

The complaint

A partnership which I'll call 'B' complains that Bank of Scotland Plc ('BOS') incorrectly held their funds in an account instead of paying it off their loan.

The complaint is brought on B's behalf by the partners, Mr and Mrs B.

What happened

B held several accounts with BOS including a current account and loan account.

B told us:

- They sold an asset in 2017 and received £200,000. They intended to purchase land with the funds, so their BOS Relationship Manager ('RM') put the funds into a blocked account.
- The intention was that if the land purchase didn't take place by early June 2017, the £200,000 would instead, be used to reduce the outstanding balance of a variable term loan held with BOS.
- The last statement received about the £200,000 was in May 2017, they hadn't received any statements since then.
- They didn't purchase the land and BOS didn't use it to reduce their loan balance. From June 2017, they have renegotiated loans and overdrafts not realising the £200,000 hadn't been utilised as agreed. This wasn't discovered until their accountant undertook a full review of their finances.
- As a result of the £200,000 not being credited to their loan as agreed, they incurred around £65,000 of extra interest and extra repayments of around £40,000 on their loan. They also had to borrow funds from overdrafts, another loan of £152,000 and cash in their pensions losing around £60,000 of tax relief.
- BOS accepted liability for the error and credited their account with £200,000 plus £450 interest. It also paid £22,845.06 for the loss but they believe BOS should refund all their losses totaling around £100,000. They also think the £100 paid by BOS for distress and inconvenience wasn't enough.

BOS told us:

- It wasn't obligated to tell B that they had left funds in the deposit account, however after June 2017 both sides should have checked what should have happened with the £200,000. So, it had partially upheld B's complaint,
- It wasn't aware of what had happened with B's land purchase that the £200,00 had been set aside for, as no updates had been provided, so it believed negotiations were ongoing. However, if it had been aware the purchase wasn't going ahead, it would have expected B to pay the funds off the original variable rate loan which the partners agreed to in April 2017. So, these funds wouldn't have been available to use as working capital as this would have been a breach of the agreement.
- It had sent B's loan statements to the same address as their account statements, which is still the address it holds for the partnership. B also hadn't contacted the RM

to query the funds not being paid off the loan or that they weren't receiving loan statements – despite other discussions taking place with their RM.

- B had contacted it in June 2022 to ask about the £200,000 and the RM had returned the funds with £450 of interest to their current account as requested. These funds were not used to repay the loan but were used elsewhere by B.
- If B had used the £200,000 towards their loan in May 2017, the outstanding balance in November 2022 would have been £35,895.12. Therefore, it was the monthly payments and interest on this loan that would have been lower, and this is where any loss would have occurred.
- It thought that both parties had caused B's losses, so it paid half of the losses it thought the partnership had incurred. This was £14,065.82 for interest the partners wouldn't have had to pay if they had reduced the balance of their loan by £200,000 in May 2017 – as this was the earliest B could have made the repayment, and £7,663.92 for the loss of use of the interest on the overcharges at 8% interest simple per annum. It also accepted this had caused B inconvenience and paid £100 compensation for this.
- It wasn't responsible for B's decision to take out a loan in 2019 or for the partners cashing in their pensions as they should have been aware that the £200,000 was still in an account. This didn't seem unusual behavior because businesses often take out borrowing when they have funds held in deposit accounts, so it hadn't behaved unreasonably in agreeing to B's borrowing requests.

Our investigator didn't recommend the complaint be upheld. She said she wasn't persuaded by the financial loss calculation provided by B's accountants, as she'd reviewed the calculations provided by BOS and she thought these were fair. She said B had made loan repayments to date of around £91,000, and, if the £200,000 *had* been paid off the loan in May 2017, B would have paid approximately £74,000 less in interest - because the balance would have been £200,000 less. However, B didn't pay the £200,000 off the loan balance when it was given back to them in November 2022, and they chose to use the funds elsewhere. Therefore, they hadn't actually made the interest overpayment because the capital hadn't been reduced by the £200,000.

Our investigator agreed with BOS that the loss B had incurred was around £17,000 as a result of the higher repayments they'd made, before the bank returned B's £200,000 when requested. The £17,000 was on the basis that B wouldn't have paid interest on the higher balance if the £200,000 had been repaid as agreed in 2017. BOS also thought it was fair to offer B 8% simple interest on the difference in interest of around £74,000 (which B said they would have paid) for the time they'd been deprived of the funds. She also thought it was fair for both parties to split the losses as BOS could have contacted B, but B could also have followed up on what happened with the funds. So, she thought both parties were responsible for the loss, and therefore the bank had acted fairly in paying B 50% of the loss it had calculated.

B didn't agree. They said they would have been in a better position with their cash flow if they'd had a smaller loan, and that BOS had told them they would pay the £200,000 which it had ringfenced off the loan if the land purchase didn't go ahead. They also said that BOS had never mentioned that it held these funds in an account, and they believed the bank had forgotten about them. So, they asked for an ombudsman to review their complaint, so the case has been passed to me to decide.

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've decided not to uphold it. I'm sorry to disappoint Mr and Mrs B, but there's not much more that I can add to what our investigator has already said.

Mr and Mrs B say that BOS has treated them unfairly because it held onto £200,000 of B's funds in a restricted account for around five years when it should have used the funds to reduce their outstanding loan with the bank. They believe that BOS should be solely responsible for the losses they incurred. But I don't agree. I say this because the agreement between B and BOS in 2017 was that the funds would be set aside pending the purchase of an asset by B. I haven't seen any evidence that B told BOS that the purchase was no longer going ahead, and I don't think it's reasonable to expect the bank to question whether or not B was still proceeding with the purchase. Particularly as BOS has told us that B previously bought and sold assets of this nature, so this wasn't uncommon behaviour for them.

Furthermore, I've seen that B received annual loan statements which showed the balance of their account from when it was taken out. I've reviewed the loan statements and I can see that when B made the other partial repayment, in line with their 2017 agreement with the bank, that this was clearly visible on the statement. I've also seen that these statements were sent to the address that B had given to the bank, which is also the same address provided to this service. I also haven't seen any evidence that B told BOS that they weren't receiving their statements until November 2022 when they made a complaint about the £200,000 not being repaid from the loan as expected. So, I think B ought reasonably to have been aware that the £200,000 hadn't been paid off their outstanding loan balance.

I recognise that B says that BOS didn't tell them that the funds remained held in a suspense account, so they believe this was only discovered as a result of their new accountant's investigations. But I'm not persuaded that's the case. I say that because I've seen the bank's case notes and records, which were available to B's RM's, and I'm satisfied that BOS was aware of the £200,000 it held and that this was being used as security towards B's borrowing, pending the asset purchase. I've also seen evidence that once B requested the release of the £200,000, in their own words this was transferred 'immediately'.

Furthermore, BOS's notes refer to figures provided by B's original accountant to BOS for the bank to provide lending to the partnership. So, I'm satisfied that both parties were aware the £200,000 was being held in the suspense account by BOS for the expected asset purchase. And I can't reasonably hold the bank responsible because B's previous accountant didn't question that there was £200,000 held by BOS from 2017 onwards, in the same way their new accountant did in 2022.

B say that BOS has acted unreasonably with the settlement offer its proposed, as their accountant says they've overpaid in interest by around £65,000. They also don't agree that that they should be equally responsible for their losses and told us that they've cashed in investments and also borrowed funds at further cost that they wouldn't have needed to. But I'm not persuaded that's the case.

Our investigator has already explained why she believes BOS's calculation is correct. I have also reviewed the bank's calculations, and I can't add anything much to what our investigator has said. If the £200,000 had been credited to the loan as the partners expected, they would have paid around £74,000 less in interest. However, when the £200,000 was repaid to them, they chose to use those funds in other ways which means the outstanding loan capital was never reduced by the partnership. That means I can't be sure that the partners would have used the £200,000 to reduce the balance of their loan even if they had received the money earlier. However, the interest calculation provided by BOS was for May 2017 (the earliest B could have paid the £200,000 off the loan) until the fund were returned in 2022 was on the basis that B *could* have paid the £200,000 off the outstanding balance at that time. I think this is reasonable.

I acknowledge B's comments that they had to take out additional funding and cash in investments because their loan balance was higher than expected, which therefore impacted

their cashflow. However, as I have already explained, I think B ought reasonably to have been aware that the £200,000 hadn't been repaid from their loan. Therefore, it follows that I don't think BOS are responsible for any losses B says they have incurred or business decisions they have taken as a result of those funds not being used.

I'm sorry to disappoint B as I know the partners feel strongly about this complaint. However, based on all the circumstances I think BOS has made a fair offer and I won't be asking it to do anything more.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask B to accept or reject my decision before 14 March 2024.

Jenny Lomax
Ombudsman