than the valuation, negotiate downwards. It's extremely rare to see a house purchase completing for more than the valuation. Mr E's proposed sale at a price over the valuation may well not have happened in any event so it's hard to say that IF's policy caused Mr E any financial loss.

Mr E has a related complaint about conflicting information that he got from IF about the negative equity process which he says caused a delay and a cost to him of getting the property sold. We received the relevant calls between Mr E and an IF advisor at the beginning of the process in February to April 2023 in which the advisor fairly sets out IF's objections to a private sale by Mr E and that the property should be put on the open market through an agent. That is what should have happened and that would have hurried up the process. I note that there were instances where Mr E was told that the matter would be passed to the negative equity team although the property had not yet been placed on the open market and that there would be a valuation although again the property wasn't on the open market. I also note that a cause of the delay was Mr E's failure to return two negative equity packs that were forwarded to him. Mr E queries whether these were required to be returned. But it seems to me that these packs were sent with a purpose and that they should have been returned to begin the negative equity process. I don't agree with Mr E that he was told not to return the documents.

Because of the conflicting information I agree with our investigator that there was some distress caused to Mr E in the difficult situation he finds himself in. But because of the phone calls made in February to April 2023 I'm of the opinion that Mr E should clearly have been aware what the requirements of IF's negative equity process were and so I believe that £300 represents fair compensation for the distress caused to him.

### **Putting things right**

Bank of Scotland Plc trading as Intelligent Finance should pay Mr E £300

### **My final decision**

I uphold this complaint and require Bank of Scotland Plc trading as Intelligent Finance to pay Mr E £300.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 30 January 2024.

Gerard McManus  
**Ombudsman**