

complaint

Mr M says Ulster Bank Ltd treated him unfairly when it repossessed and sold his commercial properties then sold on the remaining debt. It didn't accept his offers of settlement.

background

Mr M says he was approached by Ulster Bank and offered loans to deal in property. When he said he knew nothing about property Ulster Bank said it would guide him and if things went wrong it would restructure the debt. He took out a £500,000 loan in 2006 and a £1.5 million demand loan in 2007. The loan was renewed until 2010. In early 2011 Ulster Bank sent a final demand to Mr M asking him to repay his overdraft and loan. Ulster Bank appointed a receiver and sold properties. Mr M says:

- Ulster Bank didn't restructure the debt as set out in the original facility letter.
- Ulster Bank said it would wait for the outcome of a planning review, then went ahead with the sale of property.
- When he made a settlement offer, Ulster Bank asked for confirmation funds were available. Then, after receiving confirmation, it went ahead with the sale of property anyway.
- The receiver sold properties for less than they were worth and without consulting him. He wasted time raising finance to repay the debt only to find the properties had been sold. He also says the receiver didn't pay the rates.
- Ulster Bank didn't meet with him to discuss restructuring the debt. It accepted settlement proposals then changed its mind. Ulster Bank negotiated a settlement with him at the same time as it was selling the debt. He says it inflated the value of the properties, making it difficult for him to agree a settlement with the buyer. It didn't agree to an individual voluntary arrangement and made it difficult for him to repay the debt so that it could make him bankrupt.

The adjudicator did not recommend that the complaint should be upheld. He said:

- There was little information available to support Mr M's recollection about the assurances given by Ulster Bank in 2006.
- Ulster Bank was entitled to make a commercial decision whether to accept a settlement offer. Ulster Bank believed a better settlement was possible. It said it didn't meet with customers unless they had a repayment proposal.
- We can't investigate the actions of the receiver. Ulster Bank told Mr M it intended to appoint a receiver.
- Ulster Bank couldn't sell all its rights in the debt without Mr M's consent. It agreed to hold economic interest in the debt on trust for a third party. So the contractual relationship between Ulster Bank and Mr M didn't change. However the buyer made the final decision whether to accept a settlement proposal.

- Overall, Ulster Bank hadn't treated Mr M unfairly. It met with him to try and reach an agreement.

Mr M did not agree. He said the adjudicator didn't take into account the assurances he was given by Ulster Bank. He said Ulster Bank breached the terms of the loan by selling the debt. It also breached its agreement to his settlement proposals.

my provisional findings

I sent a provisional decision to the parties in January 2016 in which I set out the following provisional findings.

Complaints we can't consider

Mr M raised complaints with Ulster Bank in 2014. This included it declining his offer of settlement and putting assets on the open market; allowing the receiver to sell assets without his consent or knowledge; and breaching the terms of his facility agreement by not restructuring the loan. Ulster Bank responded to these complaints in a letter dated 2 October 2014. Mr M raised a further complaint with Ulster Bank about it declining his offers of settlement made in October 2014 and refusing to further discuss settlement; its intention to sell his loans and related data protection issues; and sale of properties by the receiver. Ulster Bank responded to these complaints in a letter dated 30 October 2014. Both letters told Mr M he could bring his complaints to this service.

We operate under a set of rules known as the DISP rules which set out the scope of our powers. A copy of the rules can be found through a link on our website. In particular, the rules say we can only consider a complaint if it's brought to us within six months of the bank's final response to the complaint. Mr M brought his complaint to us in August 2015 – more than six months after Ulster Bank sent its final responses to the complaints raised in 2014. Ulster Bank objected to us considering the complaints, saying they were brought to us out of time.

Mr M raised further concerns after bringing the complaint to us. These relate to the handling of his debt by the buyer and loan service agent and difficulties in agreeing a settlement. Mr M also says that Ulster Bank treated him unfairly when he tried to agree an individual voluntary arrangement and in bankruptcy proceedings started by a third party. I appreciate that Mr M's relationship with Ulster Bank is ongoing and this means further problems can arise. However, under our rules, we can't consider a complaint unless it has first been raised with the bank. I don't think Mr M has raised these concerns with Ulster Bank and given it a chance to respond.

I know Mr M will be disappointed. But, under our rules, I find I can't consider the following aspects of Mr M's complaint about Ulster Bank:

- *declining his offers of settlement made up to the end of October 2014;*
- *putting assets over which it had security on the open market;*
- *allowing the receiver to sell assets without his consent or knowledge;*
- *breaching the terms of his original facility agreement by not restructuring the loan;*
- *refusing in October 2014 to discuss further offers of settlement;*
- *its intention to sell his loans and related data protection issues;*

- *concerns raised after the complaint was brought to us which had not been raised with Ulster Bank.*

Complaints we can consider

We can consider Mr M's complaint about the disposal of Ulster Bank's interest in his loan.

The disposal of Ulster Bank's economic interest in its loan to Mr M wasn't straightforward. Ulster Bank gave Mr M notice of its intention to dispose of the loan. It explained the structure of the disposal in its response to Mr M's complaint. It confirmed it remained the contractual lender. The buyer has an economic interest and would have to agree to any settlement. The letter said Mr M should communicate with the loan servicing agent.

Mr M says the disposal caused delays to reaching a settlement. But I am not persuaded this was the only reason a settlement wasn't reached. Mr M hadn't been able to agree a settlement with Ulster Bank before it decided to dispose of his loan and I think it's unlikely this would have changed. I'm not persuaded Ulster Bank caused loss to Mr M by inflating the value of assets held as security when selling its loan book. The valuation of the assets did not change the amount of debt owed by Mr M.

I understand Mr M's frustration and appreciate he would have preferred that the loans remained with Ulster Bank. But I don't think the disposal of Ulster Bank's economic interest in Mr M's loan caused him any loss.

Mr M didn't agree with my provisional findings. He said Ulster Bank hadn't behaved properly and disposed of assets at a loss. Mr M says his former business manager would confirm the assurances he gave to Mr M in 2008 if contacted. He disputes that the economic interest in his loans can be sold under relevant law.

Ulster Bank had no further comments.

my findings

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, inconclusive or contradictory, I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

Mr M hasn't provided any information or evidence to persuade me that I'm able to consider the complaints described under "*complaints we can't consider*". I see no reason to change my view that I do not have power to consider those complaints.

We're an informal dispute resolution service and I don't have the same powers as a court. While Mr M says the law doesn't allow the sale of the economic interest in the loans, only a court can decide this. I haven't seen any new information or evidence that persuades me the disposal of the economic interest in the loans caused Mr M any loss or prevented him reaching a settlement with Ulster Bank.

my final decision

My decision is that:

- this service does not have power to consider the parts of Mr M's complaint described under "*Background – my provisional findings – complaints we can't consider*"; and
- I do not uphold Mr M's complaints described under "*Background – my provisional findings – complaints we can consider*".

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 7 April 2016.

Ruth Stevenson
ombudsman