

## **The complaint**

Ms C complains that Bank of Scotland plc (“BoS”) failed to properly and promptly process a transfer of title in relation to a commercial mortgage she held. She would like it to cover her financial losses that resulted from the delay.

## **What happened**

Prior to May 2018, Ms C contacted BoS to initiate a transfer of title as described above. Following extensive delays, the transaction was concluded in November 2021.

Ms C said that BoS had effectively caused these delays and complained at first in November 2019. It accepted that it had made mistakes, and offered some compensation in respect of additional legal fees Ms C had incurred. However, it still took another two years to conclude the transfer, and Ms C came to this service for help.

Ultimately, the investigator thought that BoS hadn’t acted fairly and reasonably and directed that it should pay additional costs to Ms C. Ms C didn’t accept that the investigator’s recommendation was fair, as she believed her losses caused by BoS were far greater than had been identified, including the interest on a residential mortgage that she had been unable to redeem as a result of the outstanding transaction. So she asked that her case be passed to an Ombudsman.

Following the gathering of more evidence, I concluded that a telephone hearing would be the best way to progress and conclude this case. However, BoS refused to participate. I therefore took oral evidence from Ms C in early December 2022.

## **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.

Having done so, I uphold this complaint, and will explain why. I should first say that where matters are in dispute, as they are here, I have to determine what I think is most likely to have happened, on the balance of probabilities.

BoS has accepted it made mistakes, and I accept that the extreme delays in this transaction are not solely its fault. This case is essentially about determining fair redress, which is not straightforward due to inevitable gaps in information about exactly what was happening during the entire timeframe. To determine fair redress, there are three outstanding issues to be resolved, which I will deal with in turn.

### *When did Ms C initiate this transaction with BoS?*

Perhaps in part due to the considerable length of time that has passed since, it hasn’t been straightforward to establish this fact. Documentary evidence provided by BoS indicated that this may have been in the Summer of 2018. However, documentary evidence provided by Ms C (namely an email from a BoS member of staff) confirms that she had initiated this

transaction before May 2018. Therefore I cannot place full weight on BoS' documentary submissions on this point, as they are clearly incorrect.

Oral evidence given by Ms C about the legal advice she had received at different points, and some significant personal circumstances have persuaded me that it is more likely than not that she first contacted BoS to initiate this transaction in March 2017. BoS was reminded that by refusing to participate in the telephone hearing, it was foregoing its opportunity to submit further evidence, or to challenge evidence given by Ms C.

*How long should this transaction have taken to complete?*

Both parties accept that this transaction was not an entirely typical one, with complicating factors mostly due to the country of the United Kingdom in which the property in question was located.

BoS suggests that a reasonable timeframe for completion of this transaction would have been three to nine months. Ms C suggested three months, noting that a more typical transfer ought to have been completed in six weeks.

Ultimately, I have been persuaded that three months would have been a reasonable timeframe for completion, on the basis of evidence offered by Ms C that at least two different members of BoS staff had advised that timescale to her. This evidence was both oral and suggested in an email from 2018. Again, BoS was reminded that by refusing to participate in the telephone hearing, it was foregoing its opportunity to submit further evidence, or to challenge evidence given by Ms C.

I therefore find that it would have been reasonable for this transaction to have been concluded in June 2017.

*What proportion of Ms C's financial losses should fairly be borne by BoS?*

This question is not straightforward, and Ms C herself accepts that BoS has not been responsible for 100% of the delays since she initiated this transfer in March 2017.

The Financial Ombudsman Service is an informal dispute resolution service, and it is my statutory role to reach what I consider to be a fair and reasonable outcome in each case I review. On that basis, the answer to this question will not be a forensic calculation of how much of each month's delay was BoS' fault. That is all but impossible and very much not within this Service's remit.

As mentioned previously, the documentary record for the first part of the timeframe in consideration in this case is thin. BoS has provided a summary of case notes from July 2018 which suggest that it was responsible for some delays, and other parties responsible for others. Ms C has provided copies of some emails which present a similar, if incomplete, picture.

However, what is clear is that when Ms C first raised a complaint in November 2019, BoS accepted it had made errors, and, as reiterated in an email by a BoS Customer Services Manager in October 2021, "...committed to cover [Ms C's] costs..." from that point onward. BoS was acutely aware of the situation, which even it accepts had by that stage been going on for well over a year. It is also clear that Ms C regularly contacted BoS by phone after November 2019 in a desperate attempt to achieve some progress. BoS appears to have effectively done nothing for an extended period, despite repeated contact, and to have all but 'stonewalled' Ms C.

I have therefore concluded that the fairest answer to this question which is supported by the available evidence has two parts. Namely that BoS should cover 50% of Ms C's losses between June 2017 (when the transaction ought to have concluded) and November 2019, and 100% of her losses between December 2019 and transaction conclusion in November 2021.

Again, BoS was reminded that by refusing to participate in the telephone hearing, it was foregoing its opportunity to submit further evidence on this point, or to challenge evidence given by Ms C.

### **Putting things right**

I have carefully considered what actually constitute financial losses for Ms C over this timeframe, and conclude that there are two key components.

Firstly, legal fees. Ms C would, of course, always have had to meet legal fees herself to deal with the transfer. However, those fees ought to have ended in June 2017.

Secondly, there is the matter of residential mortgage interest. Ms C has provided documentary evidence to confirm that she was in a financial position to settle a residential mortgage she held with a different lender in June 2017, without further borrowing. This evidence has previously been discussed with BoS. BoS also accepts that it was the delay in concluding this transfer of title that prevented her from redeeming that residential mortgage, which is what she did as soon as the transfer was complete. Therefore, I am satisfied that interest paid on that mortgage since June 2017 is also a direct financial loss for Ms C.

In order to put things right for Ms C, BoS must do the following:

- A) Calculate 50% of Ms C's legal fees charged between July 2017 and November 2019.
- B) Calculate 100% of Ms C's legal fees charged from December 2019 to transfer conclusion in November 2021.
- C) Calculate 50% of the interest Ms C paid on her residential mortgage between July 2017 and November 2019.
- D) Calculate 100% of the interest Ms C paid on her residential mortgage between July 2017 and November 2019.
- E) Deduct any interim compensation payments from the total of A) to D)
- F) Pay that figure (E) to Ms C.
- G) Add 8% simple interest\* to the payments in A) to D) that Ms C has already made from the date any payment was made by her to the date of settlement.

\*HM Revenue & Customs requires BoS to deduct tax from this interest. It should give Ms C a certificate showing how much tax it's deducted, if she ask for one.

We will supply BoS with all the necessary evidence of these amounts in order to enable its calculations.

### **My final decision**

For the reasons I've explained, I uphold this complaint and direct Bank of Scotland plc to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C to accept or reject my decision before 18 January 2023.

Siobhan McBride

**Ombudsman**