

## **complaint**

This complaint is about a secured loan taken out by L in 2006 with Bank of Scotland plc (BoS). L was a partnership; it had three partners, all of whom have consented to us looking at the complaint, as our rules require. But the complaint has been presented by one of the partners, Mr B, on behalf of all three.

L complains that, after the loan term had expired, BoS appointed Law of Property Act Receivers to sell the property, instead of allowing L to sell it to a willing buyer. The result, L says, is that there's now a shortfall. BoS has sold the shortfall debt to a third party, called P, and the partners are being held liable for it.

## **Background**

The case came to us some time ago, and has been looked at by two different adjudicators. Both came to a different conclusion on how the complaint should be resolved. The most recent assessment was issued by the current adjudicator, in December 2015. It's the current adjudicator's conclusions I'm reviewing here, so I'll summarise them below. She said:

- BoS was entitled to appoint Receivers, but in December 2013 had led L to believe an alternative to this would be for the property to be sold at auction. L had been trying sell the property since January 2014, and by March 2014, had two parties interested in buying it. They only hesitated when they learned the property might be auctioned. Meantime, Mr B had been diagnosed with cancer.
- By April 2014, two parties were willing to buy the property for a sum that would have cleared the outstanding partnership debt in full. Mr B had informed BoS's representative of this but the Receivers were appointed in any event. BoS should have delayed appointing the Receivers and instead allowed L to proceed with a sale to one or other of the buyers.
- Had it done that, the costs of disposal (including the Receivers' charges) and further interest wouldn't have accrued, and there'd have been no shortfall. To settle the complaint, BoS should buy the shortfall debt back from P and write it off. It should also pay £350 compensation.

BoS asked for the complaint to be reviewed by an ombudsman, but didn't add any further arguments. Mr B, on L's behalf, said that writing off the shortfall didn't go far enough, because both potential buyers were prepared to pay more, leaving L either with surplus cash or a small equity stake in the property after sale. He also thought the compensation wasn't enough for the time, trouble and upset he'd been put to since the complaint began.

## **my findings**

Before I get to the merits of the complaint, I'm conscious this case has been with us a long time. It's unavoidable when staff leave that cases they've been working on are reassigned. It's also appropriate that when a case *is* reassigned, the new case-handler should review the case in its entirety rather than assume that what's gone before is right.

On this occasion, I'm sorry to say that this review revealed several serious handling errors on the previous adjudicator's part. So I think BoS and L are both due an apology for the case taking so long to get to where it is.

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to consider it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

First and foremost, I agree with the adjudicator that BoS didn't treat L fairly when it appointed Receivers instead of allowing a sale to go ahead. I understand why a bank might be reluctant to do so; there's always some uncertainty about whether a sale will complete. But BoS must have known that once Receivers were appointed, the costs of disposal would be very much greater than a direct sale, and that those extra costs would fall on L.

So it had a duty to consider the offers L had from its potential buyers. BoS says it wasn't told about the buyers, but I think it probably was, or at least its representative was. Had BoS acted fairly, I find it most likely that a sale would have progressed rapidly, and the loan would have been discharged in full. So I've no trouble agreeing that the shortfall debt should be written off. That will necessitate BoS buying the debt back from P, the company it sold it to. That's a procedural matter for BoS to address, and I don't anticipate this presenting the bank with any difficulty.

But should BoS do more, as Mr B has said it should? His argument is that both buyers knew the property was worth more than L owed on it, and would have been willing to do more than simply pay enough to discharge the debt. I've looked at this very carefully, including studying what the potential buyers have said. Overall, I'm not persuaded there's enough for me to conclude that L would have come out of a direct sale anything other than debt-free.

I realise one of the potential buyers did later bid more when the property was marketed by the Receiver. But that's not enough to conclude he would have done the same in other circumstances. Nor can I be certain that either would actually have provided L with an equity share. Both of the potential buyers were businessmen making commercial decisions.

In short, I think either of them would have looked to acquire the property for the lowest price achievable at a given time. In my view, that would most likely have an amount sufficient to settle L's debt to BoS and cover the transaction costs.

That leaves compensation. I'm aware there were three partners in L. The other partners' involvement seems to have been limited to signing our complaint form once it became apparent we'd need their consent to issue a formal determination. So the impression I get is that Mr B has dealt with the situation largely on his own. It won't have been easy for Mr B; of that I have no doubt.

Sadly, though, I'm mindful that part of the time and trouble he's been put to is down to how we initially dealt with the complaint. And I can't fairly hold BoS to account for that. Overall, in terms of what BoS should fairly pay Mr B, I've decided that £350 is broadly fair.

### **my final decision**

My final decision is that I uphold this complaint. In full and final settlement, I direct Bank of Scotland plc to:

- buy back, and write off, the shortfall debt arising from the sale by Receivers of the property that secured L's loan; and
- pay the former partners in L £350 compensation, to be apportioned amongst them as directed.

I make no other order or award.

Under the rules of the Financial Ombudsman Service, I'm required to ask all three partners in L to accept or reject my decision before 29 February 2016.

Jeff Parrington  
**ombudsman**