

## **The complaint**

Mr S' complaint is about a mortgage he had with Bank of Scotland plc (BoS). He has concerns about how the mortgage was administered over many years before he surrendered the property to BoS in 2022, the sale of the property thereafter, and the resultant information BoS has recorded on his credit file.

In settlement of the complaint Mr S wants BoS to stop pursuing him for the shortfall between the amount he owed it and the amount the property sold for. He also wants compensation for the distress and upset it put him through over the last 13 to 14 years due to mistakes he believes it made in administering his mortgage which led to him losing his home.

## **What happened**

After a significant period of Mr S mortgage being in arrears, he decided to voluntarily surrender his property to BoS in 2022. He has told us he handed it the keys in July of that year. At that time the mortgage debt was approximately £385,000.

BoS put in place an asset management company to arrange for its sale. Valuations were obtained from a surveying firm and an estate agent. It was highlighted that the property only had 56 years left on the lease, which would make selling it more difficult as it would need a cash buyer. It was recommended the property be marketed at £250,000 with the aim of achieving a sale price of £225,000. An auction appraisal was also obtained and a reserve of £250,000 was recommended. As the asset management company believed the property would likely achieve a higher price at auction, it recommended this method of sale to BoS. BoS accepted that recommendation.

The property was sold on 14 September 2022 at auction. It achieved a price of £262,000. BoS wrote to Mr S on 20 October 2022 at the address it had for him at the time (not the property address) to inform him of the sale, the shortfall and what that meant for him.

In January 2023 Mr S complained to BoS about the sale of the property. He said that it didn't tell him that it was going to register a default on his credit file. He also considered that BoS rushed to sell the property at auction and didn't even try to get the best price possible by marketing it in a traditional manner. This created a shortfall which BoS then registered on his credit file and he said it didn't bother to contact him to let him know about it.

BoS responded to the complaint in a letter of 1 March 2023, in which it rejected the complaint. It confirmed the appropriate valuations had been completed and the property had been sent to auction because of the likelihood of achieving a better price, which it had. As for the shortfall, BoS said that while the price achieved had been higher than anticipated, it was not sufficient to clear the amount owed on the mortgage. As such, Mr S was responsible for the shortfall and this had to be reported to credit reference agencies. BoS also said that it had tried to work with Mr S over the years regarding his financial difficulties and confirmed this issue had been dealt with in previous complaints.

Mr S was not satisfied with BoS' response and referred the complaint to the Financial Ombudsman Service. When he did so, one of our investigators confirmed to him that we

would not reconsider his previous complaints about how BoS had treated him and its administration of the mortgage before he surrendered the property. Nor would we consider new issues that had not been raised with BoS.

Following reviewing the evidence in full, the Investigator concluded the complaint should not be upheld. He was satisfied BoS did what it should have and achieved the best price for the property. As this was not sufficient to repay the debt outstanding, BoS was entitled to pursue the shortfall and record it on Mr S' credit file.

Mr S didn't accept the Investigator's conclusions. He repeated comments about the errors he believed BoS had made which had led to the property being surrendered. Mr S disagreed that BoS had achieved the best possible price for the property and stated that he didn't believe it had looked at any avenues other than auction for selling it.

Mr S asked that the complaint be passed to an Ombudsman. Before doing so, the Investigator confirmed that BoS had provided evidence of the surveyor and estate agent valuations, along with the auction guides. It was also highlighted that BoS had provided a copy of the letter that it had sent him in October 2022 following the sale that had notified Mr S of the sale and the shortfall.

### **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 would initially confirm that this decision relates to the complaint Mr S made to BoS in January 2023 about the sale of his property. While I am aware he previously complained about the events that led to him surrendering his property to BoS, and he is still unhappy about those issues, they have already been dealt with and so I have not considered them and will not be commenting on them.

Before I explain my decision, I think it's important for me to recognise Mr S' strength of feeling about this matter. He has provided detailed submissions to support this complaint, which I have read and considered carefully.

When a lender takes a property into possession it has an obligation to achieve the best price it can within a reasonable period, as the debt owed will continue to increase during the marketing and sale of a property. In this case Mr S' property was going to be more difficult to sell because the lease was so short. This meant that the property was not mortgageable, and so only cash buyers would be able to purchase it.

The asset managers BoS put in place to sell the property arranged for a surveyor to value the property, which concluded it had a value of £225,000. It also arranged for an estate agent to value it, and it concluded the property should be marketed at £250,000 with a view to achieving a sale price of £225,000. Given the limited saleability of the property, the asset managers also looked into the option of auctioning it, as it would likely increase the number of cash buyers the property would be exposed to. The auction house recommended a reserve of £250,000 be placed on the property, or in other words it believed that was what the property was worth. As the auction was likely to achieve a higher sale price, and more quickly, the decision was made to sell the property at auction. BoS is entitled to rely on the expertise of the professionals involved when deciding what to do. I can see nothing wrong in the assessment of the situation and decision BoS made in this regard.

Mr S believes that BoS should have tried to sell the property via an estate agent for several months before sending it to auction. He is entitled to that opinion, but given the evidence

regarding predicted sale value, I am not persuaded it would have achieved a higher price. In addition, during that process further interest and costs would have been added to the debt. That would not have been to Mr S' advantage.

Following the property being sold, BoS wrote to Mr S at the address it held for him at the time. For clarity, this was not the property address. It told him about the sale and the shortfall debt as it would have been expected to do. As the sale price didn't clear the amount owed, it was explained Mr S was liable for that shortfall. I am satisfied BoS kept Mr S informed and that it is entitled to ask Mr S to make arrangements to pay the shortfall.

In relation to Mr S' credit file, if a lender reports to credit reference agencies, it is required to report accurate information. As such, when the property was taken into possession a default would have been registered and the fact that the debt was only partially settled would also need to be recorded. I have seen nothing that indicates BoS has done anything wrong in reporting what it has on Mr S' credit file.

### **My final decision**

My final decision is that I do not uphold this complaint. Under the rules of the Financial Ombudsman Service, I am required to ask Mr S to accept or reject my decision before 15 March 2024.

Derry Baxter  
**Ombudsman**