

complaint

M, a partnership, complains loans it was given by Bank of Scotland plc were mis-sold. It also complains about the way the bank handled the recovery of its debt.

background

The background to M's complaint is set out in the provisional decision issued on 18 November 2015 by an ombudsman. I've attached a copy of this and it forms part of my final decision.

The ombudsman decided not to uphold the complaint as she didn't think Bank of Scotland had made any errors.

Bank of Scotland had nothing further to add. One of M's partners didn't feel this provisional outcome showed there'd been an impartial review. He was also concerned they'd had no opportunity to get their voice heard.

my findings

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

As the other ombudsman recently left the service, I've taken the opportunity to review the evidence from both parties in full. This includes the detailed letter Mr B, one of the partners, wrote to us on 9 November 2015. I know the ombudsman carefully considered the issues including whether a hearing would be appropriate. She said she would review this once she'd received any responses to the provisional decision.

I've looked at what M has said following the provisional decision and I'm satisfied no new issues have been raised. Like my colleague I don't believe a hearing is necessary. I feel there's enough information from both M and the business to help me decide the case.

I know M is concerned not all the issues they've raised have been given an airing. But our role is to look at the case as a whole and decide whether the business has acted unfairly or done anything wrong. I can reassure M I've considered all the points made in the detailed submissions to us but overall I don't believe Bank of Scotland has acted unfairly.

I believe the evidence is clear that the products M was sold in 2007 and 2009 were loans and not derivatives or swaps. The emails between M and Bank of Scotland confirm this. I've also seen copies of the original loan documents, all signed by M. These state they are loans. I also believe the loan terms were known when M signed the agreements.

I've also looked at the behaviour of their sales representative. There's no evidence he was getting backhanders as M has alleged. I agree some of the jokes and references in emails may be a little unusual but I don't believe this shows Bank of Scotland acted inappropriately.

I believe the other main aspect is M feels they were rushed by the bank into selling properties to pay off their debts. I don't agree. The evidence shows Bank of Scotland gave M opportunities to pay off the principal of the debt as well as the interest. In the end however I'm not surprised the bank felt they had limited options left in trying to get the debt repaid.

I believe M knows why we can't look at the role the receivers played. And in fact I've seen correspondence from M which says this isn't what they're really complaining about. I can see how unfortunate this has all been and I don't underestimate the impact this has had on Mr M and Mr B. However I don't believe the evidence shows Bank of Scotland did anything wrong which would result in M being paid compensation.

my final decision

For the reasons I've given, my final decision is not to uphold M's complaint against Bank of Scotland plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask M to accept or reject my decision before 29 February 2016.

Sandra Quinn
Ombudsman

COPY OF PROVISIONAL DECISION

complaint

M – a partnership - complains that loans it was provided by Bank of Scotland plc were mis-sold. It also complains about the way the bank handled the recovery of its debt.

background

M was provided with a business loan from Bank of Scotland in March 2007 of £462,000. The partnership also had an overdraft facility of £350,000. Security provided was a charge over a portfolio of nine properties. The loan was refinanced in 2009. A new loan of £250,000 was also provided that year in order to reduce the overdraft. In 2011 the bank expressed concern about the partnership's debt and said it would need to be refinanced at the next review. Extensions to the loan were granted to enable M to do so or otherwise to market the properties for sale. However, in January 2013 Bank of Scotland advised that it intended to appoint receivers. M requested more time and Bank of Scotland agreed to put the receivership on hold for a few months. However, the receivers were then called in. M complained about this and that it was prevented from refinancing its debt because the bank didn't provide it with copies of its loan documentation in good time. However, Lloyds Banking Group, of which Bank of Scotland forms a part, didn't accept the bank had done anything wrong in the way it handled the debt recovery.

The complaint was brought to this service and our adjudicator was of the opinion that the bank acted within the terms of the loan agreement and gave M extra time to try to repay or refinance its debt. Our adjudicator noted that M was unhappy with the receivers and the valuations they obtained for M's properties. However, he said this was something M would need to take up with the receivers directly.

M didn't agree with our adjudicator's findings. It said, in brief summary, that:

- the adjudicator focused on concerns about the appointment of the receivers whereas the more important issues concerned mis-selling of derivative products and potentially fraudulent misrepresentation
- the bank sales representative's conduct was unacceptable
- the property portfolio was over-valued when Bank of Scotland agreed the loan and it made errors with the registration of title deeds
- it didn't understand the concerns the bank had about the loan in 2011
- the bank was aggressive in the way it set about recovering its debt.

Lloyds, in response to M's comments, said the products M was sold were base rate loans.

As the complaint still hasn't been resolved, it has been passed to an ombudsman to make a final decision.

my provisional findings

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

I've taken account of all of the additional points M has made. However, my job isn't to respond to every question raised. I need to look at what happened overall to decide if I think Bank of Scotland made mistakes with the business finance it provided.

I've looked at the documentation for the loans M was provided in 2007 and in 2009 and have seen no evidence of the sale of a swap or other derivative product. I'm satisfied from what I've seen that the loans M was provided with were base rate loans.

The 'hunting fund' that M said it was sold, and which it said the adjudicator didn't look into, was the bank salesman's way of describing the overdraft facility the bank provided to enable M to 'hunt' for properties and buy them quickly before putting longer term finance in place.

I've seen no evidence thus far that persuades me the products Bank of Scotland sold to M were misrepresented or otherwise mis-sold. I've seen no evidence that the bank sales representative was in line to receive 'backhanders' for the products sold and am not persuaded from what I've seen that his conduct was inappropriate, notwithstanding some jokey comments about a post-finance completion night out with M. M complains that the loan agreement process was rushed through but from what I've seen this was in response to pressure from M to have finance in place.

M has complained the loan and overdraft terms were changed without its knowledge or agreement. It also complained there was no obvious source of repayment at the end of the interest only loan. However, I'm satisfied that documentation which M signed set out the terms on which the bank was willing to lend and that reasonable potential sources of repayment were discussed e.g. property sales or refinancing.

M complained the original property valuations were overvalued. However, given the bank instructed a properly qualified surveyor, I think it was entitled to rely on his professional opinion. I don't find the bank is responsible for any alleged defects in the surveyor's valuation.

M has queried why the bank had concerns about its debt in 2011. Looking through the bank's internal paperwork, I've seen evidence that Bank of Scotland had concerns about its lending to M from as early as 2008. The bank recorded then and discussed with M that the partnership had breached the conditions of lending. The bank's records from 2011 show that M's credit limit exceeded the security the bank held. M was aware of this and tried to sell properties to reduce its debt but the market was difficult. In view of the security shortfall, the bank took the decision that the debt needed to be refinanced at the next review.

I've seen evidence that Bank of Scotland gave M several months to try to improve its debt to security level but when this wasn't achieved, it placed the debt with its recoveries department which started the process of instructing receivers. I'm not minded to think this was unreasonable. M offered to increase its monthly payment to pay off principal as well as interest while it continued to try to sell properties. Bank of Scotland agreed to this and to hold off the receivership for a few months. M then requested another 12 to 14 months to sell its properties but the bank wasn't willing to provide this. M was given some additional time but wasn't able to pay down or refinance its debt so receivers were then appointed. From everything I've seen, I don't consider that Bank of Scotland acted unfairly or unreasonably in the way it sought to recover its debt.

M is unhappy with the receivers and with their valuation of M's property portfolio but as our adjudicator has explained, this is not something that this service is in a position to look into.

In summary I'm not minded to think that Bank of Scotland has made any errors for which compensation should be paid.

my provisional decision

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

Sarah Carter
ombudsman