

complaint

This complaint is about two mortgages that Mr C has held with Bank of Scotland plc. Mr C sold one of his mortgaged properties in 2008, but a member of staff at the firm of conveyancing solicitors stole the sale proceeds instead of using them to repay the mortgage. Mr C is unhappy that Bank of Scotland has transferred the outstanding debt onto his other mortgage, and expects him to repay the combined balance of both mortgages.

background

The circumstances of this complaint, briefly are that in 2008, Mr C arranged to sell one of his mortgaged properties (for ease of reference I shall call this Property A). The sale was agreed, and the same firm of solicitors was appointed to act for Mr C and his buyer in the conveyancing. The buyer funded the purchase with a mortgage of his own, also from Bank of Scotland.

Unfortunately, when the transaction went through, the sales proceeds were never paid to Bank of Scotland to redeem Mr C's mortgage. A member of staff at the conveyancing solicitors misappropriated the money. Bank of Scotland succeeded in recovering some of the stolen money, and credited it in part-reduction of the mortgage on Property A. The bank then debited the remaining shortfall to the mortgage account Mr C held on a second property he owns (which I shall call Property B).

Mr C is unhappy that Bank of Scotland holds him liable for the outstanding debt from Property A, and that it has added the debt to his other mortgage, allowing it to be secured against Property B. Mr C cannot afford to pay the debt in full, and believes Bank of Scotland is treating him unfairly. He maintains the debt stopped being his responsibility when ownership of Property A was transferred to his buyer.

The adjudicator who considered the complaint did not recommend it should be upheld. She explained that with Mr C's mortgage not fully repaid (even after the partial recovery) the bank would have been left with two mortgages on Property A, Mr C's debt and the new mortgage taken out by his buyer. Whilst sympathetic to the fact that Mr C was the victim of fraud, she explained that the terms and conditions of the mortgage allowed Bank of Scotland to transfer the debt over to the Property B mortgage, and combine the balances of the two debts into one.

Mr C asked for his complaint to be reviewed by an ombudsman.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I have come to largely the same conclusions as the adjudicator, and for much the same overall reasons.

There is no dispute Mr C intended to sell Property A, and redeem in full the mortgage on it. He was only unable to do so because someone at the firm of solicitors whom he entrusted with the sale money stole it instead of paying it to Bank of Scotland. I understand that Mr C is extremely distressed by this; he has suffered a shattering financial loss, not of his own making but from the fraudulent action of a third party.

But even taking that into account his responsibility for the mortgage debt did not go away when he sold Property A. Certainly, it did not transfer to the new owner, as he appears to have suggested on a number of occasions. Bank of Scotland is reasonably entitled to hold Mr C liable for the debt, and where, as here, there is an alternative security – in the form of Property B – the terms of the mortgage permit the bank to combine the two debts, rather than leave the debt from Property A unsecured.

Mr C has told Bank of Scotland he cannot afford to pay the combined debt in its entirety. Generally speaking, lenders have an obligation to treat consumers in financial difficulties fairly. In any negotiations for repayment of the debt, Bank of Scotland has a duty to take Mr C's immediate and wider financial circumstances into account.

Equally, however, Mr C has duty to mitigate his loss. As I understand it, Mr C has told the bank he can only afford to pay a reduced amount rather than the full monthly instalment on the combined debt. Bank of Scotland has said it is only prepared to consider agreeing to some form of reduced payment arrangement if Mr C is also willing to lodge a claim with the Solicitors Regulation Authority Compensation Fund in respect of the loss he has suffered.

In my view, that is fair. I said earlier that Mr C had suffered a shattering loss as a consequence of the actions of a fraudster, and that is the reason he owes Bank of Scotland the combined balance of the two mortgages. To the extent that he may have an avenue for recovering his loss – even if only partly – Bank of Scotland is entitled to make it a condition of any repayment concession that Mr C pursue that avenue.

my final decision

My final decision, for the reasons set out above, is that I do not uphold this complaint, and make no order or award against Bank of Scotland plc.

Jeff Parrington
ombudsman