

The complaint

Mr S complains that Bank of Scotland plc, trading as Intelligent Finance (IF), lent him a mortgage secured on a property that was overvalued. He also complains about recent action IF has taken to recover the debt because the mortgage is in arrears.

What happened

In 2007 Mr S took out an interest-only mortgage of just over £170,000 with IF to buy a property. The property is one of several flats in a converted house, and Mr S bought it on the basis that it was a two-bedroom flat.

In early 2024 Mr S says his circumstances had changed significantly and he could no longer afford the mortgage payments. He decided to sell the property and accepted an offer from a buyer. He was then asked to provide the naturalisation certificate for the conversion of the whole property into flats and the fire safety certificate for one of the bedrooms in his flat.

Mr S didn't have those documents, so he made enquiries of the local council's building control department. They told him that they couldn't issue him with the certificates he needed because the conversion work appeared to pre-date the Building Act coming into force in November 1985. They said they could assess the flat's compliance with current building regulations, but:

“These have been strengthened numerous times over the last 39 years, especially in relation to fire standards and means of escape. As discussed, this often results in internal rooms being particularly difficult to certify and could mean that the property should only have functioned as a one bedroom dwelling since altered in 1985. The lack of building control certification would also normally be exposed by the local searches undertaken through the conveyancing process.”

Mr S says his buyer pulled out of the purchase because of the lack of certification. Mr S made a complaint to IF. He said he can only market the property as a one-bedroom flat, he thought he was buying a two-bedroom flat in 2007, he paid a premium for it because of the size of the main bedroom and he wouldn't have bought the property had he known that bedroom wasn't habitable. He said the property was never suitable security for a mortgage, IF shouldn't have lent, it was overvalued, and he can't now sell it.

IF said it had relied on the valuer's report and information provided to it by the conveyancing solicitors in deciding to lend. It also said that building regulations had changed since Mr S bought the property in 2007, and current certification requirements may not have applied at the time of purchase.

Mr S hasn't been able to continue paying the mortgage and the arrears have increased since he complained. He asked us to look into his complaint and also complained that IF has begun legal action to take the property into possession even though he's been trying to sell it and he's vulnerable.

Our Investigator said that IF had instructed a suitably qualified surveyor, and it was entitled to rely on the valuation report and to lend on that basis. He also said it wasn't unreasonable for IF to take legal action to recover the mortgage debt given the level of arrears. He found that IF had wrongly told Mr S that it would accept responsibility for the valuation and this had caused Mr S distress and inconvenience. He recommended IF pay Mr S £150 in recognition of that.

IF accepted that conclusion but Mr S did not. He still considered IF responsible for the survey and that it had been negligent in issuing a fraudulent mortgage.

The complaint was referred to me to decide. I came to the same overall conclusion as our Investigator, but for different reasons, so I issued a provisional decision.

My provisional decision

I said:

"I was sorry to read about the impact this matter has had on Mr S's health and wellbeing, and I've carefully considered everything he has told us about this. I understand that he's in a very difficult position. He can no longer afford to pay the mortgage on the property and is keen to sell it but has run into a stumbling block he didn't expect. I have to tell him however that I've come to the same overall conclusion as our Investigator did, albeit for different reasons. I'll explain why.

First of all, Mr S has said that IF must take responsibility for what has happened because it bought the property. But that's not how property purchases work. Mr S bought the property using finance from IF. IF doesn't own the property, Mr S does.

After Mr S applied to IF for a mortgage in late 2006, IF instructed Colleys to carry out a valuation on the property he wanted to buy. Carrying out a survey or valuation isn't of itself a regulated activity. At the time however Colleys was Bank of Scotland plc's valuation service, and IF is part of the same firm. The valuation on the property Mr S was buying was an ancillary activity to the regulated activity IF was carrying out of entering into a regulated mortgage contract. The valuation is therefore covered by our rules. So Mr S's complaint about the valuation and what happened as a result of it falls within my jurisdiction and I can consider it in this complaint against IF.

I've looked carefully at the valuation report. It shows that the valuation was carried out by a suitably qualified surveyor who was a member of the Royal Institution of Chartered Surveyors. The copy of the report which was provided to Mr S included guidance notes on each page. They said:

"You have chosen a valuation report which is a limited inspection of the property highlighting only those items which we consider will materially affect value.

[...]

You still have the option to request a more detailed report and we would be pleased to help you with this.

The valuer has assumed the property information supplied is correct although your conveyancer should verify this."

The valuer's comments in the report included:

“I understand the property has been subject to structural alterations. My valuation assumes the work was properly supervised and complied with all necessary permissions.”

In the section headed “matters for your conveyancer” the report said:

“The property has been extended by construction of living accommodation within the original roof void and checks should be made to confirm whether all necessary permissions and consents were obtained.

[...]

Your conveyancer should make enquiries of the local authority to obtain full details of the fire precaution works required or carried out on the building and advise you further.”

And in the “advice for applicants” section it said:

“We may have mentioned “Legal requirements or consents”. This means such things as planning and building regulation permissions, listed building consent, party wall issues, health and safety matters, freeholder consents, title restrictions, road and sewer bonds etc. Your conveyancer can advise you further.”

I’m satisfied that the report was clear that it was based on a limited inspection and Mr S could ask for a more detailed survey if he wanted. The report was also clear that it was for the conveyancing solicitors acting for Mr S to carry out relevant searches and checks, particularly in respect of the structural alterations that had been made. The surveyor valued the property at £179,000 – which, as the report said, assumed that the structural alterations were “properly supervised and complied with all necessary permissions”.

It’s not for me to substitute my own view for the surveyor’s. But I see no reason to conclude that the report was wrong or misleading – it said it was based on a visual inspection, on the property information that had been made available to the surveyor, and on the basis that the structural alterations complied with necessary permissions. The property information included that the property had been marketed and described as having two bedrooms. The report also said that the surveyor hadn’t checked for relevant permissions and consents, and that this was a matter for the conveyancing solicitor to check. All of that was correct.

Given the limited nature of the surveyor’s inspection and given that it was based on the information the surveyor had available at the time, I can’t fairly conclude that the valuation was carried out wrongly or negligently. I also think that IF was entitled to rely on the surveyor’s opinion in deciding to lend as much as it did against the property. The report it received included no requirements or recommendations about the structural work that had been done on the property, only about further checks being needed for asbestos – which were then carried out.

It would usually be for the buyer’s solicitors to carry out relevant searches, request documents where necessary and check the title deeds to a property. It would be extremely unusual in my experience for a surveyor to obtain building and fire safety certificates before valuing a property for mortgage purposes. In Mr S’s purchase, the same firm of solicitors was acting for both Mr S and IF, which isn’t unusual in property transactions. IF is responsible for the solicitors’ actions insofar as they were acting for it in the transaction. But the solicitors’ work for IF was to ensure that its requirements were

met, such as ensuring that it had security for the mortgage by registering its charge at the Land Registry. At the time IF did require a building guarantee if the property Mr S was buying was newly built or converted, but Mr S's property was not newly converted so it did not require such a guarantee. In dealing with Mr S's purchase of the property and any checks involved in that, the solicitors were acting for Mr S and not IF. IF is not responsible for what the solicitors did or did not do in that respect.

Mr S has complained directly to the solicitors and has received a response, which he has provided to us. The solicitors referred to the property information form which the seller of the property completed in 2006 and in which he said that the main bedroom was an original feature and not a loft conversion. They consider that they made reasonable enquiries on Mr S's behalf and noted that the letter Mr S has recently received from building control says it **could** be that the flat should only ever have been considered a one-bedroom property, not that it **should** be.

The searches and enquiries the solicitors made about structural alterations, permissions and certificates were for Mr S's benefit, not IF's, and if Mr S is unhappy with the solicitors' position he may be able to take the matter up with the Legal Ombudsman. But these are not matters I can consider in a complaint about IF.

For these reasons, I don't intend to uphold Mr S's complaint about the valuation.

Mr S has also complained that IF has treated him unfairly in taking legal action to repossess the property given his situation. Repossession should be a last resort. Ultimately, however, a lender is entitled to seek possession of a property if no agreement for repayment can be reached. IF knew Mr S is vulnerable and that he's keen to sell the property himself. An income and expenditure assessment in October 2023 showed that Mr S had a monthly deficit of around £650, without taking account of mortgage payments. IF's records show that it offered to put a hold on further action in 2023, but Mr S didn't return the information it asked him for, despite reminders.

As at early 2025, the last payment to the mortgage was received in September 2023 and the unpaid interest has resulted in the balance increasing. The mortgage had been in and out of arrears for some time before that. IF suspended debt recovery action when a sale of the property appeared to be imminent. It did the same for a time following a bereavement Mr S suffered and again following our involvement in this complaint.

Overall, I don't consider IF has treated Mr S unfairly. It wouldn't be reasonable or in either party's interests to suspend action indefinitely as the mortgage arrears continue to grow and erode the equity in the property. Once this complaint has ended Mr S should discuss his plans for the property and the mortgage with IF to see if they can find a way forward. I remind IF that it should consider any proposals Mr S makes fairly and sympathetically, particularly given his vulnerability.

Finally, IF has agreed to pay Mr S £150 because of the confusion about whether or not it would take responsibility for the valuation, and I think that's fair in recognition of the upset this caused."

I invited Mr S and IF to let me have any further comments and evidence they wanted me to consider before I make a final decision.

Responses to my provisional decision

Mr S didn't accept my provisional decision. In brief summary, he considers that IF failed to carry out due diligence in asking the conveyancing solicitors to provide relevant documents

and certificates ahead of the property purchase, and it should therefore compensate him for the repercussions of that and be held to account.

IF accepted my provisional decision and had nothing more to add.

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've noted Mr S's strength of feeling about his complaint and that he strongly disagrees with my provisional decision. I can't however uphold his complaint on that basis. I must remain independent and impartial. I can also assure Mr S that my review of his case is independent of the Investigator's and of IF.

My consideration of this complaint has included all of Mr S's further submissions following my provisional decision as well as everything he previously sent us. I'm satisfied that I have enough information to make a fair and reasonable decision, and that I don't require any further information or evidence from Mr S or a discussion with him in order to do so.

Having reconsidered this complaint, I've come to the same conclusion I set out in my provisional decision, for the same reasons.

IF instructed a suitably qualified surveyor to value the property Mr S was considering buying, it was entitled to rely on the surveyor's opinion, and for the reasons I explained in my provisional decision I don't find that the valuation was carried out wrongly or negligently.

IF, as Mr S's mortgage lender, wasn't acting as Mr S's agent in the purchase and it did not have a duty to him to ensure that building and fire safety certificates were in place. It was for the conveyancing solicitors, not for IF or the surveyor, to carry out checks relevant to Mr S's decision to purchase the property – including those concerning structural alterations, permissions and certificates. In making those checks the solicitors were acting for Mr S, not for IF.

I can't therefore fairly uphold Mr S's complaint about the 2006 valuation and IF's decision to lend him his mortgage. I've taken account of everything he has said about what he considers to be IF's breaches of the rules of mortgage regulation and the Financial Conduct Authority's Principles and guidance (insofar as they're relevant since these rules, principles and guidance aren't retrospective), as well as the past decisions he has referred to. I have decided this complaint on its individual merits and circumstances, as I'm required to do; those earlier decisions don't set a precedent for this complaint, I haven't found that IF is responsible for the way the property was described and sold to Mr S in 2006, and I haven't found that the valuation was carried out wrongly.

I remain of the view that the compensation of £150 IF has agreed to pay is fair and reasonable in all the circumstances and I can't fairly require it to pay any more than that. I leave it to Mr S to decide whether or not he now wishes to accept that.

My final decision

My final decision is that Bank of Scotland plc, trading as Intelligent Finance, should pay Mr S £150 compensation. I make no further order or award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 25 September 2025.

Janet Millington
Ombudsman