

The complaint

The executors of Miss R's estate have complained about a mortgage, further advance and secured personal loans granted to Miss R by Bank of Scotland plc trading as Halifax (BoS) in 2005 and 2006. They have said the mortgage and loans were mis-sold because the lending was irresponsible as Miss R was 75 and 76 respectively, and a pensioner where affordability would be an issue. In addition, they have questioned whether BoS undertook safeguarding checks to ensure that Miss R had capacity to enter into the contracts.

The executors have asked that the amount paid to redeem the mortgage and further advance is returned to Miss R's estate and it is paid £20,000 compensation.

What happened

Miss R took out her original mortgage with BoS in 1975. It appears the term ended in 2000, but a minimal balance was left on the account in what was called a deed store arrangement. At some point over the following four years Miss R increased her borrowing and by 2005 the mortgage had a balance of just over £9,000.

In January 2005 Miss R started the process of borrowing more money. BoS agreed to provide a further advance of £3,200, increasing Miss R's borrowing to around £12,500 over a term of 19 years and 3 months. An affordability assessment was carried out at that time. The mortgage was arranged on a repayment basis and interest was charged at BoS' standard variable rate. The monthly payment was just over £91 when it started.

In November 2005 Miss R took out a secured personal loan with BoS. The computer records from the time show that Miss R was retired, had an income of £1,000 per month and monthly outgoings of £304. A loan of £20,000 over a term of 18 years was agreed. The loan was set up on a repayment basis with payments of approximately £158 each month. Miss R made every payment due on this loan on time until October 2006 when she paid a lump sum to clear the balance.

In March 2006 Miss R took out a second secured personal loan on a repayment basis. This was for £25,000 over a term of 19 years. Miss R made monthly payments to the loan until the end of that year. It then appears that an arrangement was made for Miss R to make annual payments for the following two years. Monthly payments recommenced thereafter, and all payments were made on time and in full by direct debit. The loan was repaid with a lump sum payment in November 2015.

The payments to the main mortgage began to be erratic in 2011 and this continued over the following years. It meant that the account was in arrears at times and in advance at others. Miss R and two relatives (who she gave authority on the account) had conversations with BoS over this time and it was confirmed throughout that there were no long-term financial difficulties. Rather the missed payments had been because of oversights on Miss R's part or due to unexpected expenses arising that had caused temporary cash-flow issues.

On 9 April 2016 BoS was told by one of her authorised relatives that Miss R's only income was a state pension and due to this one of her children was paying the mortgage. During this

conversation it was confirmed that Miss R had begun to have memory problems and family members would take responsibility for ensuring the mortgage payments were made.

The executors, during our investigation, were unable to confirm when Miss R stopped paying the mortgage and a relative took over, or even if that was what happened. BoS was asked if it could locate any evidence of when Miss R's relative started paying the mortgage around 2016, but it could not do so - the payments were made from Miss R's bank account throughout.

Short-term arrears continued to occur on a regular basis, but they were generally repaid quite quickly until late 2017. After that point the arrears built on the account and very few payments were made, so BoS decided to start legal action in February 2019. BoS was granted a suspended possession order (SPO) in August of that year. The SPO required Miss R to pay the monthly payment plus an amount on top. Some payments were made, but not all.

Miss R died in late 2020 and following their appointment, the executors raised a complaint with BoS about the mortgage and secured loans having been mis-sold because of Miss R's age and the affordability of the arrangements. The complaint was made on 10 November 2021.

BoS informed the executors in a letter of 15 December 2021 that it considered the complaint had been made too late based on the time limits contained in our rules. It concluded Miss R would have been aware of any affordability concerns in 2009 when she applied to the DWP for support in making her mortgage payments. As all of the lending was given by or before 2006, Miss R had until 2012 to raise her concerns, which she didn't do.

The executors were not happy with BoS' response and referred the complaint to us.

I looked into the matter of our jurisdiction to consider this complaint and issued a decision on 4 August 2023. This set out my conclusions and reasons for reaching them. I was satisfied the complaint fell within our jurisdiction.

Subsequently, one of our Investigators considered the merits of the complaint. He didn't recommend it be upheld.

The executors didn't accept the Investigator's conclusions. They stated their complaint was that Miss R had been given two loans in quick succession and they don't believe BoS carried out sufficient checks to determine if she could comfortably afford to repay the loans. In addition, the executors believe that as she was 75/76 when the lending was agreed, it was unlikely that she would have finished repaying the loans before her death.

The executors then set out the details of the loans, Miss R's age at the beginning and end of the terms and commented on why they didn't think the loans were suitable. They said that Miss R not missing any payments until the later years of the loan didn't make them affordable. They went on to say that affordable would only be the case if the monthly payments were made without hardship and they didn't think the Investigator was in a position to make that assumption about Miss R's circumstances. The executors reiterated that the anxiety and distress Miss R had been caused because she was an individual of advanced years who was unused to owing money, could have been avoided had BoS completed reasonable due diligence. They asked that the complaint be referred to an Ombudsman.

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.

Before I look into the merits of this complaint, I will comment on the matter of Miss R being vulnerable and how BoS should have viewed her requests for borrowing in light of her age. Miss R was in her seventies when she approached BoS for further borrowing. At that time, it would appear that she had existing borrowing in the form of a mortgage and likely a personal loan. So I don't consider she would reasonably be described as an elderly person who was not used to having indebtedness, as the executors have suggested. While Miss R's age might have meant she was vulnerable or lacked capacity, it would have been inappropriate for BoS to have made assumptions in either of these regards unless they had been told of a vulnerability or been given cause to doubt Miss R's capacity from her behaviour. Although there is evidence that Miss R suffered from memory problems during the term of the mortgage, this was many years after any of the borrowing was agreed and no evidence has been presented that Miss R was suffering from those problems or was vulnerable, such that she should have been denied borrowing, in 2006 or earlier.

I would at this point highlight that the mortgage and the secured personal loans were all arranged on a repayment basis. As such, the borrowing was expected to be repaid over its term and where affordability is concerned, it would be a case of whether the monthly payments were affordable for Miss R from her income.

While the executors don't believe the mortgage and loans were affordable, this appears to be simply because Miss R was elderly, retired and they have put forward that she was living on only a state pension.

In relation to the further advance granted in March 2005, there was clearly an affordability assessment completed by BoS and Miss R was only offered the amount it considered she could afford to repay. When the first of the secured personal loans was taken out Miss R told it, and likely had to provide evidence of, an income that was significantly higher than her state pension income.

Miss R made all the payments needed to the secured personal loans when they were due and, while the second probably paid off the first, Miss R also had the funds to clear the second loan early. She made the mortgage payments for more than a decade before there was any indication she might be struggling with the payments. Indeed, when payments were missed initially, Miss R and her relatives, which includes one of the now executors, reassured BoS that there were no financial difficulties.

I understand the point the executors have made, that making the monthly payments didn't mean that they were affordable, as Miss R could have been depriving herself in favour of the debt repayment. However, no evidence of that has been given and Miss R told BoS that her income consisted of more than a state pension when both the mortgage and the first of the secured loans was taken out. That, combined with her ability to make payments over the long term, does not indicate there were any affordability issues when the mortgage and loans were sold.

While it does not affect the outcome of this complaint, I would comment on something the executors raised in response to the Investigator's conclusions. This being what Miss R would have been told about what would happen if she were to die before the end of the term of the loans and/or mortgage. There would not have been any specific documentation issued in this regard, but it would have been normal industry practice for it to have been highlighted to Miss R that should she die before the end of the term of any of the borrowing, her estate

would be responsible for paying back whatever the outstanding balance was. The fact that this was the case because Miss R would have been too old for life cover, would not have been considered unusual nor would it have made BoS' agreement to lend to Miss R inappropriate or meant that the borrowing was mis-sold.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask the estate of Miss R to accept or reject my decision before 12 April 2024.

Derry Baxter

Ombudsman