

## **The complaint**

This complaint is about a mortgage Mrs H holds with Bank of Scotland plc (BOS). She's unhappy that BOS refused an application she made in 2022 to separate the mortgaged property into two separate titles, sell one of them and reduce the mortgage balance with the proceeds of sale. BOS refused the request after a valuer said the part of the property Mrs H wanted to retain wasn't suitable security for the mortgage.

## **What happened**

The above summary is in my own words. The basic background to this complaint is well known to both parties so I won't repeat the details here. Instead I'll focus on giving the reasons for my decision. If I don't mention something, it won't be because I've ignored it. It'll be because I didn't think it was material to the outcome of the complaint.

## **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.

Where the evidence is incomplete and/or contradictory, I'm required to reach my decision on the basis of what I consider is most likely to have happened, on the balance of probabilities. That's broadly the same test used by the courts in civil cases.

BOS didn't have a contractual or legal obligation to agree to the part-sale. Any request to amend the security for a mortgage is a new lending decision for a lender. It's subject to lending policy and criteria – and where relevant the consumer's individual circumstances – as they stand at the time the request is made. Lenders can, but aren't obliged to, make their lending policy known to the public at large. They can if they wish regard the policy as commercially sensitive.

In Mrs H's case, the surveyor instructed by BOS, who is employed by a third party firm not covered by our scheme, concluded that the part of the property she was proposing to retain didn't meet BOS's lending criteria on acceptable property. That's no doubt a source of genuine frustration and upset for Mrs H. But it's not down to anything BOS did or failed to do. It's entitled to rely on the opinion of the qualified professional appointed to assess the proposed property's suitability as security for a mortgage. It's not within my remit to consider whether the surveyor's assessment of the property was faulty in any way.

I've no regulatory function; it's not my role to decide what BOS's lending policy (or any lender's for that matter) on acceptable properties should be. If BOS is reluctant to lend on a property, that's a matter for its commercial judgement. But it should apply that policy fairly, and here I'm satisfied it did so by relying on the surveyor's opinion.

Mrs H argues that when she took the mortgage out in 2003, the entire property was deemed acceptable security at that time. That is true, but lenders' criteria on acceptable property do change from time to time, and here there was a near twenty-year gap between the valuation for the original purchase and the valuation for the part-sale Mrs H wanted to carry out.

Like the 2022 valuation, the 2003 valuation wasn't carried out by BOS. It was conducted by a third party surveying firm, albeit one that was owned by BOS at the time. If Mrs H did want to complain specifically that the 2003 valuation was flawed, that would need to be raised separately – because it's against a different business, albeit one that was owned by BOS. If unhappy with the response received, Mrs H could then refer that complaint to us, but if she did, we would first of all need to consider whether it was a complaint that our rules allowed us to consider.

I say that because carrying out a survey or valuation on behalf of the borrower or lender isn't a regulated activity that falls within our jurisdiction, so we can't consider stand-alone complaints about it. But where, as here, BOS is also the lender, we may find that the valuation/survey is an ancillary activity to the lending decision that relied on the valuation.

However, having read the case file, my impression is that Mrs H isn't unhappy with the 2003 valuation. Rather, it seems to me that she regards the 2003 valuation as a reasonable yardstick against which to compare the 2022 valuation, rather than that it was itself wrong.

But all of that is separate from, and has no bearing on, the complaint before me about the lending decision BOS made in reliance on the 2022 valuation. In my view BOS's decision not to allow the part-sale of security was legitimate. It might have been unwelcome, but it wasn't unfair or unreasonable, and that's the test I have to apply.

### **My final decision**

My final decision is that I don't uphold this complaint.

My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further consideration or discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 1 April 2024.

Jeff Parrington  
**Ombudsman**