

The complaint

Mr M is unhappy that Bank of Scotland plc (BoS) has approached him to repay the shortfall that existed following his home being repossessed in 2009 and sold in 2010. He has said he was unaware of the debt until 2019 and thinks it's unfair he is being pursued for the debt.

What happened

Mr M bought a property with the assistance of a mortgage from BoS. Unfortunately he had difficulty paying the mortgage and by late 2009 the property had been taken into possession by BoS, which sold it early in 2010. When it did so, the amount received from the sale wasn't enough to pay the entire amount owed. Mr M was liable to pay BoS the shortfall amount.

The shortfall at the point of sale was £7,752.15. This was made up of the difference between the sale price achieved and the mortgage debt, associated interest, plus the costs of the repossession and sale of the property. In 2012 the debt was reduced to £6,732.15 due to a credit made by BoS.

From 2012 BoS used external debt recovery agents to attempt to recover the debt. Those agencies made various attempts to trace Mr M and believed they had done so in 2012 and 2013. Mr M was written to at the traced addresses in 2012, 2013, 2014 and 2015, but no response was received and one letter to the second address was returned as 'addressee unknown'. Mr M has subsequently told us he didn't live at either of the traced addresses.

It was not until 2019 that Mr M was traced to his current address and confirmed receiving a letter about the debt. Following receipt of the letter about the debt, Mr M contacted BoS as he believed he couldn't still be pursued for it. Mr M was unhappy that the debt was being pursued and BoS treated his comments as a complaint.

BoS said that because it had been trying to pursue Mr M for the debt from 2012 it was entitled to do so. As Mr M wasn't happy with this response, he referred the matter to this service for consideration.

One of our investigators considered the complaint, but didn't uphold it. He concluded that the debt did exist and that BoS was within its rights to pursue the debt, given the circumstances around its continued attempts to do so. As Mr M wasn't happy with the investigator's conclusions, he asked that the complaint be referred to an ombudsman for consideration.

What I've decided – and why

I have considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Mr M is unhappy that nine years after the sale of his home he is being pursued for the shortfall in the amount he owed BoS. I can understand this would have been an unpleasant surprise if he had previously been unaware of the debt. He has also said that he thinks BoS can't pursue the debt because it is more than six years since it came into existence.

There are two sets of time limits that affect this case: those set by the regulator in its code of conduct for such situations and those set in law. When deciding a case I must consider both sets of timescales.

Mr M's mortgage was subject to the laws of England and Wales and so, in line with the relevant legislation, BoS had twelve years to contact him to arrange for the shortfall to be paid. So BoS was in time at the point Mr M acknowledges receipt of the letter from BoS in 2019. However, I must also consider the requirements the regulator's rules place on BoS. This requires lenders to tell a consumer the amount of the debt and confirm it is planning to reclaim that debt in Scotland within five years of the shortfall sale.

In this case it is clear that BoS always intended pursuing Mr M for the shortfall debt. However, because Mr M had not provided BoS with a way to contact him following the possession of the property, it had to find him before it could issue the necessary notifications. It placed the debt with a collections agent within two years of the amount being known about to attempt to find Mr M.

Whilst the timescale set out by the regulator is a defined period, I don't consider this was designed to deny lenders the ability to reclaim debts where a consumer's circumstances were such that they couldn't be found, were able to avoid contact by the lender or deny receipt of correspondence if contact was made. Rather the timescale set was to ensure a lender took action in a timely manner.

BoS attempted to trace Mr M when he didn't contact it after the sale. It thought it had done so on two occasions and wrote to Mr M about the debt and its collection; both of which were within the five year period. Mr M has denied ever living at either of the addresses, but given the time that has elapsed and the nature of the accommodation he was living in at those times, it will be difficult to confirm that.

Mr M has said he was living in temporary accommodation for four years after his home was possessed by the bank. He's also said he lived abroad for a year. I am persuaded BoS was actively looking for Mr M during the period set out by the regulator and it was likely the nature of his accommodation meant it didn't manage to do so.

As I have said above, I don't think the regulator's aim in setting the timescale was to allow the avoidance of a debt by a consumer, but rather to ensure a lender was proactive in its pursuit of a shortfall debt. I am satisfied in this case that BoS was proactively pursuing the debt throughout the five year period set by the regulator. As such, now that BoS has found Mr M, I don't believe it is inappropriate for BoS to ask him to pay the shortfall debt. As I have already said, legally, it is still entitled to do so.

Mr M has questioned the breakdown of the amount owing as it included a significant amount of interest. This was interest that was accrued between the property being taken into possession and it selling. At that time the mortgage debt still existed and was subject to the terms and conditions of the mortgage. This meant that interest was still payable on the debt. So it wasn't unfair or unreasonable for that sum to be included in the final debt calculation. No interest has been added to the shortfall debt, which is as it should be.

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 Mr M to accept or reject my decision before 28 May 2020.

Derry Baxter
Ombudsman