

The complaint

Mr B has complained about how Bank of Scotland plc handled his mortgage accounts following his bankruptcy in March 2011. The mortgages were held with Birmingham Midshires ("BM") and The Mortgage Business ("TMB"), both of which are trading names of Bank of Scotland plc.

He says incorrect information has been recorded on his credit file, he's received letters about mortgage accounts that he is no longer liable for, and the council tax wasn't paid for a property he no longer controlled.

What I've decided – and why

I issued a provisional decision earlier this month, the findings of which said:

"I trust Mr B won't take it as a discourtesy that I've condensed this complaint in the way that I have. Although I've read and considered the whole file I'll keep my comments to what I think is relevant. If I don't comment on any specific point it's not because I've not considered it but because I don't think I need to comment on it in order to reach the right outcome. This service is impartial between, and independent from, consumers and businesses. What this means is that we don't represent either party, and we look at things independently without taking sides.

It isn't in dispute that the information reported to the credit reference agencies by Bank of Scotland has been incorrect over the years, so I don't need to comment further – or make any findings – on that. All I need to think about is how to put things right.

For clarity Bank of Scotland should ensure all Mr B's accounts are reported as:

- *In default on the date of his bankruptcy (March 2011).*
- *Part satisfied on the date he was discharged from bankruptcy (March 2012).*

That should be the case for all the mortgage accounts Mr B held with BM and TMB at the point he went bankrupt. As the date of discharge is over six years ago all his mortgage accounts should now not be reported to the credit reference agencies.

I understand Mr B would like the mortgages for the properties he has retaken control of to be reported going forwards, but because – due to his bankruptcy – he is no longer liable for those debts that isn't something Bank of Scotland can do. That's not to say that Mr B can choose not to make the payments with no repercussions, as if he misses payments such that any account reaches the threshold for repossession then Bank of Scotland still has its security to fall back on, but due to his bankruptcy Mr B isn't liable – as such – for the debts and therefore Bank of Scotland can't report anything to the credit reference agencies about them (good or bad).

*Bank of Scotland has told us it has received numerous complaints from different consumers that incorrect information is showing with the credit reference file provider that Mr B has been using. In Mr B's case account *700 was showing twice, but with different*

information. Bank of Scotland has said that complaint needs to be directed to the credit reference file provider in question as the error is its end, not Bank of Scotland's end.

Mr B has said that he's been unable to obtain credit due to the misinformation that has been reported by Bank of Scotland over the years. He's mentioned car finance and a mobile phone, that a relative had to take out for him, and that he's been unable to get a mortgage to buy further properties, or to remortgage his existing properties.

Whilst I understand Mr B feels he would have been able to obtain credit on favourable terms were it not for this information, unfortunately that is something we would never be able to prove such that we can quantify any specific financial loss. Mr B has lived abroad for many years, and still does, and any information on his UK based credit file wouldn't have impacted him obtaining credit from a provider there as a credit file doesn't travel with you abroad.

Mr B would have been able to build up his credit in his new country of residence, just like any other ex-pat would do. And any UK based lender may well have had issue with the fact Mr B had lived abroad for so long, as there can be eligibility criteria around being a UK resident and a need to provide proof of living at a UK address. Whilst Mr B used a relative's address for correspondence purposes, it would be incorrect to declare that on any application for credit and instead he would have needed to declare his true address abroad. There would be some credit providers that didn't have an issue with that, but it wouldn't have been a case that all lines of credit would have been available to him.

It may be Mr B has spent enough time in the UK to keep his UK residency status, but even if that were the case we still can't quantify any financial loss Mr B can be proven to have incurred because of, and which can be solely attributable to, the information Bank of Scotland reported to the credit reference agencies.

I understand the matter of the unpaid Council Tax bill for one of the properties that Bank of Scotland had responsibility for has now been resolved, with Bank of Scotland paying Mr B the amount he paid to settle that bill.

There clearly has been confusion about the status of some of the properties, and Bank of Scotland has admitted it instructed a debt collection agency when it shouldn't have done so as Mr B – due to his bankruptcy - wasn't liable for the debts that remained when his various properties were sold in possession for a shortfall.

Mr B has been very clear that he doesn't think Bank of Scotland should contact him at all about the properties that he didn't take back into his control, but that's not the case. The various properties remained in his name (as owner) with the Land Registry, and the mortgages were still held in his name. Whilst he wasn't personally liable for the debts (albeit the debts were secured on the properties, and so Bank of Scotland could try to recoup some of its money when those properties were sold), his name remained on the mortgage accounts and therefore correspondence would be sent to him.

*As an example, the letter in November 2020 sent to Mr B by Bank of Scotland's solicitor said the property which had the mortgage *339 was being handed back to Bank of Scotland by the LPA Receiver, and that Mr B could get in contact to see if he could come to an acceptable arrangement so he was able to take back possession of the property. That seems a fair communication, as Mr B had the option to take back possession of the property if he was able to meet the criteria – just like he did with the other properties in 2018. There was, of course, information that was incorrect in that letter as it was a standard letter for a property that is being handed back to the lender from an LPA Receiver – such as that Mr B would be liable for the debt, and that the credit reference agencies*

would be notified of any repossession. I wouldn't expect Bank of Scotland to put in place bespoke letters for Mr B, it is enough that it has told him he can ignore anything that isn't relevant to him.

Bank of Scotland couldn't suppress the letters on just some of the accounts that are held in Mr B's name – that is, the ones he hadn't retaken control of – without it also suppressing the letters on the accounts he did control. Some stages of litigation and possession automatically trigger certain letters to be issued, and that isn't something Bank of Scotland could stop happening. Instead it told Mr B he could safely ignore those letters that aren't relevant to him due to his bankruptcy and situation.

Until the properties are sold Mr B does own all of them – including the ones he no longer controls. If Mr B feels his Trustee in Bankruptcy – or the Court - did anything wrong in relation to the properties and the Land Registry registration, then that is something he would need to take up with them directly, but I can see the Land Registry simply shows Mr B was the owner of the various properties (even those he no longer controlled) and that Bank of Scotland held a charge on the properties as mortgagee. That is what matters to Bank of Scotland, and what matters for this complaint. As both the owner of the properties in question, and the person named on the mortgage accounts, Bank of Scotland has to keep Mr B informed of certain actions even if control of the properties rests with an LPA Receiver and/or Bank of Scotland directly.

All that said, Bank of Scotland was wrong to pass a shortfall debt to a debt collection agency, which led to a home visit. Whilst Mr B has referred to it as his home address and an invasion of his personal space, I understand the visit in question was made to Mr B's relative's address that he uses for correspondence (with any post then being sent onto his address abroad).

When considering any distress and inconvenience caused I can only consider that in respect of the person who is eligible to complain (ie the customer of the financial provider). Here that is Mr B. I've no power to consider any distress or inconvenience caused to any of Mr B's family, even if that was due to the matters being dealt with here.

Mr B has also mentioned a letter received just before Christmas about a £96,000 shortfall debt, which didn't enable him to relax over Christmas. Whilst clearly that letter shouldn't have been sent, I'm satisfied that Mr B has been aware since long before that letter was sent that he wasn't liable for that sum and that any such letters were a mistake.

It isn't in dispute that Bank of Scotland has got things wrong, and that matters have been protracted over a number of years. To date Bank of Scotland has paid the following compensation sums to Mr B for this matter:

- £500 in 2017,
- £150 in 2018,
- £200 and £500 in 2020,
- £650 later in 2020 in accordance with our investigator's assessment of the complaint.

So a total of £2,000 in compensation has been paid to Mr B in respect of this matter.

We recently asked Mr B what he wanted to resolve matters (other than his credit file to be corrected) and he said he wanted £5,000 to reimburse him for various letters his solicitor has had to write on his behalf, and £5,000 compensation for the impact on his life.

I've considered this very carefully but I'm not awarding Mr B the £10,000 he's requested. I'll explain why.

I can't award Mr B the £5,000 he's requested for letters written by his solicitor for two reasons. Generally we say it is a person's choice to get legal representation. We are a free service and Mr B could have referred matters to us rather than paying a legal representative. Mr B did refer a complaint to us in 2017, but then he didn't progress the credit file aspect of that after our investigator said we couldn't consider the main bulk of his complaint. This complaint was then referred to us in March 2020. Had a complaint about Mr B's credit file, the debt collectors and the council tax bill been referred to us before then we could have investigated and resolved things just as we are now. A solicitor wasn't needed, and I can't see any aspect where a letter from Mr B's solicitor has resolved any of these matters.

In any event, even if a solicitor was needed Mr B has said "I don't have a copy of the invoices from the solicitor" and whilst he may feel his estimates of both the number of letters sent and the likely cost of each letter is reasonable, without evidence of what costs were incurred and for exactly what, along with proof Mr B paid those costs, we wouldn't be able to make any award.

I now turn to Mr B's request for £5,000 compensation for the impact on his life. As I've explained above, Bank of Scotland has already paid £2,000 to Mr B for these issues, so I'm considering if £2,000, £5,000 or a different sum entirely is a fair sum.

To be clear here I'm not considering any potential financial impact on Mr B – such as the fact he couldn't get UK credit whilst abroad, or the cost of his legal letters – as I've already explained why I can't make any award for those. I'm just thinking about the practical and emotional impact on Mr B personally – often referred to as distress and inconvenience.

The award of compensation for distress and inconvenience is fairly subjective – there's no exact scale as it were. We have some fairly broad bandings, which we publish on our website at www.financial-ombudsman.org.uk/consumers/expect/compensation-for-distress-or-inconvenience.

The fifth band is described as 'An award ... of up to £5,000' and that says:

"An award of over £1,500 and up to around £5,000 is appropriate where the mistakes cause sustained distress, potentially affecting someone's health, or severe disruption to daily life typically lasting more than a year. A mistake that has an extremely serious short-term impact could also warrant this level of compensation, but usually you'd expect some ongoing or lasting effects.

Examples at the higher end could include where the effects of the mistake are irreversible or have a lasting impact on someone's health or even resulted in a personal injury."

I'm satisfied the total award due (including that already paid) sits within this band so I need to decide the actual amount within that band. As I've already explained, I can't consider the impact on Mr B's relatives of a debt collection agent visiting their home, and I must keep in mind that whilst Mr B's credit file has been impacted for a number of years he has been living abroad for that time, so the day-to-day impact hasn't been as great as it would have been for someone living and working in the UK throughout. That's not to say I'm at all minimising the impact it has had on Mr B as clearly this has gone on for far too long, but these are all things I need to keep in mind when deciding on compensation.

Having considered everything I'm minded to order Bank of Scotland to pay Mr B a further

£250 compensation (on top of the £2,000 already paid), which takes the total compensation for these issues to £2,250.”

Both parties confirmed they accepted my provisional findings. Mr B asked if a clause can be inserted to say that if Bank of Scotland fails in its duty to report correctly that a further punishment would be made. As our investigator explained, that isn't something we're able to do but if Mr B accepts this decision it will be legally binding, so he would be able to enforce it in court if he needs to do so.

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

Having considered the full file afresh I see no reason to depart from my provisional findings.

My final decision

I uphold this complaint and order Bank of Scotland plc to report all Mr B's mortgage accounts (both those held on properties he controlled and ones held on properties he didn't control) to show them as:

- In default on the date of his bankruptcy (March 2011).
- Part satisfied on the date he was discharged from bankruptcy (March 2012).
- No further credit reporting should be made about any accounts after that date, whether that is positive or negative.

As the date of discharge is over six years ago all Mr B's mortgage accounts should now not show on his credit reference file when a search is made by a potential new lender. Bank of Scotland plc should also pay Mr B a further £250 compensation (on top of the £2,000 already paid).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 24 June 2022.

Julia Meadows
Ombudsman