

The complaint

Company A says Bank of Scotland plc (BoS) agreed a development loan but later changed the terms of that loan, causing a delay which left Company A with a significant financial loss.

The complaint is being brought by Mr W, a director of Company A.

What happened

In 2017 BoS agreed a development loan with Company A, as Company A wanted to build a new property on a plot of land. The loan agreement said the loan was offered on condition of the following securities, “(a) *First Ranking Standard Security from [Company A] over the freehold land and buildings at [plot address], and (b) a Bond and Floating Charge from [Company A] over the whole of its property and undertaking.*” BoS provided Company A with a loan of £162,400 for a term of twelve months.

Company A’s builder started works – it was planned they would complete all the work from start to finish for a total price of £160,805.67. Over the next few months, Company A drew down part of the loan and paid its builders a total of £88,814.95. In around November 2017, Company A tried to draw down more of the loan but BoS said it wouldn’t allow this until Mr W provided a personal guarantee. Mr W says the personal guarantee was finalised in December 2017 but by that time the builders had left the job due to concerns about when they would be paid.

On behalf of Company A, Mr W complained to BoS that it had unfairly changed the terms of the lending, because it hadn’t initially asked for a personal guarantee but then refused to release further loan funds without one.

BoS said it had advised that a personal guarantee was required when Company A first applied for the loan, but acknowledged it didn’t have any evidence of this. So BoS didn’t think it had made an error, but it nonetheless offered Company A compensation in order to settle the complaint, taking into account the interest it had charged Company A in the last twelve months, amongst other things.

In further communication between Mr W and BoS, it seems Mr W ultimately asked BoS for compensation of £34,900 plus an interest free period regarding the loan. BoS agreed to this and offered to credit Company A’s BoS loan account with £34,900 as well as waive interest between 24 June 2020 and 30 September 2020.

On behalf of Company A, Mr W brought this complaint to our Service. He said BoS unfairly changing the terms of Company A’s loan meant Company A lost its builders and needed to pay other builders more to complete work already begun. And this caused problems with Company A’s cash flow and so property had to be sold, other lending had to be taken out, and legal costs were incurred regarding all of this. Mr W said Company A’s financial loss was very significant, including:

- legal costs;
- additional build costs;

- loss of rental income caused by being unable to sell this property and so not having funds available to pay for necessary works to a rental property;
- interest BoS charged Company A for this development loan;
- interest paid to other lenders on subsequent loans taken out;
- loss of income caused by other properties being sold below market value so that funds were available.

Over the following months, Mr W provided our Service with more evidence and information to support Company A's complaint against BoS. This included evidence of loans, property valuations and sales, building works and legal costs. But Mr W highlighted that no funds were paid into Company A's own bank account as he thought BoS would simply have taken them as payment towards the development loan, which was in arrears – Mr W says all funds were instead paid through his other business's account, which I'll call Company B.

After considering the complaint, our Investigator upheld it but said he couldn't be sure what financial impact BoS had directly caused Company A. So he didn't think BoS should pay compensation for any financial loss regarding legal costs, property sold, loss of rental income, or other loans taken out. But he said the BoS loan went significantly over the original twelve-month repayment period, so BoS had charged additional interest. And he thought it wasn't fair for BoS to charge additional loan interest past the point where the residential property ought to have been completed or sold, because BoS should have made the personal guarantee clear before agreeing the loan or not asked for it later, which he thought caused delays. But he noted Company A hadn't yet repaid any of the development loan.

Ultimately, our Investigator said BoS should put things right by refunding all the BoS loan interest and charges Company A paid from January 2019 onwards, and should add 8% simple interest on that. But once BoS had done that, the loan would effectively reset and Company A would be responsible for paying the capital and interest originally agreed on the loan when it was taken out. Our Investigator also thought BoS should pay Company A £500 compensation for the inconvenience BoS caused it.

BoS agreed with our Investigator, and said it would remove the interest it had charged Company A from January 2019 to date, plus 8% simple interest, from what it was asking Company A to repay for the development loan. BoS calculated that this amounted to £35,072.91 at that time. BoS also agreed to pay Company A an additional £500 compensation for inconvenience.

On behalf of Company A, Mr W disagreed. He said this wasn't sufficient compensation for the impact of BoS's error on Company A and him and his family, and he reiterated some of the comments he'd previously provided on Company A's behalf. But our Investigator didn't change his view.

As agreement couldn't be reached, this complaint came to me for a decision. In further communication, Mr W again reiterated some of his previous comments. He also said BoS were now enforcing the personal guarantee, which Mr W felt BoS had obtained by holding him to ransom. And that while Company A might be the eligible complainant here, both he and his wife were seriously affected as their family home was now at risk.

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'd like to start by acknowledging that Mr W has provided our Service with a great deal of

comments and evidence in support of Company A's complaint. I'd like to reassure Mr W that I have read all of this, but I won't address everything he has provided in my decision. I mean no discourtesy by this, but I'll only address what I see to be relevant to reaching a fair and reasonable outcome to this complaint. This simply reflects the nature of our Service.

I'd also like to say I'm sorry to hear of the financial difficulties Mr W has told us about, which I understand must be causing Mr W and his family a great deal of upset.

However, I need to be clear that our Service can only look into complaints brought to us by eligible complainants. In this case, the development loan in question was between Company A and BoS, and so only Company A is the eligible complainant in this particular complaint. Mr W and his other business are not eligible complainants here because they are not customers of BoS with regards to this particular loan. This means I can't take into account the impact this may have had on Mr W's other business or on Mr W or his family when making this decision. If Mr W feels he has cause for complaint about BoS now enforcing the personal guarantee, he would need to raise that as a new complaint with BoS first. And if Mr W was unhappy with its response, he may then be able to refer that new complaint to our Service.

Ultimately, BoS would have been entitled to ask for a personal guarantee before it agreed this loan with Company A. But it's not clear why BoS didn't ask for a personal guarantee before it agreed this loan. And I've not seen that BoS told Company A it might ask for a personal guarantee at a later stage. So I think BoS made an error by not saying it might ask for a personal guarantee at some time after the loan had been agreed, when this wasn't something BoS had asked for at the start. And I think this error caused Company A an unnecessary delay of about two months at most, between November 2017 (when Company A tried to draw down loan funds but was told by BoS it required a personal guarantee first) and mid-December 2017 (when Mr W says the personal guarantee was finalised). I don't think Company A should have to pay interest on the BoS loan for that period of delay.

However, I don't think that delay led to the financial losses Mr W says Company A has been caused. I'll explain why.

When a business makes an error, our approach is to consider the impact of the error. In other words, the distress, inconvenience and financial loss that error caused. As I say, the eligible complainant in this case is Company A. Company A is a business and not a natural person, so it can't experience distress. Therefore, I can't compensate Company A for distress. But Company A can be inconvenienced. And I think that BoS's error in asking for a personal guarantee well after it had already agreed the loan and without saying this was something that might happen, caused Company A inconvenience in arranging this at short notice. I think £500 is fair compensation for this inconvenience.

Company A wants our Service to award compensation for all the financial losses it says BoS caused it. From what Mr W has provided to our Service on Company A's behalf, I understand he considers that these amount to a very large sum of money, and include things like legal costs, additional build costs, loss of rental and sale income, interest BoS charged Company A for this development loan, and interest paid to other lenders on subsequent loans.

But I need to be clear that I could only fairly and reasonably award compensation for financial loss if I thought that those financial losses were directly caused by BoS's error, and if I thought the financial losses were caused to Company A itself - so not to Mr W, his other business or some other entity.

On Company A's behalf, Mr W has provided a great deal of evidence and comments about

what he considers Company A's financial loss to be, and I acknowledge his strength of feeling. But from what's been provided, I've not seen enough evidence to persuade me that BoS has directly caused Company A itself a specific and quantifiable loss.

I understand Mr W says that property had to be sold to provide cash flow so Company A could continue building the property it had started building with the BoS development loan. And that Company A should have had the proceeds from the sale of the property it was building, but because of the delay BoS's error caused, it didn't have these proceeds and so for the past three years or so it's had to take out other lending. But the property sold in 2018 was owned by Company B, not Company A. And while the other property sold was owned by Company A, it was sold in 2021, so some years after BoS's error. I can't see that this is therefore a loss caused by BoS.

While there were a series of loans, only two of these seem to have been in Company A's name. And my understanding is that each of these loans repaid the previous loan with additional borrowing, so that the final loan was for an amount of £489,536. This is significantly more than the build costs of the property Company A had started building with the BoS development loan. It's unclear why the loan is now this high. However, I've not seen evidence to persuade me that the funds from the sold property and further loans were used to pay for additional building costs regarding the property Company A had started to build with the BoS development loan.

In addition, Mr W has told our Service that he could not pay any funds into Company A's own bank account as he thought BoS would simply have taken them as payment towards the development loan, which was in arrears – he says all funds were paid through Company B's account to protect any funds advanced to Company A. It's Mr W's right to choose how to operate his businesses from a cash flow point of view. But as I've explained, our Service can only consider any potential loss against Company A. And ultimately, I'm not able to fairly say BoS has directly caused Company A itself a specific and quantifiable financial loss.

So for the reasons above, I think BoS caused Company A an unnecessary delay and inconvenience but I don't think this led to a financial loss for Company A.

That said, BoS has agreed to remove from the loan balance the interest it charged Company A for the development loan from January 2019 to date, plus 8% simple interest – this stood at £35,072.91 in January 2022. This is clearly more than the interest that was charged during the two month period of delay, which I've said Company A should not have to pay. However, I think it's fair and reasonable to say that BoS should put things right in the manner it has already agree to.

Once BoS has done this, BoS is entitled to begin adding interest and charges to this loan again, subject to the original loan terms and conditions.

Putting things right

I think it's fair and reasonable to say that BoS should put things right in the manner it has already agree to, which is:

- To remove from the loan balance the interest it charged Company A for the development loan from January 2019 to the date it removes this interest, plus 8% simple interest per annum.
- To pay Company A £500 compensation for inconvenience.

Once BoS has done this, BoS is entitled to begin adding interest and charges to this loan again, subject to the original loan terms and conditions.

My final decision

For the reasons set out above, I'm upholding this complaint. Bank of Scotland plc should:

- Remove from the development loan balance the interest it charged Company A for the loan from January 2019 to the date it removes this interest, plus 8% simple interest per annum.
- Pay Company A £500 compensation for inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask S to accept or reject my decision before 22 July 2022.

Ailsa Wiltshire
Ombudsman