

complaint

Mrs D has complained that Bank of Scotland plc ("BoS") is pursuing her for a shortfall balance following the repossession and sale of a property she jointly owned. Mrs D wants BoS to pursue her ex-husband (and joint mortgage holder) for the shortfall.

background

Mrs D, together with her then husband, owned and lived in a property over which they had a joint mortgage. The mortgage was taken out with BoS in 2005 for around £80,000. The marriage broke down and in 2012 Mrs D left the property. Mortgage payments weren't maintained and the property was repossessed by BoS in February 2014. The property was sold at auction in June 2014 for £60,000.

In June 2016, a law firm wrote to Mrs D on behalf of BoS looking to recover around £30,000 which it said represented the mortgage shortfall following the bank's sale of the property. Mrs D contacted the BoS about this as she believed that it had been agreed in the repossession proceedings that BoS wouldn't pursue her for any of the mortgage debt. BoS told her that the letter from the law firm was a mistake and could be ignored.

However, BoS has now told Mrs D that she does indeed owe the debt. It says that it hadn't contacted Mrs D in earlier years because it couldn't locate her as she had changed her surname and address. BoS also says that it didn't agree at the time they repossessed the property that it wouldn't seek to recover the debt from Mrs D.

But BoS did acknowledge that it had initially provided Mrs D with incorrect information when she called them in 2016. It offered Mrs D £500 for this as it knew that this mistake was made when Mrs D had serious health issues. It also agreed to refund charges previously applied to the mortgage, reducing the shortfall by £1,768.

Mrs D was unhappy with this and wanted BoS to accept that it had agreed that the debt wouldn't be recovered from her. She also says that BoS should have contacted her before selling the property which she says was at an undervalue. So she brought her complaint to our service.

One of our investigators looked at the evidence and didn't think BoS needed to do anything more. He thought BoS had given a reasonable explanation about why it hadn't contacted Mrs D earlier. He didn't think it was right to ask BoS to write off the debt. Overall he thought that the offer from BoS of £500 for the trouble and upset caused to Mrs D and a reduction of the debt by £1,768 was fair and reasonable.

Mrs D has now asked me to make a final decision about this.

Since our investigator reached his view, we've received more information about events surrounding the repossession. This evidence includes minutes of the repossession hearing at Swansea County Court in 2013 and details from BoS surrounding the sale of the property.

my findings

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

Did BoS agree to write-off mortgage debt the debt against Mrs D?

The records we've obtained from BoS show that there was a suspended possession order and money judgment (for £78,500) dated 11 June 2013. So, a judge has already decided that Mrs D and her ex-husband owed this amount to BoS at that time. The order made clear that if they didn't maintain repayments under the mortgage (including an amount for arrears), BoS could seek possession of the property and recover the debt.

BoS's records show that it took possession of the property on 12 February 2014. So, I think it's likely that the mortgage payments weren't maintained. The property was sold on 27 June 2014 for £60,000. When the property was sold, and all outstanding costs were paid, there remained a shortfall of around £30,000. In such situations, lenders are typically entitled to pursue the debt from the joint mortgage holders, in this instance Mrs D and her ex-husband.

I haven't seen any evidence that supports Mrs D's recollection that BoS agreed to release her from her obligation to repay the mortgage debt. It appears that BoS first took steps to recover the shortfall debt from Mrs D in 2014, but it encountered difficulties tracing her. I think this shows that BoS still considered the debt as being owed by Mrs D at that time.

Can BoS recover the shortfall after such a long period of time? Should Mrs D have been contacted before the property was sold?

Under the Mortgage Conduct of Business Sourcebook, a bank should contact a borrower within six years of the date of sale of a property to tell them that there is a shortfall which they intend to recover. Although there was a delay, BoS has contacted Mrs D well within this time frame.

I appreciate that Mrs D says that she should have been contacted before the property was repossessed and sold. I'm satisfied that BoS encountered genuine difficulties tracing Mrs D. But, even if she had been contacted before the house was repossessed, I'm not persuaded that she could or would have taken steps to avoid this. After all, she wasn't living at the property – her ex-husband was. And the very fact that the house was repossessed was because Mrs D and her ex-husband couldn't keep up payments for the mortgage. I think the pragmatic step at the time would have been to sell the property and pay off as much of the mortgage as possible. And that's what ultimately happened.

Was the property sold at an undervalue?

Mrs D has raised concerns that the property was sold at an undervalue by BoS. I appreciate that the sale price was less than the mortgage that was held on the property and so the shortfall is a significant sum. But, I'm satisfied that BoS took reasonable steps to achieve a fair price when selling the property. I can see that BoS obtained two valuations of the property (£65,000 and £62,000) and the initial asking price was set at £67,950 in March 2014, which BoS reduced to £60,000 after around 6 weeks. The property appears to have been marketed properly by a local agent and the sale was agreed in June, after a reasonable period of time.

Should any compensation be payable to Mrs D?

I know that Mrs D has been through a very difficult time over the past few years. And she continues to suffer health problems. So, like our investigator, I can understand why she would have been very upset when she received a letter about the debt in June 2016 –

especially as she believed it wasn't one she owed. This was made worse when she was later told that the debt was still due, despite having been told that she could ignore the letter.

BoS has accepted that it made a mistake when Mrs D contacted it about the letter. It has offered £500 for the trouble and upset caused to her. Taking into account Mrs D's circumstances, I think this sum is fair and reasonable and in line with what I would otherwise have awarded. So I don't think BoS needs to pay any more for this.

I note that BoS has agreed to refund charges previously applied totalling £1,768 back to the mortgage account. It has also agreed to put on hold recovery of the debt against Mrs D by 12 months and review the position thereafter. In the circumstances of this case, I think this is fair.

I know this isn't the decision Mrs D was hoping for. But, I hope Mrs D understands why I can't uphold her complaint.

my final decision

My final decision is that I don't uphold this complaint, to the extent that I consider the offer already made by Bank of Scotland plc to be fair to settle the matter.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 14 September 2017.

Abdul Hafez
ombudsman