DRN-5410182

The complaint

This complaint's about a credit decision made by Bank of Scotland plc (BOS) in relation to the assets and liabilities of a limited company I'll refer to as C. C is one of three limited companies with common directors and shareholders, all of which bank with BOS.

The essence of the complaint is that when C wished to sell a property that was held as part of security for the borrowings of the three companies, BOS insisted that almost half of the sale proceeds be used to pay down loans C owed to it. This was contrary to the position it had previously stated, which was that subject to a new valuation of the remaining security, all of the sale proceeds would be released. C is represented here by Mr K, one of its directors.

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, rounding any figures to avoid the risk of identification by including information that is overly specific. 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'll start with some general observations. We're not the regulator of financial businesses, and we don't "police" their internal processes or how they operate generally. That's the job of the Financial Conduct Authority (FCA). We deal with individual disputes between businesses and their customers. In doing that, we don't replicate the work of the courts.

We're impartial, and we don't take either side's instructions on how we investigate a complaint. We conduct our investigations and reach our conclusions without interference from anyone else. But in doing so, we have to work within the rules of the ombudsman service, and the remit those rules give us.

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Under our rules, we can consider a complaint from an eligible complainant. Here, the eligible complainant is the limited company C. It's not Mr K or C's other director, and nor is it either of the other two companies that Mr K and his follow directors own and control. I can see the interconnected nature of the relationship between BOS and the various businesses, and it's apparent from Mr K's response to the investigator's view, received on 1 April 2025, that he views the complaining party as being all three companies. However, our rules don't allow me to take the same "global" approach. I can only consider this complaint in terms of how BOS' actions impacted on C.

Having no regulatory function means that it's not open to me to determine what BOS' policy requirements and appetite for lending risk should be in cases like this. My role is to determine if BOS has applied its policy fairly and reasonably.

The first test for me to consider is whether BOS could reasonably require that C reduce its indebtedness as a condition of the sale of a property that formed part of the security it provided to BOS. As a matter of broad principle, I'm satisfied it could. I've noted what Mr K has said about BOS effectively changing the terms of the fixed loans, but I must also keep in mind that the security for them was changing too.

I've very carefully read everything that Mr K has said about why he believes BOS wasn't justified in insisting that some of the sale proceeds be retained and used to reduce C's indebtedness. I understand his frustration, and his strength of feeling, but in the end, this is a dispute about BOS's commercial judgement on what constitutes satisfactory risk exposure. Mr K, and C's accountants, clearly have different opinions from BOS on this, but what Mr K is effectively asking me to do is substitute my commercial judgement (or indeed his own) in place of BOS'. It's not in my remit to do that.

BOS was the party being asked to accept a reduction in its security, and it's not for me to assess the risk or second guess how BOS should have assessed it. BOS exercised its discretion as it was entitled to do. This put C in the position of having to choose between two unwelcome options; either comply with BOS' conditions, or abort the sale. A choice between two unwelcome options is still a choice, and C's directors chose the option that required the indebtedness be reduced.

That brings me to Mr K's argument that BOS gave a written undertaking to release all of the sale proceeds, subject to a revaluation of the residual security. It's not in dispute that BOS said this, in an email exchange on 24 January 2024. But the business then changed its mind, which it's perfectly entitled to do. The only caveat to that is how long it took for BOS to communicate the change of position, and what steps, if any, C took in the intervening period that prejudiced it financially.

Mr K has said, in effect, that the sale was underway and C therefore had no option but to proceed with it and comply with BOS' changed requirements. He said, in an email dated 28 November 2024, that BOS *"did not notify us until very late in the sale process (by which time we were committed)".*

I'm not convinced that's a persuasive argument. The change of position was communicated – again by email so using the exact same medium as the initial indication that all of the sale proceeds would be released – on 31 January 2024. That's seven days. I agree it took longer to establish the specifics of which loans BOS would require be repaid (or reduced) but I'm satisfied that no more than seven days elapsed before BOS put C on notice not just that it would require funds be retained for debt reduction, but also the exact amount. That was £187,000, from a sale price of £410,000.

Mr K is effectively seeking to persuade me that in those seven days, the proposed sale of the property had advanced to the point that contracts had been exchanged with the buyer, and C could not abort the sale. There's nothing in the evidence either party has presented for me to consider that would give me reason to believe, on the balance of probabilities, that this is what happened. Also, given that the sale eventually completed in late April 2024, it does seem unlikely that C was contractually committed to the sale before 31 January 2024.

In summary, BOS' decision will, I have no doubt, have been unwelcome to C, but it was not unfair, which is the test I have to apply.

I said at the outset that I wouldn't be commenting on every single point, and I haven't. I have, as I said I would, confined myself to those matters that I consider have a material effect on the outcome.

I can see from his submissions how important this is to Mr K, not just in terms of how it might impact on C, but on the other businesses too. But my remit (which I've already explained is confined to the impact on C) requires me to be objective, impartial, and to decide what is fair, reasonable and pragmatic in all the circumstances of the case. It also means that I'm not required to provide answers to every specific question that comes up if I don't consider doing so will affect the overall outcome.

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 C to accept or reject my decision before 9 June 2025.
Jeff Parrington
Ombudsman