

The complaint

This complaint is about the way in which Bank of Scotland plc (BoS) dealt with a property formerly owned by Mr and Mrs A (and mortgaged to BoS). Mr and Mrs A say that, due to delay by BoS in dealing with the property, they suffered financial loss, distress and upset. They are asking BoS to pay substantial compensation.

The complaint has been brought in the joint names of Mr and Mrs A, but all our dealings have been with Mrs A.

What happened

What happened can be summarised fairly briefly. This is because BoS has agreed that it didn't take action to sell the property within a reasonable time. As a result, BoS has accepted our investigator's findings that compensation should be paid for the period November 2014 to December 2016. Consequently, I don't need to go into detail about what happened in order to establish who is at fault; the only issue in dispute is the amount of compensation payable.

In addition, what happened has been set out in detail in our investigator's correspondence with Mr and Mrs A and BoS. Because our decisions are published, I must be careful not to include any information that might lead to Mr and Mrs A being identified. For these reasons, I will not set out the full history of this matter.

Briefly, Mr and Mrs A owned a property mortgaged to BoS. They fell into arrears and a possession order was granted in favour of the bank in 2014. The bank was able to take possession in November 2014, but didn't do so. Mr A had already left the property and was living elsewhere. Mrs A surrendered the keys in 2015. The property remained empty and no action was taken by BoS to sell it until December 2016. The property was sold for £255,600. After payment of the mortgage, there was a surplus of just over £72,000, which was paid over to the second charge holder, which I will call AG.

Mrs A complained about what had happened. She thought the property had been sold for too low a price, and she wasn't happy the surplus had been paid to AG.

BoS agreed it had delayed taking possession and should have taken steps to realise the debt in late 2014. As a result the bank agreed to refund interest added to the mortgage account totalling (including compensatory interest) £8,995.33, plus the cost of telephone calls and compensatory interest of £128.77, and £650 for distress and inconvenience. After deducting tax of £375.68 the total offered was £9,398.42.

Unhappy with this, Mrs A (with the consent of Mr A) complained to the Financial Ombudsman Service.

The investigator didn't think the property had been sold for too little. She also thought it was reasonable for BoS to have paid the surplus to AG, given there was a second charge on the property.

The investigator thought the compensation offered by the bank in relation to the mortgage and for trouble and upset was fair. But she didn't think the total award of compensation was sufficient. This is because, during the time the bank had delayed, AG was continuing to add interest to the second charge account. In addition, Mrs A was liable for council tax and utilities on the property.

BoS reviewed its offer of compensation and agreed that it should have taken account of the additional interest accrued on the debt owed to AG. BoS agreed to pay interest totalling £11,633.21 for this, which needed to be paid to AG, as there was, as far as BoS knew, still a shortfall debt owed to AG.

BoS also agreed to pay the council tax on the property, totalling £3,809, plus interest of £395.66. The bank said that if Mrs A could supply copies of utility bills, it would look to reimburse these too.

BoS also agreed to adjust Mr and Mrs A's credit files to reflect that the property should have been taken into possession in 2014.

Our investigator thought this was fair and reasonable. Mrs A agreed and so it appeared the complaint was resolved. Mrs A wasn't able to provide utility bills, but BoS paid the compensation of £9,398.42 to Mrs A, as well as the council tax refund. BoS confirmed it was dealing with the refund to AG direct.

However, Mrs A then said she wanted more compensation for distress and inconvenience, and also wanted reimbursement of the utility bills. BoS has said it will pay the utility bills of Mrs A is able to provide copies. But the bank has pointed out that, given the property was vacant, the amount Mrs A is claiming (about £1,800) is more than the standing charges. As a result, the bank says it needs to see the actual bills before it can agree to this.

Because the matter is unresolved, it now falls to me to issue 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.

As I said at the outset, the only outstanding issue is the level of compensation payable. I've looked at everything that's happened, and I have no doubt this has been an upsetting time for Mrs A. But I have to be impartial and decide this case on the basis of the evidence, and not be swayed by emotion.

I've looked at the online sales history for Mrs A's property and similar ones in the area. I note Mrs A believes the property was worth £300,000 to £350,000 in 2014. However, a similar property in the same street sold in 2014 for £250,000. Another similar property on the same estate sold for £247,500 in 2014. A slightly smaller property, but of similar design and construction, on the same estate sold in 2016 for £184,000. Give this, I'm not persuaded that the price achieved for the property (£255,600) in 2016 was too low.

I'm satisfied that the compensation already paid to Mrs A totalling £9,398.42 fairly compensates her for additional interest on the mortgage, expenses in bringing the complaint and trouble and upset. This puts Mrs A back in the position she'd have been in had the bank not delayed in selling the property, and includes £650 for distress and inconvenience. I'm also satisfied that the compensation of £3,809, plus interest of £395.66 for council tax is fair and reasonable. This compensation has already been paid to Mrs A.

I note BoS has agreed to adjust Mr and Mrs A's credit files as if the possession had taken place in 2014, not 2016, and I think this is fair and reasonable.

I agree with the investigator that BoS needed to compensate Mr and Mrs A for the additional interest accrued on the shortfall debt owed to AG. I've looked at the bank's calculations, and I'm satisfied the amount paid to AG of £11,633.21 is fair and probably over-compensates in relation to the actual amount of interest that was charged.

I'm not persuaded that any further compensation for distress and inconvenience is payable. BoS has already paid Mrs A £650, which I think is fair, reasonable and proportionate to the upset caused to Mrs A by the bank's delay.

Putting things right

I'm satisfied that BoS isn't required to pay the utility bills Mrs A is claiming without evidence of those bills. I agree with the bank that the amount she's claiming – almost £1,800 – is more than the standing charges that would have been payable on an empty property for the period in question. Given this, it is reasonable for BoS to want to see evidence of the actual bills before it pays these. Upon production of those bills, the bank should pay them, together with statutory interest at 8% per annum.

My final decision

My final decision is that I uphold this complaint in part. Bank of Scotland plc has already paid the compensation for additional interest on the mortgage, and on the second charge to AG, as well as the cost of calls, reimbursement of council tax, compensatory interest and compensation for trouble and upset, as detailed above.

If Mrs A is able to provide itemised statements for gas, electricity and water accounts for the period November 2014 to December 2016, I direct Bank of Scotland plc to reimburse Mrs A for these, together with simple interest at 8% per annum.*

I make no other order or award of compensation.

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.

* If Bank of Scotland plc considers that it is required by HM Revenue & Customs to withhold income tax from any interest, it should tell Mrs A how much it has taken off. Bank of Scotland Plc should also give Mrs A a tax deduction certificate if requested, so the tax can be reclaimed from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A and Mrs A to accept or reject my decision before 25 March 2022.

Jan O'Leary
Ombudsman