

The complaint

Mr W's complaint is about a joint mortgage he is a party to with Bank of Ireland (UK) Plc (Bol). He is unhappy that his application to add a new interest rate product to the mortgage, and extend its term was declined. He has told us that Bol assured him that changes could be made to a joint mortgage without the consent of both borrowers, but it then declined to make the changes he asked for without that consent. This has meant that he is going to have to sell the property earlier than planned.

Mr W has also raised the fact that despite a court order making him solely responsible for the mortgage payments going forward, Bol has told him it still holds his ex-wife responsible for the mortgage. However, despite this, he doesn't believe it has pursued her for the monthly mortgage payments when he has paid less than the full amount.

Mr W says in settlement of the complaint he would like Bol to recognise the court order, accept that exceptional circumstances exist, and agree to make the changes to the mortgage Mr W wanted, without the other borrower's consent.

What happened

In 2005 Mr W and a joint borrower took out a mortgage with Bol. It was arranged on a repayment basis over a term of 25 years.

The borrowers separated (with Mr W remaining in the property) and from October 2022 there were discussions between Mr W and Bol about the situation. Mr W confirmed that he and the other borrower wanted different things in relation to the mortgaged property. It was also confirmed the joint borrower was not contributing to the cost of the mortgage.

As Mr W had told Bol he couldn't afford the mortgage, it completed an income and expenditure exercise to assess Mr W's situation. This showed Mr W had a disposable income of around £300. Despite this, Bol explained that it could provide him with temporary arrangements that would help with the affordability of the mortgage, if he wanted it to. He declined as he didn't want his credit rating affected.

In November Mr W didn't make the full mortgage payment and the account went into arrears. The amount of the arrears was not sufficient to be reported on Mr W's credit file. He asked Bol to chase the joint borrower for the shortfall. It said it would do that, but it would also want to speak to him about making up the payment. Bol again offered to make an arrangement that would allow Mr W to pay less to the mortgage, but he declined again.

A further income and expenditure assessment was completed in December 2022. This again determined that Mr W had a disposable income after the mortgage and his basic outgoings were paid. He confirmed to Bol that he didn't want to use that money to bring the mortgage up to date. Instead he wanted Bol to chase the joint borrower for the money. Mr W maintained this position thereafter and declined to go through further income and expenditure exercises whenever this was suggested by Bol.

In February 2023 Mr W approached Bol again. He told it that the property had been allocated to him under a court order, but with the most recent interest rate increase, the monthly payment was unaffordable. Bol offered to look at whether it could offer any forbearance solutions for the short-term, but Mr W declined.

Subsequently, Mr W asked to make alterations to the mortgage. As the mortgage at that time was on Bol's standard variable rate of interest, Mr W wanted to add a two-year fixed interest rate product to it. In addition, he also asked to extend the term of the mortgage to 30 years in order to reduce the monthly payments. Mr W was told that the joint borrower would need to agree to the alterations. He indicated that he believed the other borrower would agree.

Bol issued a mortgage offer for the changes Mr W asked for the day after he spoke to the mortgage adviser. The offer was valid for 30 days and expired because the joint borrower didn't agree to the offer. Mr W asked if the changes could be made without the joint borrower and Bol said it would consider if it could agree to do so. Mr W provided a copy of a court order setting out the financial settlement regarding the mortgaged property.

Bol decided that it would not be appropriate in the circumstances for it to agree to make the changes to the mortgage without the joint borrower's consent. Mr W was not happy about this decision and asked for the joint borrower to be removed from the mortgage. There were then discussions about removing the joint borrower from the mortgage and property title, but it was highlighted that the joint borrower would need to consent. Later in these discussions Mr W introduced the concept of taking some additional borrowing. An affordability check was completed for the increased mortgage amount in just Mr W's name, but it failed and so the request was declined. Again, it was agreed that the request to alter the mortgage without the joint borrower's consent would be referred for consideration. Bol again concluded that it would not be appropriate in the circumstances. Mr W complained.

Bol responded to Mr W's complaint in its letter of 13 June 2023. It didn't think it had done anything wrong in its dealings with Mr W. Further correspondence was exchanged, but Bol didn't change its position on the complaint. Mr W remained unhappy and referred the complaint to the Financial Ombudsman Service.

One of our Investigators considered the complaint, but he didn't recommend it be upheld. He considered that in the circumstances, it was not unreasonable for Bol not to allow changes to the mortgage without the joint borrower's consent.

Mr W didn't accept the Investigator's conclusions. He asked why the Investigator had not commented on Bol's actions in terms of the Mortgage Charter, which was published by the Regulator in June 2023. He highlighted that flexibility was being offered to borrowers under the Charter, but he was not being offered anything. Mr W also commented that Bol hadn't chased the joint borrower when she was not making contributions toward the mortgage. In addition, he said that it appeared that the court order, removing the joint borrower's liability to make mortgage payments had no bearing in the real world. Mr W asked that the complaint be reviewed by an Ombudsman.

The Investigator considered what Mr W had said, but it didn't alter his conclusions. As such, the complaint was referred for an Ombudsman's review.

I issued a provisional decision on 8 November 2023, in which I set out my conclusions about the complaint and reasons for reaching them. Below is an excerpt.

'Usually, when a complaint is made about a joint financial product, we will require the involvement of both of the accountholders. There are some situations where we will consider

a complaint without the joint accountholder's consent, but when we do so, we can only consider the impact the actions of a business has on that accountholder. In addition, the financial business will only be able to provide us with limited information that relates to the other accountholder, and we would be unable to pass that information on to the complainant. This means that in this case, I can only consider the discussions and requests Mr W had with Bol about the situation and any difficulties he was having in relation to the mortgage payment.

Mr W has said that Bol has ignored the court order in relation to it making him responsible for the mortgage – because it has said it still holds the joint borrower responsible. The court order Mr W has referenced relates to the financial settlement between him and the joint borrower. It says that the property doesn't need to be sold until a certain date, and Mr W has the option to buy the joint borrower out of the property in the meantime. However, during the period until the property had to be sold, Mr W was to be responsible for paying the mortgage.

As has been explained previously, the court order set out the arrangements between the borrowers, but it did not place any requirements or obligations on Bol to do anything in relation to the mortgage. It also did not supersede the mortgage contract that both parties entered into with Bol. As such, the borrowers remain jointly and severally liable for the mortgage payments and to repay the capital in the event the mortgage is called in. However, in real terms, if the mortgage was being paid in line with the requirements of the contract by one of the borrowers, the lender would not pursue the other for a contribution. How mortgage payments are made is a matter for borrowers to sort out between themselves and not something lenders would choose to become involved in.

I would also explain at this stage the Mortgages and Home Finance: Conduct of Business Sourcebook (known as MCOB) sets out at MCOB 13 what lenders are required to do to help borrowers in arrears due to financial difficulties. A lender is required to explore ways to resolve an arrears situation, especially if the problem that created the arrears to begin with is one that looks to be short-term and capable of being resolved.

For long-term difficulties, a lender must also look at other ways to help, such as transferring a mortgage from capital and interest repayment to interest-only, deferring interest for a period of time or capitalisation of arrears. Balanced against that is the lender's obligation to ensure that any arrangement is affordable and sustainable. The requirement for a lender to try to help a borrower doesn't mean that a borrower should be given whatever they ask for, but rather the lender needs to determine if it can put forward any proposals that will actually help, and not just postpone the inevitable if the mortgage isn't and won't be affordable going forward.

The first stage of a lender looking into providing support to a borrower is for it to complete an assessment of the borrower's finances. As Mr W had said the joint borrower was not contributing and he was finding it difficult to make the monthly payments, Bol did this based on Mr W's sole income and the outgoings for the mortgaged property, where he was still living. This assessment showed that while his finances might have been constrained, he still had a disposable income on both occasions. The latter of these was conducted in December 2022 and showed a disposable income of around £240 each month. Despite this, Bol offered to look into forbearance options to provide Mr W with some breathing space, but he declined the offer as he didn't want his credit file affected.

Mr W declined to complete further assessments of his circumstances after this, saying that they had not changed. While the mortgage did for a short period go into arrears, this appears to be because Mr W chose to pay less than the full monthly payment, in order to prompt Bol to chase the joint borrower for the amount of the arrears, which it did. However,

subsequently, Mr W cleared the arrears, which had never been equal to one monthly payment and, therefore, didn't affect his credit file.

When Mr W asked to alter the mortgage to make it easier for him to afford, after the court order set out that he should maintain the mortgage payments alone, Bol conditionally agreed to offer what he wanted – a term extension and a new interest rate product. The condition it placed on the offer was that both borrowers agreed to the changes. Given the court order required the property to be sold at a certain point, which was several months before the end of the product being applied for, and so an early repayment charge (ERC) was likely to be incurred, this change would have had a material affect on the other borrower. In addition, the term extension would involve less capital being paid off the balance of the mortgage, which again could have had an effect on the amount the joint borrower would receive when the property was sold. As such, the changes could have had a material financial impact on the joint borrower. In those circumstances, I don't consider it was unreasonable for Bol to require both borrowers to agree to the changes.

Mr W is unhappy that, despite being told in exceptional circumstances, Bol could waive the need for the consent of the joint borrower, it didn't do so in his case. I can see from its records that Bol did consider whether it should allow the changes Mr W wanted without the consent of the other borrower, but decided it was not appropriate. This type of action would usually only be taken where the party paying the mortgage was experiencing financial difficulties and their need outweighed any financial detriment to the other borrower. In this case, the assessments that Bol was able to complete showed that Mr W was able to afford the mortgage payments and there was a real potential for the joint borrower to be disadvantaged by what Mr W wanted. As such, I don't consider it was unreasonable for Bol to conclude the circumstances were such that it wasn't appropriate to alter the mortgage without the joint borrower's consent.

As for the matter of Bol explaining the concepts of transfer of equity and transfer of title to Mr W, I don't think it did anything wrong in the circumstances. It was right that one of these processes would need to be completed in order to remove the other borrower from the mortgage, which Mr W asked about doing. Nor was it Bol's place to decide that the joint borrower would not consent to either of these actions – that was a matter between Mr W and the joint borrower. It is also not unreasonable for Bol not to want to get involved in any disputes between the two borrowers.

Mr W has raised the issue that Bol has not offered him anything under the Mortgage Charter. At the point Mr W complained to Bol and it responded to the complaint, the terms of the Mortgage Charter that he is referring to – term extensions, early access to interest rate products and temporary changes to an interest-only repayment basis – were not in place. They didn't come into force until July 2023. However, as Mr W included this in his complaint to this service, Bol has commented that given the situation it believed both borrowers would need to consent in the circumstances it was aware of when last Mr W gave it details.

The mortgage charter is there to support borrowers who are finding their finances challenged and in order to help them not fall into financial difficulties with their mortgage. Based on the information I have from the last time Mr W's financial situation was assessed by Bol, it would not appear that Mr W fell into this category. As such, I am not persuaded that Mr W's need outweighs the potential financial detriment to the other borrower such that he should be granted changes to the mortgage without consent of the joint borrower. However, if Mr W's circumstances have changed and he still wants to alter the mortgage under the charter, he should approach Bol, so that it can make a fresh assessment of his circumstances.'

Bol confirmed it had received the provisional decision and had nothing further to add.

Mr W didn't accept my conclusions. He said he believed my provisional decision had been made based on inaccurate inferences and misunderstanding of the dire financial straits that he finds himself in. He feels the entire response focussed on his ex-partner not being financially disadvantaged, rather than the position he has found himself in. He went on to reiterate the situation in relation to his ex-partner, the mortgage, the ex-partner not having fulfilled her responsibility. He repeated his belief that Bol didn't contact his ex-partner for payment of arrears and has not done enough to make her pay her share of the mortgage. He also didn't consider the financial benefit his ex-partner had received because she hadn't had to contribute to the mortgage had been taken into account.

In addition, Mr W considered that Bol had not fulfilled its duty of care toward him as there was no surplus income as has been referenced. He went on to say that the money that had been labelled as disposable income was required for expenses not included in the figures he had given Bol, such as prescriptions, dental charges, maintenance/repairs to the property and family trips/holidays. He commented that the budget planner that Bol asked for information to complete didn't make allowances for school lunches, school trips, car expenses, heating, Sky television, and luxuries – it only allowed for the basics. He confirmed that he is now in arrears with some household bills.

Mr W also reiterated his comments about Bol insisting on him applying for a transfer of equity and the costs it would have incurred. He went on to ask what constituted exceptional circumstances. He also said that Bol had not offered him any assistance, either in the short or longer terms, and this was because he believes his ex-partner would have to consent to any arrangements, which Bol knows she will not.

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.

Mr W has said Bol didn't offer him any either short- or long-term options to assist with his circumstances. I have reviewed the contact records again and I am satisfied that Bol offered to look into forbearance options to assist him on more than one occasion, but he was not interested in anything that might have an impact on his credit file, which many such options would have. That process would also have involved assessments of his financial situation, which Mr W declined to engage with latterly. So I can't find that Bol wasn't willing to try to assist Mr W if he was genuinely in financial difficulties.

I have noted Mr W's comments about the budget he was asked to provide information for, and from which Bol concluded he had a disposable income. I would initially confirm that it would not take account of luxuries and 'nice to have' items, as it is assessing the circumstances of a person stating they cannot afford their mortgage – it is assumed that a person in that position would forgo luxuries and prioritise essentials. However, that said, all normal household expenditure, such as car expenses like road tax and maintenance, should be included. My provisional decision was based on the situation when Mr W last agreed to co-operate with Bol assessing his financial situation. If that situation has changed since, or he thinks some outgoings were missed previously, I would encourage Mr W to speak to Bol and engage in a further assessment to see if there are things Bol can do to assist him, whether under the mortgage charter or under its usual forbearance arrangements.

I have considered everything Mr W and Bol have said and provided. I have reviewed the file again in its entirety and I have revisited my provisional decision. Having done so, I am still of the opinion that based on the information Bol had at the relevant time, it didn't act inappropriately. However, I would encourage Mr W to fully engage with Bol going forward, especially if his financial situation has deteriorated as he has indicated.

My final decision

My decision is that I do not uphold this complaint. Under the rules of the Financial Ombudsman Service, I am required to ask Mr W to accept or reject my decision before 29 December 2023.

Derry Baxter
Ombudsman