

The complaint

Mr A had a mortgage for a buy to let ("BTL") property with Bank of Scotland plc ("BoS"). He complains that Law of Property Act receivers caused his property to be taken over by squatters. He says the receivers acted for BoS, not him, so BoS should pay the costs of this.

What happened

Mr A said he owned a buy to let property. In November 2019 he found out that the tenant hadn't paid rent since July 2019. He had been out of the country, and someone with whom Mr A is no longer on good terms had been looking after the property for him. Mr A said that in 2020 he tried to contact the tenants, but with no response.

Mr A said he had found out that the tenant left in December 2019 and another person moved in for around three months.

Mr A said he wasn't able to visit the property until September 2020. He also made a payment to BoS in that month.

In early 2021 Mr A said the bank wrote to him to say that it was going to send someone to look at the property. Mr A said he understood then the property was vacant, and he would go to the property to secure it. But BoS told him that it had appointed a Law of Property Act ("LPA") receiver, to manage the property on Mr A's behalf.

Mr A said he told the receiver that the property was empty. He said they promised to visit and if it was empty, they would secure the property and hand it over to the bank. Mr A said the receivers visited on 8 April 2021 and found the property was empty. They arranged for the locks to be changed and the property secured. But when a contractor went to the property on 14 April 2021 to change the locks, someone was living in it.

Mr A said that the receivers had effectively created a squatter situation for him. He said the bank's action had destroyed his right to income from the property.

Mr A wanted to know why field agents who visited his property in January 2021 left a calling card for him, when he was living in another city? He said he had no knowledge of this visit.

Mr A said the property was vacant when the receiver was appointed, and the squatter who then moved in did so at the time the property was in the possession of BoS. So he thought that BoS should compensate him for lost income for that period, and whatever arrears BoS had created should be cancelled. He said that BoS had sent him a cheque to make up for some unclear information, but he hadn't cashed that.

BoS said arrears had already built up on Mr A's mortgage. It had tried during 2019 and 2020 to contact Mr A and make arrangements to clear these, without success. So it sent a field agent to Mr A's property in January 2021. It has shown us that it wrote to Mr A to tell him about this.

BoS said because this is a BTL property, not Mr A's home at the time, then it could appoint LPA receivers to look after the property on Mr A's behalf. It has shown us it warned Mr A that this could happen, in its January 2021 letter. LPA receivers were appointed on 24 March.

BoS told Mr A after this that he could take back control of the property, but he would have to clear the arrears to do so, and also show he could afford the mortgage payments in the future.

BoS seems to have understood that Mr A was complaining about its field agent, who visited the property in January 2021. It said that someone was living in the property at the time, so it couldn't secure the property for Mr A then.

Our investigator had understood that the complaint Mr A was making wasn't about BoS' field agent, it was about the LPA receivers that BoS had appointed, who were working for Mr A.

She didn't think this complaint should be upheld. She said that payments weren't made to the mortgage in 2020, so it was reasonable for BoS to contact Mr A about this. She thought BoS had tried to get in touch, but hadn't been able to resolve things.

Our investigator said that BoS' field agent had been to the property three times in late January 2021, and found someone was living there. Our investigator noted that Mr A was concerned that BoS would leave a calling card for him at the property, when he wasn't living there, but she said BoS was also in touch with Mr A by phone and letter.

Our investigator didn't think BoS' field agent could have caused problems with squatters. She said the agent wasn't able to access the house, and BoS wasn't in possession of the property.

Our investigator said that because of the high amount of arrears, continued lack of payment and no arrangements in place to resolve that, she thought it was reasonable for BoS to appoint LPA receivers in March 2021.

Our investigator said Mr A thought the visits by the LPA receivers caused squatters. She said she'd understood Mr A thought the property was left unsecured or had not been secured as it should have. But she said that would have to be raised with the receivers.

Our investigator said the LPA receivers are separate to BoS. They work for Mr A, not BoS. Our service can't look at what they did in a complaint against BoS.

Our investigator said BoS had accepted that it had provided poor service, and had paid Mr A £100 for that. She agreed the information provided to him could have been clearer. And she could also see that Mr A had to follow up with BoS to get answers to his questions. He shouldn't have had to do that. But she thought the payment BoS made for this was fair. If Mr A hadn't received this payment, then we could arrange for it to be sent to him. And she didn't think that the rest of the things that had gone wrong were BoS' fault.

Our investigator said BoS had told Mr A he could have control of the property back if he paid off the money owing. She didn't think it had to do more.

Mr A got back in touch to say that he still thought the receiver was answerable to BoS, not him. He still thought the squatter moved in when the property was in the bank's possession.

Mr A said we'd ignored that the local authority said his house was empty since 1 April 2020. Mr A said he'd lived in this property before moving abroad some time ago, and was planning to move back in.

He wanted us to look at what BoS did when it sold his house. He said it had never provided him with a breakdown of costs, and raised other issues about the sale.

Our investigator didn't change her mind. She still thought the LPA receivers were working on Mr A's behalf. The bank isn't responsible for them, and it didn't gain possession of Mr A's property just because they had been appointed.

Our investigator said that this complaint wasn't about the sale of Mr A's house, and he'd need to raise that separately with BoS. She wasn't sure how the council tax charge incurred while the property was empty could be relevant to the complaint.

Mr A wrote again, to say that BoS wouldn't communicate with him while his complaint was with us. And whilst we were considering the case, BoS sold his house. So he said this was all one complaint.

Our investigator said this complaint still wasn't about the sale of the house, and Mr A really did need to raise that with BoS before we would be allowed to look at it. That's what our rules say.

Mr A repeated his earlier arguments, and said the local authority had provided evidence that the property was empty after April 2020. So he felt he'd proved the house was empty then. So Mr A said that BoS and our service had ignored the evidence that the tenant moved out at the end of 2019, and another squatter also moved in and out at the start of 2020.

So he then said that BoS should have been very understanding because a squatter had moved into the house at an unspecified time between the appointment of the receiver and when they took steps to evict those squatters. Mr A said that BoS wanted him to continue paying the mortgage although the property had a squatter.

Mr A said BoS thought the property was occupied in January 2021, but the local authority had told him in September 2020 that it was empty. Mr A thought BoS had been very unfair.

Our investigator didn't change her mind. She said she recognised that squatters in the property wouldn't be Mr A's fault, but these wouldn't be BoS' fault either for the reasons she'd explained.

Mr A wrote again, to say that the local authority had shown the tenant had left at the end of December 2019. A squatter moved in during January 2020, but then out again by the end of March 2020. So the property was empty. Mr A said this was his evidence, to show the property was empty. He'd seen it was empty in September 2020. The receiver said someone moved in during March 2021. Mr A still disputed that the receiver, which had been appointed by BoS, was working for him.

Mr A also said we'd relied on what BoS said about attending the property in January 2021, and there was very little proof of that. And Mr A said BoS hadn't shown the mortgage was a buy to let mortgage. And he still thought we should look at the sale of the house.

Our investigator didn't change her mind. She sent Mr A a decision on a different case, to show that our service says that LPA receivers do not fall within our jurisdiction and the bank isn't responsible for their actions.

Mr A said this case wasn't like his case. Because no agreement was reached, this case was passed to me for 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.

I've reached the same overall conclusion on this complaint as our investigator.

Mr A had a mortgage with BoS over the property which is the subject of this complaint. He said that he was intending to live in the property in the future, but he doesn't appear to have done so for at least the last five years.

Mr A wanted us to find out what sort of mortgage this originally was. BoS has said it's a buy to let ("BTL") mortgage, and none of the available documents confirm anything different. The mortgage conditions it has shown us say that Mr A can rent out the property if he has BoS' permission. As Mr A had been renting out the property for some time, and BoS was aware of this, it was operating as a BTL mortgage.

Mr A understood that the property was tenanted at the end of 2019, although he says he didn't arrange this tenancy himself. I can see that payments to the mortgage were being made in 2019, but these were unfortunately a little less than the anticipated monthly payment. Mr A's mortgage account was in arrears. And late that year the payments stopped. Mr A said this was because the tenant refused to pay rent.

Mr A said the property was squatted in early 2020, and that the pandemic prevented him from travelling to the property for most of 2020. In September 2020, he understood the property was vacant, and he made one payment to BoS for the mortgage, that month. Considerable arrears had built up on Mr A's account by the time Mr A made this payment, and the payment Mr A made then wasn't enough to clear those.

There are long periods when Mr A either hasn't paid the mortgage, or what has been paid is less than the amount owed. Mr A has sought to show us that there wasn't a tenant in the property at those times, who was paying him rent. But unfortunately, that doesn't make any difference here. Mr A still owes the mortgage money to BoS, and he has to keep paying that, even if the property is empty, even if his tenant stops paying rent, or even if there's a squatter living in his property.

In early 2021, BoS instructed an agent to go to the property, to see if anyone was living there. Someone was living in the property in January 2021 when that agent visited. Mr A says this wasn't his tenant, he thinks the last tenant moved out at the end of 2019.

BoS appointed an LPA receiver to look after the property for Mr A. Given that the property had been rented out for quite some time, and given the arrears on the mortgage, I'm satisfied that this was a reasonable step for BoS to take, and it was entitled to take that step under the terms of the mortgage.

Mr A said that the receiver was appointed by BoS, and said it could only be BoS' agent. The receiver didn't work for him. But that's not right. Whilst BoS appoints the receiver, the receiver represents Mr A. And that means that BoS isn't responsible if the receiver gets something wrong.

Mr A says that the receiver did get something wrong. The receiver attended the property in early March, and the property was empty. So the receiver arranged for someone to go out and change the locks. But by the time that person got there, someone was living in the property again. Mr A says that's the receiver's fault, and because the receiver works for BoS, the bank is responsible for this. That's why he thinks BoS should cover his losses, when the squatter was in the property.

I know Mr A thinks the receiver caused the property to be squatted. But even if they did, BoS wouldn't be responsible for that. So I don't think that BoS has to cover Mr A's losses, for the time he didn't receive rent. It doesn't have to waive any of the interest incurred during this time, and it doesn't have to waive its right to mortgage payments during this time either.

BoS has upheld a complaint by Mr A, that it didn't respond to his questions on a letter dated 31 May 2021, and that it had been difficult to contact.

BoS said those two questions were –

1. A field agent had gone out to the property. They have found the property was empty. Mr A wanted to know why they had left it insecure? (Mr A believed this had led to the squatter situation).

BoS said that its agent had found someone living in the property, so they couldn't secure it. But I think BoS may have misunderstood Mr A's complaint. Because this is a question about the activities of the receiver, I think that Mr A ought to have been told that he should talk to the receiver directly about this.

2. Who is going foot the cost of the removal of the squatter?

BoS told Mr A that if legal action needed to be taken against squatters in the property, ultimately he would be charged for this. The costs might be added to his mortgage. I think that's right. Mr A remained responsible for the property, so ultimately he would have to cover these costs.

BoS accepts that it didn't answer Mr A's questions at the time, and that the relevant team was difficult to get hold of. It apologised for this, and offered Mr A £100. It doesn't appear to have realised that Mr A's concern may have extended to the activities of the receiver, rather than just its field agent. But I can see that BoS had tried to clarify with Mr A what his concerns were, and I haven't seen anything to make me think that this confusion was BoS' fault. So I think that the payment of £100 which BoS sent to Mr A provides a fair outcome to this part of Mr A's complaint. I don't know if Mr A has cashed this cheque.

I will include this payment in my award, and allow BoS to offset any payment it has already made. What that means in practice is that BoS will have to find out if the cheque has been cashed. If it has, then BoS doesn't have to do any more. If it hasn't, then BoS will need to make this payment to Mr A now, if Mr A accepts my decision.

I understand that Mr A is still in dispute with BoS, and that matters have progressed while our service has been considering his complaint. Arrears on the mortgage have continued to build up. Mr A told us that when he complained, BoS had recently said it understood the property was empty again now, and it was considering selling the property. Whilst this complaint has been with our service, Mr A told us that BoS has sold the property. Mr A is very unhappy with how this was done. Mr A asked us to look at this too, he said it was all one complaint.

I understand why Mr A thinks these issues are all linked. But the sale of Mr A's property happened after his complaint came to us, and, importantly, BoS hasn't had a chance to

consider and respond to any complaint about this yet. So our service can't consider those issues here.

I know that Mr A will be very disappointed by my decision, but on the issues our service is able to consider here, I don't think that BoS has to do more than it has already offered, which is to pay Mr A £100 for not responding promptly and clearly to the questions he asked in his letter.

My final decision

My final decision is that Bank of Scotland plc must pay Mr A £100. Bank of Scotland plc can count towards that award any amount it has already paid to Mr A for this complaint.

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

Esther Absalom-Gough
Ombudsman