

The complaint

A company I'll call H complains that Bank of Scotland PLC (BoS) failed to remove a charge at Companies House, despite the underlying debt having been repaid. H says it incurred legal fees in removing the charge as it had to do so at short notice when the charge was discovered.

To put things right H wants compensation, including the legal fees it incurred in having the charge removed.

H is represented by one of its directors, Mr S.

What happened

In 2006, H held an account with BoS. BoS held a floating charge over H's assets, but H closed its account a few years later, leaving no debt owing. In 2019, H's accountant discovered that the floating charge was still registered against H and informed Mr S.

Mr S later looked to sell H and, in February 2021, he became aware the historic BoS charge would need to be removed in order to complete a sale. Mr S approached BoS to seek removal of the charge as a matter of urgency, but, after a delay in replying for which BoS later paid £100 in compensation, BoS said it couldn't process the removal quickly. It said it could remove the charge, but that doing so would take some time and advised Mr S that the quickest way to have the charge removed was for Mr S to apply to Companies House for removal himself.

Mr S attempted to have the charge removed himself, but was unable to do so. And because the sale depended on the charge being removed, Mr S instructed solicitors to remove the charge. Mr S had complained to BoS, but it didn't change its position. It said it couldn't access its records of the account given the age of the same. And that it wouldn't have been its standard process to discharge security on account closure. It said Mr S would need to complete form MR04 and file it at Companies House.

Mr H tried to complete the form, but was unable to do so and, given the time pressure, he instructed H's solicitors to complete the work. The solicitors had the charge removed in June 2021 and charged H fees of £982.80.

Our investigator looked at H's complaint and upheld it in part. She explained our service can't consider whether the floating charge was fairly taken out in 2006, because it's out of our jurisdiction. And focussed on the key issue of whether BoS did enough to help Mr S in removing the charge.

She said BoS hadn't given Mr S sufficiently clear instructions to enable him to complete the form himself, so she understood why he instructed a solicitor to help. And she felt BoS could have done more to help Mr S. However, she also noted that Mr S first knew about the charge in 2019, and she took the view that BoS would have removed the charge before H was sold, had Mr S taken action in then.

Because our investigator felt that both parties had contributed to the problem, she felt they should split the costs 50/50. She said BoS should pay H £491.40, to put things right.

Mr S didn't agree. He felt BoS was responsible for removing the charge and didn't accept he should be liable for the costs of correcting BoS's error. He asked for an Ombudsman to review the matter afresh.

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 first matter to address is the extent of our jurisdiction and how that impacts this complaint. Our investigator set out the position in detail, but briefly, for the purposes of the rules I must follow, H's turnover of £1.7m and staff headcount of 23, mean that is considered to be a small business, not a micro enterprise. The significance of that is that our service can only consider complaints from a small business relating to acts or omissions which occurred on or after 1 April 2019.

In his response to our investigator's view, Mr S said that BoS should have discharged the charge without his involvement. But that relates to matters before 1 April 2019. So, I can't comment on whether or not BoS should have removed the charge when the account was closed. And I haven't seen any triggering events since 1 April 2019 that should have sparked BoS into action. All of which means that the only matter I can address is whether or not BoS did enough to help H when Mr S requested the charge to be removed.

I can see that BoS did try to give Mr S guidance on how to complete the necessary form. But I agree with our investigator that BoS didn't explain the process clearly enough for Mr S to complete the form, and given the time pressures created by the company sale, I think it was reasonable for Mr S to instruct solicitors to act on his behalf.

The sale was dependent on release of the charge, so Mr S took the reasonable view that he couldn't risk delaying or jeopardising the sale by attempting to complete the form himself: something that he might have got wrong, or that might have taken longer given his lack of experience in this area. Had there been no time pressure, I might have expected Mr S to attempt to obtain release himself, but in these circumstances, I think it was reasonable to instruct professional help.

Mr S also says that BoS could have removed the charge more quickly, and says he had a similar security discharged by a different bank in 3 weeks. However, for this case I've considered the process BoS has to follow, in the particular circumstances of this case. BoS has explained to our service that it needs to carry out a search of its archive to locate security relating to closed account, and that this takes time because it involves multiple departments within the bank. So, while another bank may have been able to act more quickly, I can't say whether the situation was the same (i.e. if the other account was closed and historic) and I can't comment on the other bank's process.

Ultimately then, I don't think BoS gave Mr S sufficiently clear instructions, such that he could complete the necessary form himself in the timescales required. And I note that some of that time pressure was caused by BoS as it didn't respond to Mr S when he first contacted BoS to raise the matter, something BoS has offered £100 in compensation for.

But, while I do think BoS could have done more, I also think this matter could have been avoided had Mr S taken action when his accountant notified him that the charge was still in place. Had the charge been addressed at that time, Mr S could have completed the form

without time pressure, or BoS could have started their internal process, and it wouldn't have mattered if it took several months to complete.

Given both parties contributed to the need to incur costs to fix the problem, I take the view that the costs should be split between H and BoS. That being the case, to put things right, BoS should pay H £491.40, representing half of H's legal bill.

I have also considered the distress and inconvenience caused by this matter to decide if further compensation is warranted. I can see this matter caused Mr S personal distress, particularly given the time pressures involved. But BoS's customer is H, a limited company, so I can only award compensation to H, and not to its directors or employees in respect of any personal distress they felt. And because H is a limited company, it can't feel distress.

I accept H was inconvenienced by the situation, but I think BoS's offer of £100 sufficiently compensates H for the inconvenience of having its director's attention diverted elsewhere while the charge was removed.

My final decision

My final decision is that Bank of Scotland PLC must pay H £491.40. If Bank of Scotland PLC hasn't paid H the £100 it offered in its final response letter dated 12 April 2021, it should pay that to H too.

Under the rules of the Financial Ombudsman Service, I'm required to ask H to accept or reject my decision before 17 March 2023.

Alex Brooke-Smith
Ombudsman