

complaint

Mr W complains about the terms of an offer made by Bank of Scotland plc (trading as Colleys) to settle his complaint. In particular, Mr W's not happy to accept the offer as it stands because he's worried about potential losses or issues that might arise in the future.

background

Colleys is the valuation and surveying service of Bank of Scotland. It carried out a survey for Mr W so I'll mostly refer to Colleys in my decision – but Bank of Scotland is responsible overall for what happened.

Colleys failed to mention in its report that the property Mr W was interested in buying was affected by an invasive plant species. The problem became apparent some time after Mr W had bought the property. Colleys said it was sorry it hadn't brought this to his attention. It made Mr W an offer which included paying for remedial work and compensation in recognition of the fact that its report hadn't met the standard it endeavoured to provide.

Our adjudicator felt the settlement proposed to resolve this complaint was fair and reasonable. Mr W disagrees. He's told us that he doesn't expect a figure to be awarded to compensate for future eventualities now. But he wants the opportunity for recourse should the situations he's worried about crystallise. For example, where a prospective purchaser walks away after negotiating a price because of the problem. Or where plant growth starts up again after the 5 year eradication treatment guarantee expires.

So the complaint has been referred to me.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I sympathise with Mr W. I can understand that he's worried about the possible financial consequences this problem might cause in future. And it's clear his present enjoyment of his property has been affected. But, looked at overall, I agree with our adjudicator that the settlement Bank of Scotland has offered is fair and reasonable. Here's why I say this.

There's no dispute about what's happened here. So I've concentrated in my decision on how the bank should put things right for Mr W. He told us the offer for settlement doesn't adequately cover:

- the total costs that'll be incurred in the removal and restoration work
- the risk that the problem plant may grow back, or give him adequate assurance that it won't cause difficulty on sale of the property
- the costs of inconvenience and time taken to research the problem, deal with the claim, organise and supervise the removal and restoration work nor organisation of cleaning and costs of possible repair work required for damage caused during the removal work.

Mr W says that if the problem had been identified prior to completion, he wouldn't have gone ahead unless all of the items above were adequately dealt with and a reduced purchase price agreed with the seller or all of the work completed prior to completion.

My approach is to try and put Mr W back into the financial position he'd have been had Colleys mentioned this problem in its survey report. And overall, I find the bank's offer does fairly and reasonably do this. I appreciate that Mr W would ideally have liked a longer guarantee period to protect against the plant coming back after treatment work is done to kill it off. But I haven't seen anything to suggest that a five year guarantee for this work is unusually short. So I don't feel I can fairly and reasonably require Colleys to provide a longer guarantee.

I've also taken into account that, had this work been done by the seller prior to completion, the guarantee period left remaining would've been less than it's going to be if Mr W gets this work done now. So I don't think Mr W is disadvantaged by this should he decide to sell.

I do understand that it's a worry not knowing what view a potential buyer might take when Mr W decides to sell. But, Mr W said he'd have bought the property, knowing about this problem, if the price had been reduced to reflect the costs of putting things right or if that work had been done. So I can't in all fairness conclude that the bank should be liable to pay him extra compensation to reflect his concern about this.

I agree with our adjudicator that the bank's offer fairly reflects costs of remedial work and reinstatement. And it includes a reasonable amount of compensation for the inconvenience and trouble Mr W's been put to as a result of dealing with this complaint. I can't ask the bank to take any further action in these circumstances.

We look at things differently to the way a court would. We offer an alternative informal way to settle disputes. It isn't up to me to decide issues of legal liability like negligence and we aren't generally able to consider future losses the way a court can. So if Mr W still feels the bank's offer doesn't go far enough he might want to get legal advice to see what other remedies might be available.

my final decision

For these reasons, I don't uphold this complaint. I simply leave it up to Mr W to decide if he wants to accept the offer made by Bank of Scotland plc (trading as Colleys) in its final response letter sent to him in July 2015.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 9 November 2015.

Susan Webb
ombudsman