

The complaint

Miss C complains that Bank of Scotland plc (BoS) didn't tell her that she was being charged a higher rate of interest on her mortgage because it had been taken out on a self-certification basis in 2004. She says she wasn't told until 2022 that a self-certification marker had been recorded on her account, and this could have been removed before 2022.

Miss C is also unhappy that BoS didn't agree to a new fixed rate product between 2012 and 2022.

What happened

Miss C took out a mortgage with BoS in 2004 through an independent broker. The mortgage was taken out on a self-certification basis, which Miss C says wasn't properly explained to her.

We haven't been provided with a copy of the mortgage agreement from 2004, but I understand that an initial three-year fixed rate product was agreed, which expired in 2007. Following this, Miss C took out a five-year fixed rate product at 6.29%. When this expired in 2012, Miss C's mortgage reverted to BoS's Standard Variable Rate (SVR). The mortgage remained on BoS's SVR until 2022.

Miss C is unhappy that BoS didn't offer her a new fixed rate product between 2012 and 2022. She says she asked BoS for a new fixed rate product on numerous occasions after her mortgage reverted to its SVR in 2012, including when she was experiencing financial difficulty - but BoS repeatedly told her that there were no products available.

Miss C says this continued until March 2016, when she became up to date with her payments. She says she was told in 2016 that she could apply for a new rate, but she would need to provide proof of income, which she says she couldn't do. So, her mortgage remained on BoS's SVR.

Miss C says she was later told by BoS in 2022 that there was a self-certification marker on her account, which was removed. BoS then agreed to a five-year fixed rate product which reduced her monthly payments by around £100. Miss C feels strongly that whilst the marker was recorded on her account, she was charged a higher interest rate than she would have been charged had it not been there.

In March 2022, Miss C complained to BoS that it hadn't told her until 2022 that she had been paying a higher interest rate because her mortgage had been taken out on a self-certification basis, and a marker had been recorded on her account – which BoS should and could have removed sooner than 2022. Miss C also complained that she'd previously struggled to make her payments, and she felt something should have been done sooner.

BoS sent responses to Miss C in April and June 2022 explaining that it didn't uphold her complaint. In summary, it said Miss C's broker was responsible for explaining to her the appropriateness of taking out the mortgage on a self-certification basis. Further, it didn't agree that it should have proactively explained to her what self-certification is during conversations they had after the mortgage had been taken out. It also said it wouldn't usually remove a self-certification marker unless it was asked to do so.

Unhappy with BoS's responses, Miss C referred her complaint to our Service.

BoS didn't consent to this Service considering Miss C's complaint because it didn't think a complaint had been made within the relevant time limit rules.

Our Investigator looked into whether this Service can consider the complaint. She was satisfied that Miss C's concerns about BoS not telling her until 2022 that she was being charged a higher interest rate because her mortgage was taken out on a self-certification basis, and her concerns about the marker on her account (Part one of this complaint), had been made within the relevant time limit, so this Service can consider it.

However, she felt that this Service can only consider Miss C's concern about BoS not agreeing to a new fixed rate sooner (Part two of this complaint), during the six-year period leading up to Miss C making her complaint to BoS in March 2022.

Miss C disagreed with the Investigator, so the complaint was passed to me to reach a decision on the jurisdiction matter.

In March 2023, I issued a jurisdiction decision confirming that this Service is able to consider Part one of Miss C's complaint. However, we are only able to consider Part two of Miss C's complaint during the six-year period leading up to her making her complaint to BoS in March 2022.

Since issuing my jurisdiction decision, BoS made an offer to resolve Miss C's complaint. It offered to rework Miss C's account, applying the lowest interest rates available from February 2017 (the earliest point that it says Miss C would have been eligible for a new rate) until Miss C made her complaint in 2022. It also offered to pay Miss C £400 for any distress and inconvenience it had caused.

The Investigator considered Part one of Miss C's complaint, but she didn't think it should be upheld. In summary, she said she was satisfied that BoS wasn't responsible for the sale of Miss C's mortgage, and she didn't think Miss C had been charged higher rates of interest in comparison to BoS's mainstream (standard mortgage) customers.

She also felt the offer made by BoS was fair and reasonable in the circumstances, and she didn't think it needed to do anything further.

Miss C didn't agree with my jurisdiction decision or the Investigator's findings on the merits of her complaint. In summary, she said:

- I had used subjective rather than objective criteria when deciding when she knew, or should reasonably have known, she had cause to complain about not being given a fixed rate.
- BoS had provided her the wrong type of mortgage. She feels she should have been given a standard fully certified mortgage from the outset, and she says I also reached this conclusion in my jurisdiction decision.
- BoS has acted in breach of relevant rules and regulations by not offering her a new interest rate product until 2022.
- Her account was brought up to date in March 2016.
- BoS's offer should go further. Amongst other things, Miss C thinks BoS should apply the lowest interest rates that were available from November 2012, when her mortgage reverted to the SVR.
- She should be provided with information about BoS's lending policy and criteria.

As agreement hasn't been reached, Miss C's complaint has been passed to me for a 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.

I've thought carefully about what Miss C has said in response to my jurisdiction decision. However, it hasn't changed my view and I won't be departing from the findings that I've made.

Miss C has also said that I concluded that she should have been given a standard fully certified mortgage from the outset. I didn't reach a finding on this point in my jurisdiction decision. My decision solely addressed what parts of the complaint this Service is able to consider.

Miss C has made detailed submissions about the merits of her complaint. I've read these carefully, but my decision will concentrate on the issues that I think are central to the outcome of the complaint.

Part one of this complaint.

Miss C has complained that BoS didn't tell her until 2022 that she was being charged a higher interest rate because her mortgage was taken out on a self-certification basis, and she says there was a marker on her account preventing her from getting a cheaper interest rate.

In 2004 Miss C took out a mortgage with BoS on a self-certification basis. Self-certification was often used before changes to mortgage regulation, but it's no longer something lenders in the United Kingdom are able to offer. This type of mortgage was aimed at borrowers who were unable to prove how much they earn without difficulty, such as those who were self-employed.

Miss C has told us that she took out her mortgage through a broker, and BoS has provided this Service with a copy of the application form from 2004 which confirms this. This also shows the option 'Special Status' was selected from the mortgage products listed in the application form, which indicates a non-standard mortgage was applied for.

Having reviewed the information available to me, I haven't seen any evidence that shows BoS provided Miss C with any advice when she took out the mortgage in 2004, or when she agreed to a new product in 2007. It follows that I'm not satisfied BoS was responsible for assessing the suitability of the mortgage or checking that Miss C understood the terms of the mortgage – including any terms relating to self-certification.

Further, in the circumstances, I wouldn't expect the self-certification basis of the mortgage to have been explained to Miss C during the various conversations she had with BoS after agreeing to the mortgage, unless she had specifically requested this - and I haven't seen any evidence to suggest that she did.

I've taken into consideration Miss C's view that the self-certification marker should have been removed from her account sooner than it was. However, I don't think Miss C has lost out as a result of having the marker on the account and I will explain why.

In 2007, upon the expiry of her initial fixed rate product, Miss C took out a five-year fixed rate product at the rate of 6.29%. BoS has provided evidence to show that it had offered a two-year fixed rate product to its mainstream (non-self-certified) customers at 6.29%. However, it hadn't offered a five-year fixed rate product to its mainstream customers at that time. I understand that following BoS's merger with Halifax, customers could be directed to Halifax mortgage products, and Halifax did offer a five-year fixed rate product at that time - but this was at a higher rate of 6.99%. I'm therefore not persuaded that Miss C would have been able to secure a more competitive five-year fixed rate product with BoS at that time had she not been considered a self-certification customer. So she wasn't disadvantaged.

Further, when Miss C's five-year fixed rate product ended in 2012, the mortgage reverted to BoS's SVR. This was BoS's standard reversionary rate, and it didn't differ for self-certification and mainstream customers. It was exactly the same rate. Miss C's mortgage remained on the SVR until 2022. So, again, she wasn't disadvantaged as a result of the self-certification marker.

Having carefully considered the information available to me, I'm unable to conclude that the self-certification marker on Miss C's account resulted in her being charged higher interest rates in comparison to BoS's mainstream customers. It follows that there are no grounds on which I can fairly require BoS to compensate Miss C because her mortgage was marked as 'self-certified'. There's no evidence that she has suffered any losses because of it.

Part two of this complaint

Miss C has complained that BoS should have agreed to a new fixed rate sooner. For the reasons I've set out in my jurisdiction decision, I'm only able to consider the events being complained about during the six-year period leading up to March 2022 (so from March 2016).

BoS has told us that it hasn't been able to locate any evidence of Miss C asking for a new fixed rate in 2016. And in any event, it says Miss C wouldn't have been eligible for a new rate in 2016 because her account was in arrears, and it was its policy at that time that customers needed to be up to date with payments before a product transfer could proceed.

BoS has provided evidence to this Service that confirms this was its policy at that time. It isn't uncommon for a lender to require a borrower to be up to date with payments before agreeing to a new interest rate product. A new fixed rate would usually come with an Early Repayment Charge (ERC). And taking out a new product which would be subject to an ERC upon early repayment may not be in a borrower's best interests if there's a risk the mortgage isn't sustainable in the long term. In Miss C's circumstances, I think it was reasonable for BoS to want to see that she was able to make the mortgage payments.

I've noted Miss C's request to be provided with the detail of BoS's policy. I understand why Miss C would like to see this, but our rules allow us to receive information and evidence in confidence where appropriate. I'm satisfied that it's appropriate to do so here, given that BoS's policy document is commercially sensitive. I've gone on to consider whether BoS has applied its policy fairly and I'm satisfied it has. I'll explain why.

Miss C says she brought her account up to date in March 2016. However, I've reviewed the transaction history for the account, and this shows the arrears weren't cleared until 30 January 2017. The transaction history shows the arrears balance reducing gradually from £1,523 on 28 January 2016 to £54 by 29 December 2016 – but the final amount wasn't cleared until Miss C made a payment on 30 January 2017.

I'm therefore satisfied that February 2017 was the earliest point, within the six-year timeframe that I can consider, that Miss C would have been eligible to apply for a new rate. It follows that I think BoS has applied its policy fairly when determining the earliest point Miss C was eligible to apply for a new rate.

BoS has also provided this Service with a record of a telephone conversation that took place with Miss C in January 2017. This details a discussion that took place about the arrears on Miss C's account and her intention to bring the account up to date with her next payment.

BoS has accepted that it could have told Miss C that she would be eligible to apply for a new rate once the account was up to date during this telephone conversation. And because it didn't, BoS has offered to rework Miss C's account, applying the lowest rates available from February 2017, when Miss C's account was brought up to date, until 2022 – when Miss C secured a fixed rate product. BoS has also offered to pay Miss C £400 for any distress and inconvenience it has caused.

I've carefully considered BoS's offer, including its approach for calculating redress, and I think this is fair and reasonable in the circumstances. I'll explain why.

I'm satisfied that February 2017 is the earliest point that Miss C was eligible to apply for a new rate. Further, I'm persuaded from what Miss C has told us that, had she been made aware that she would be eligible for a new rate upon clearing the arrears, she would have asked for a new rate as soon as she was able to – which was February 2017. So, I agree this should be the starting point for calculating redress. Miss C was able to secure a new fixed rate product in 2022, so this should be end date for calculating redress.

BoS has agreed to rework the account as if its lowest rate had been in place from February 2017. It hasn't detailed the type of products it would apply here - but given that Miss C has told us that she had wanted a fixed rate product since November 2012, on balance, I think this is what she would have agreed to had she known she was eligible to apply for a new product in February 2017. So, BoS should apply its lowest fixed rate product/s during the relevant period.

I've also considered the question of interest on the interest reimbursements (if Miss C chooses to have the overpayments refunded to her). Each time Miss C has paid more each month than she needed to, she's been unfairly deprived of the extra amount. This entitles her to interest on each overpayment, from the time it was paid, up to the time it is reimbursed. The relevant rate is 8% simple per annum.

I've also thought about the impact the matter has had on Miss C. I appreciate that making unnecessarily high monthly payments and trying to resolve the matter has caused Miss C stress and upset. BoS has offered to pay Miss C £400 for any distress and inconvenience it has caused, and I think this is fair compensation in the circumstances.

Putting things right

To settle this complaint, I require Bank of Scotland plc to calculate redress as follows:

- Re-work Miss C's mortgage so that it is as if a BoS's lowest fixed rate had been in place from February 2017 to 2022, when Miss C took a new fixed rate.
- Give Miss C the choice of either:
 - a) Having the resulting overpayments between 2017 and 2022 refunded to her, adding simple annual interest of 8% running from the date of each payment to the date of refund; or
 - b) Having the resulting overpayments used as an overpayment each month, with the balance – and interest charged as a result – reduced in subsequent months.
- Write to Miss C explaining any changes it has made to her mortgage account.

If Miss C selects option a), BoS may deduct income tax from the 8% interest element of my award, as required by HMRC. But it should tell Miss C what it has deducted so she can reclaim the tax if she is entitled to do so.

BoS should also make a separate award of £400 for the distress and inconvenience the matter has caused Miss C.

My final decision

For the reasons I've given, my final decision is that I uphold this complaint and I require Bank of Scotland plc to put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 23 October 2023.

Michelle Griffiths
Ombudsman