

## The complaint

Ms E's complaint is about a buy-to-let (BTL) mortgage with Bank of Scotland plc (BOS). Ms E says that, after she was told she had until 27 February 2023 to remedy the default on the account, BOS reneged on this and told her on 24 February 2023 that she was out of time. Ms E says this is unfair and that BOS hasn't taken account of her vulnerabilities.

Ms E also says the loan was mis-sold.

## What happened

I will summarise the complaint in less detail than it's been presented. There are several reasons for this. First of all, the history of the matter is set out in detail in correspondence, so there is no need for me to repeat the details here. I will instead concentrate on giving the reasons for my decision. In addition, our decisions are published, so it's important I don't include any information that might lead to Ms E being identified. So for these reasons, I will keep my summary of what happened quite brief.

Ms E owns a BTL property which has a first mortgage to a different lender (K) granted in 2014. In July 2018 Ms E took out another loan secured on the BTL property, this time with BOS. The bank already had security in place, by way of a second legal charge on the BTL property dating from May 2017.

The mortgage offer dated 19 July 2018 shows that Ms E borrowed £108,000 on an interest-only basis over a term of five years. The repayment vehicle was stated in the loan documentation to be ad hoc capital reductions during the loan term, with any remaining balance coming from the sale of the property.

The mortgage terms and conditions state that the property must only be occupied by tenants, and cannot be used as a home for Ms E or her family. The offer also states that this is an unregulated mortgage and is for business purposes.

Unfortunately the loan fell into arrears. Payments were missed in November 2022, December 2022 and January 2023, following which BOS issued a default notice in mid-February 2023 calling in the loan and requesting full repayment of the outstanding balance – at that point £111,255.26.

Ms E spoke to the bank several times to try to resolve the situation. It was explained to Ms E that a default notice could be issued after two missed payments, but in this case there had been three missed payments. Ms E felt BOS hadn't taken her vulnerabilities into consideration, as a result of which she believed the bank had acted incorrectly in calling in the loan.

A further payment was due on 23 February 2023, but there were insufficient funds in Ms E's current account to cover this, and so the payment was returned. Ms E said that a member of staff, LM, had given her until 27 February 2023 to bring the mortgage account back on track, but on 24 February 2023 another member of staff, GW, told Ms E that LM would not be contacting her any further as he would no longer be dealing with the account.

GW explained that LM was a collections agent, but the account was now being passed to Recoveries and so LM would have no further involvement with it. GW explained that the account would be with LM until 17:00 on 24 February 2023, giving Ms E until then to pay the full outstanding balance.

Ms E complained. She thought BOS had treated her unfairly, failing to take into account her vulnerabilities. Ms E said the bank's threats of legal action had caused her considerable distress and anxiety. Ms E also said she thought the loan had been mis-sold.

BOS didn't uphold the complaint, so Ms E brought it to our service. An investigator looked at what had happened, but didn't think the complaint should be upheld. He was satisfied the loan hadn't been mis-sold, and didn't think the bank had treated Ms E unfairly.

Ms E asked for an ombudsman to review the complaint. She's reiterated her points about why she believes BOS hasn't been fair to her.

### **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.

The evidence in the case is detailed, running to several thousand pages of documents. I've read everything and listened to the relevant call recording, and it's apparent that some parts of the evidence are less relevant to the underlying case than others. There are also a lot of duplicated documents and repetition of arguments. In what follows, I have, by necessity, summarised events in rather less detail than has been presented.

No discourtesy's intended by that. It's a reflection of the informal service we provide, and if I don't mention something, it won't be because I've ignored it. It'll be because I didn't think it was material to the outcome of the complaint. This approach is consistent with what our enabling legislation requires of me. It allows me to focus on the issues on which I consider a fair outcome will turn, and not be side-tracked by matters which, although presented as material, are, in my opinion peripheral or, in some instances, have little or no impact on the broader outcome.

I am grateful to both Ms E and BOS for providing the further information I requested. However, despite my requesting details of the tenancy at the BTL property, that information has not been forthcoming. I've noted the letter Ms E provided from a trades union, which Ms E considers to be crucial evidence in her case, but this is of minimal evidential value; it simply reiterates what Ms E has told the writer of the letter, and requests, in July 2023, that Ms E should be afforded the timeline to repay the loan that was agreed in July 2018. Indeed, I note the timeline to repay the loan agreed in July 2018 has now expired, as the loan term came to an end in July 2023 and the balance remains unpaid.

**Mis-sale complaint:** Ms E says the loan was mis-sold. However, the purpose of the loan wasn't to take out new borrowing; it was to re-schedule debt owed to the bank which Ms E had already incurred. There was therefore no overall increase in Ms E's indebtedness to BOS. This was a BTL mortgage, and as such is considered a commercial loan. No advice was given by BOS about whether Ms E should, or should not, take out the loan; it was up to Ms E to make her own decision about whether or not to re-arrange her borrowing in this way.

I appreciate Ms E's income is erratic and is largely reliant on factors outside her control. But the implications as far as Ms E is concerned are that the regulations on affordability that

apply to residential mortgages do not apply to a BTL mortgage. And in any event, where the mortgage in question is a BTL (as is the case here), repayments are generally intended to be covered by the rental income.

Ms E did try to send us a copy of her first mortgage with K, as it would have been helpful to see what the terms of that mortgage were, including the amount of monthly repayment, but for technical reasons, it wasn't possible to view the document. Nor do I know how much rental income Ms E is receiving from her tenants, and whether that is sufficient to cover both the first mortgage to K and the second mortgage to BOS. The rent does not appear to be paid into Ms E's current account with BOS.

Ms E's overall debt exposure didn't increase, and by taking out this BTL mortgage, Ms E had stability of knowing how much her monthly repayments would be. She had a clear repayment strategy - ad hoc reductions in capital as and when her income allowed, with a sale of the property at the end of the mortgage term, which has now expired.

In all the circumstances, I'm not persuaded the loan was mis-sold. Ms E knew the terms of the mortgage she entered into, and had a strategy to repay the loan, either during the term or when it came to an end.

**Financial difficulties:** Although BOS is required to treat customers fairly, commercial loans (which include BTL mortgages) do not have the same regulatory framework as residential mortgages. Therefore the rules on what lenders are required to do to help residential mortgage customers in financial difficulty do not apply to BTL mortgages. Notwithstanding this, BOS is still required to treat Ms E fairly and sympathetically.

The bank's notes show that considerable forbearance was granted to Ms E, once payments started to be missed from November 2022 onwards, with efforts made to try to help her to bring the account back on track. Unfortunately, as a result of further missed payments in December 2022 and January 2023, the account was defaulted, which meant that the full balance then became due. This was action which I'm satisfied BOS was entitled to take.

I'm satisfied that BOS kept Ms E advised of missed payments, and the implications if the account wasn't brought up-to-date. I note that Ms E had difficulty opening encrypted emails from BOS and asked for the bank to correspond with her by letter, which it did. Although Ms E later complained that she'd not been sent emails, I'm satisfied that she had, in fact, asked the bank to write to her instead.

The crux of this complaint is that Ms E says she thought she had until 27 February 2023 to repay the balance, but says the bank reneged on this on 24 February 2023. Ms E claims these three days were crucial to her.

However, Ms E hasn't provided any evidence to persuade me that on 27 February 2023 she'd have been in a position to pay off the loan in full. To be clear, this wasn't a question of making up missed repayments; the bank had already issued a default notice, so the *entire* balance of the loan was due to be paid in full.

I've listened to the call Ms E had with BOS on 24 February 2023. BOS explained that the account was being passed to Recoveries. Ms E wasn't happy that the account had been defaulted, but BOS explained that the default wouldn't be removed as it was an accurate reflection of the conduct of the account.

Ms E told the bank that she believed BOS hadn't taken her vulnerabilities into account, or offered her the help she'd needed. However, BOS disagreed. The call did not end with any resolution that was acceptable to Ms E.

Although Ms E wasn't happy about the tone of the BOS staff member to whom she had spoken, I have found that the staff member was polite, but also firm and resolute in explaining that the bank's decision to default the account would not change. She explained the next steps to Ms E – that the account would be going to Recoveries.

Overall, I don't think BOS treated Ms E unfairly or unsympathetically, or that the bank failed to take into account her vulnerabilities. Ms E was given considerable leeway to bring the account up-to-date, but ultimately wasn't able to. As stated above, Ms E hasn't provided any evidence to show that she would have had funds available on 27 February 2023 to pay off the loan in full. Therefore I'm not persuaded that BOS acted unfairly in passing the account to Recoveries on 24 February 2023.

## **Conclusion**

I am satisfied that the loan was not mis-sold. I'm also satisfied that BOS treated Ms E fairly and sympathetically when she experienced financial difficulties. In the circumstances, I'm unable to uphold the complaint.

I appreciate this isn't the outcome Ms E was hoping for. But after careful consideration of everything she and BOS said, I'm unable to find the bank has done anything wrong.

As the end date of the loan has now expired, Ms E will now need to take steps to repay it. If Ms E intends to sell the property to repay BOS, I would suggest that she seeks legal advice from a solicitor in order to ensure that her tenants are given sufficient notice. Alternatively, if Ms E wants to arrange alternative finance to repay the bank, she will probably need to seek advice from a specialist BTL mortgage broker.

Generally mortgage lenders will allow a BTL borrower a short period of time (typically no more than six months from the date of expiry of the loan) to arrange repayment. However, this is usually dependant on the borrower providing evidence from solicitors of a pending sale of the property or from a mortgage broker that a new mortgage is in the process of being arranged. I am explaining this because I would not want Ms E to be under any misunderstanding that she has an indefinite amount of time to put her repayment arrangements in place. In the absence of full repayment of the loan within the foreseeable future, BOS will be entitled to seek possession of the property, and so it is important that Ms E puts in motion arrangements to repay the mortgage at the earliest opportunity.

## **My final decision**

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

This final decision concludes the Financial Ombudsman Service's review of this complaint. This means that we are unable to consider the complaint any further, nor enter into any correspondence about the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms E to accept or reject my decision before 26 September 2023.

Jan O'Leary  
**Ombudsman**