

The complaint

Mr W and Mrs W complain about the way The Governor and Company of the Bank of Ireland trading as Bank of Ireland Mortgages treated them when they were in financial difficulties.

What happened

In early 2004 Mr W and Mrs W took out a 25-year repayment mortgage of around £100,000 with The Governor and Company of the Bank of Ireland trading as Bank of Ireland Mortgages (BOI).

From around 2013/2014 onwards they couldn't keep up their mortgage payments and significant arrears began to build up. BOI got a possession order against Mr W and Mrs W in 2019. And in 2022 they instructed solicitors to repossess the property. That action is on hold while we look into their complaint.

Mr W and Mrs W felt BOI failed to take into account their circumstances and health issues or provide them with support. They said their communications were intimidating and had caused them distress. And they were unhappy BOI wouldn't provide a copy of their lending policy. They complained to BOI.

BOI didn't uphold Mr W and Mrs W's complaint. They said, in summary, they'd tried to help them many times and signposted them to organisations that could provide financial support; Mr W and Mrs W had provided incomplete and inconsistent information about their income and expenditure so they hadn't been able to reach agreement about paying off the arrears; their contact with Mr W and Mrs W was in line with their responsibility to let them know the action they might take so they could decide how to manage their mortgage account; and they wouldn't provide their lending policy since it was commercially sensitive.

Mr W and Mrs W were unhappy with BOI's response to their complaint. They brought it to the Financial Ombudsman Service. Our investigator felt BOI had taken Mr W and Mrs W's circumstances into account in their dealings with them. And she thought BOI had treated them fairly and reasonably.

Since Mr W and Mrs W were unhappy with our investigator's outcome, their complaint was passed to me to decide. I recently issued a provisional decision, an extract of which follows:

"What I've provisionally 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 won't set out in detail what's happened. No discourtesy is intended by that. It simply reflects the informal nature of the service we provide. I'd like to reassure the parties I've looked at everything carefully before coming to my decision. Since my reasons differ in part from those of our investigator, I'm issuing a provisional decision to give the parties time to comment before I issue a final decision.

I'm sorry to hear of the difficult personal circumstances and health issues Mr W and Mrs W have dealt with over many years. I can see they've found it difficult to manage their mortgage payments. And I appreciate their emotional attachment to their property.

I need to be fair to both parties in considering Mr W and Mrs W's complaint. Under the terms and conditions of their mortgage, Mr W and Mrs W agreed to make their contractual monthly mortgage payments (CMPs). It was reasonable for BOI to expect them to be paid. If Mr W and Mrs W fell into arrears, it was reasonable for BOI to take action to recover the arrears and repossess the property if that was the only way they could recover their loan.

Having said that, I'd expect BOI to have treated Mr W and Mrs W fairly while they were in financial difficulties and to have taken their circumstances and health concerns into account.

The relevant rules mean I can only look at what's happened in the six years before Mr W and Mrs W complained, that is from 2016 onwards. But I can see that BOI had been discussing the arrears with them for a few years before that. And they'd put possession proceedings on hold while they worked with them to manage the account. Neither Mr W nor Mrs W were working due to ill-health. And they were receiving help towards their mortgage from the Department of Work and Pensions.

By 2016 BOI were aware of Mr W and Mrs W's vulnerabilities and poor health. And they'd passed their case to a specialist team for handling. BOI were aware the organisation Mr W and Mrs W had hoped would provide a grant to pay off the arrears at the time, wouldn't be making any payment since they'd found no evidence of financial hardship. And they understood from Mr W and Mrs W's representative at that organisation that they could afford their CMP.

It was reasonable for BOI to think Mr W and Mrs W could afford their mortgage based on that information. But they gave Mr W and Mrs W the opportunity to provide them with information about their income and expenditure so that they could assess their financial situation and what was affordable for them. They considered requests to move to interest only terms as a concession and capitalising the arrears. And they raised the possibility of Mr W and Mrs W selling the property.

BOI were concerned about Mr W and Mrs W's failures and delays in providing information about their financial circumstances. They held off taking repossession proceedings over many months to accommodate their ill-health and other reasons they gave for delays. But they noted the information Mr W and Mrs W did provide was incomplete, inconsistent with supporting documentation or showed they were spending money on non-essential items, rather than paying the mortgage - as they should have been as a priority debt.

For example, in June 2016 BOI delayed sending a field agent to discuss things with Mr W and Mrs W when Mr W was unwell. They agreed instead to consider their income and expenditure information if they returned the form within 14 days – they failed to do so. In 2017, Mr W and Mrs W didn't return an income and expenditure form they were asked to complete then. And in March 2018 BOI noted inconsistencies in the information Mr W and Mrs W provided.

We expect borrowers to engage meaningfully in discussions with lenders about their circumstances. In the absence of any clear information about Mr W and Mrs W's financial circumstances, I don't think it was unreasonable for BOI to decline a change to the mortgage. I appreciate selling the property would have been a wrench for Mr W and Mrs W given their personal connections to it. But it was a reasonable suggestion for BOI to make. Since Mr W and Mrs W weren't paying the mortgage in full or at all, the arrears were continuing to increase, and the equity in the property was reducing in neither party's interests.

Despite everything, BOI held off pursuing repossession of the property until 2018. Several court hearings were adjourned based on proposals Mr W and Mrs W made to pay the CMP and an additional amount towards the arrears. Limited or no payments were made. And, in the end, the court made a possession order in September 2019. Even so, BOI held off taking possession after that in light of Mr W's poor health. And repossession was then delayed in line with government guidance during the coronavirus pandemic.

BOI kept in contact with Mr W and Mrs W. They looked into concerns Mrs W raised about a standing order she'd set up to pay the mortgage not going through. And they agreed to discuss things with a relative if Mr W and Mrs W gave authority. But BOI had fresh concerns about where the unpaid standing order money had gone when it wasn't paid to them; payments Mr W and Mrs W had made to an airline which suggested non-essential expenditure; and the authority to discuss things with a relative not being provided.

Bearing all of the above in mind, I think BOI treated Mr W and Mrs W fairly and reasonably. They had valid concerns about the information Mr W and Mrs W were providing about their ability to pay the mortgage. They took account of their circumstances and gave them plenty of time to respond to requests for information. And BOI regularly provided them with information about organisations that could provide them with independent financial advice.

I've considered the contact and correspondence BOI had with Mr W and Mrs W. I'd expect BOI to have kept Mr W and Mrs W updated about the position on their account through calls and correspondence. I don't think it went beyond what was required or reasonable in the circumstances of this case. I wouldn't expect BOI to have provided Mr W and Mrs W with a copy of their lending policy since it's commercially sensitive information.

I'm aware Mr W and Mrs W are unhappy about a visit made to their property in October 2022. I understand it was made on the instruction of BOI's solicitors and was required to check who was living at the property before it could be repossessed. But I don't consider it here since it's not part of the complaint Mr W and Mrs W made to BOI which I'm looking at here.

Considering everything, whilst I sympathise with Mr W and Mrs W's difficult situation, I don't think BOI have treated them unfairly or unreasonably. And, whilst I understand they will be disappointed, based on what I know so far, I don't intend to uphold their complaint. I'd expect BOI to continue to treat Mr W and Mrs W fairly while they consider their next steps.

My provisional decision

For the reasons I've explained, I don't intend to uphold Mr W and Mrs W's complaint."

Developments

Neither party has commented on my provisional decision. So, I'll go on to make my final 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.

Since there are no further comments to consider, I see no reason to change my views. For the reasons I set out in my provisional decision, I don't uphold this complaint.

My final decision

My final decision is that I don't uphold Mr W and Mrs W's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W and Mrs W to accept or reject my decision before 21 August 2023.

Julia Wilkinson
Ombudsman