

complaint

Mr D's complaint is about the sale of his home following it being repossessed by Bank of Scotland plc (BoS). He believes it was sold for less than it was worth and disagrees that it was suffering from subsidence. In addition, Mr D is unhappy that BoS is pursuing him for the shortfall (the difference between the mortgage amount and the sale value) because of the amount of time that has passed since the house was sold.

background

Mr D took out a mortgage with BoS in 2007. Several years later he experienced a period of financial difficulty, personal problems and a deterioration in his mental health. This resulted in him leaving the property and it being repossessed by BoS. Mr D told us that he was homeless when he left the property.

The property was valued in early 2013 by a surveyor and an estate agent on behalf of BoS. Evidence of structural movement was identified by the surveyor and it valued the property at £75,000, pending further information about the structural problems. The estate agent thought the property would sell for £67,500 and should be marketed at £70,000. The estate agent noted that the property had previously been marketed by another estate agent at £90,000; but hadn't sold at that price.

Following marketing the property an offer of £65,000 was accepted by BoS. The buyer's mortgage lender required a full structural report on the property due to the signs of movement. It was established that the movement was subsidence, the damage was significant and would cost around £15,000 to £20,000 to repair and make the property safe. This meant the buyer pulled out.

The surveyor said the structural problems meant the property would only be able to be sold to a cash buyer, so the property was sent to auction. The property value was reassessed by the surveyor and it was thought to be worth in the region of £46,000.

The property was sold on 7 November 2013 for £40,000. This left a shortfall debt of slightly over £68,000.

In the spring of 2018 BoS arranged for a debt recovery agent to pursue the shortfall on its behalf. The first part of this process was to attempt to find Mr D, as BoS understandably didn't have an up-to-date address for him.

Mr D told us that he spoke to the debt recovery agent in the summer of 2018. He said that based on his account of what had happened and when, he was told the debt couldn't be pursued as more than six years had passed. There is no corresponding entry on the debt recovery agent's records. However, the debt recovery agent's notes show that Mr D was contacted by telephone in the spring of 2019. He wasn't happy and contacted this service. We explained he needed to tell BoS about his concerns before we could become involved. Mr D made a complaint to BoS.

BoS responded to Mr D's complaint, but it didn't uphold it. It said the price the property sold for reflected the subsidence problem and damage. It said that it was legally entitled to pursue the shortfall debt and it would continue to do so. Mr D wasn't happy with BoS' response and asked us to look into the complaint.

One of our investigators considered it, but he didn't recommend the complaint be upheld. Mr D didn't accept the investigator's conclusions and the complaint has been passed to me to consider.

my findings

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

When a property is repossessed, a lender has a duty to obtain the best price possible within a reasonable period. This means that it would be inappropriate for a lender to reject a reasonable offer in the pursuit of a slightly higher one that might not ever come into existence and would delay the sale unreasonably. This is because while the property is being marketed, interest on the debt and other costs continue to accumulate. So delays can prove costly to a consumer and a balance between speed and monetary value has to be reached by the lender.

Due to the time that has elapsed there is limited information about the repossession and property sale. However, the evidence we have is that BoS went through the correct processes once it had repossessed the property. It had the property valued by two professionals and marketed it in a timely manner. It accepted an offer that was only slightly below the lower of the two valuations.

When the degree of the structural problems was discovered, the property was sold at auction. This was because, in general, lenders won't lend on properties that have ongoing subsidence problems, so a cash buyer was needed. When a property needs such a niche purchaser, they tend to be sold through auctions.

I know that Mr D is concerned about BoS saying that the property was suffering from subsidence when it repossessed it, as this wasn't identified in 2006 or 2007 when the house was bought/re-mortgaged. Subsidence is something that can appear at any time and the fact that it wasn't happening or, if it was, wasn't obvious when previous surveys were carried out, doesn't mean that it wasn't happening in 2013. The assessments of the property appear to have been done by appropriately qualified individuals, so BoS was entitled to rely on the opinions provided.

Overall, I don't think BoS did anything wrong in relation to the sale of the property. As such, I have no reason to question the amount of the shortfall debt established at the end of 2013.

Mr D wasn't immediately contacted about the shortfall debt. That is unfortunate but given his explanation of his circumstances at the time, it's not surprising. He has said that when he left the property he was unwell and homeless. Without an address to contact him at, BoS wouldn't have been able to speak to him about the debt.

As our investigator and BoS have pointed out, there are timescales linked to the pursuit of a shortfall debt. The legal position is that there is limitation period of twelve years. There is also guidance from the Council of Mortgage Lenders that the lender should inform the consumer of the intention of pursuing the debt within six years. BoS contacted Mr D within both timescales and so I don't think it acted inappropriately in relation to its pursuit of the shortfall debt.

my final decision

My decision is that I don't uphold this complaint. Under the rules of the Financial Ombudsman Service, I am required to ask Mr L to accept or reject my decision before 29 October 2020.

Derry Baxter
ombudsman