

## **complaint**

Mr F has complained on behalf of A Ltd in his capacity as director. He feels that Bank of Scotland Plc has acted unfairly regarding the “over valuation” of work by the bank’s appointed quantity surveyor. Mr F also thinks the appointed receiver has dealt with his development and subsequent issues unfairly.

## **background**

A Ltd in 2003 borrowed £300,000 from Bank of Scotland Plc to fund a development of properties for later sale. The plan was to develop seven houses, the last of which Mr and Mrs F would occupy. It was originally planned that the houses would be developed and then sold two at a time to reduce the borrowing as the project progressed. The project was intended to take 12-18 months.

As security, the bank obtained guarantees (from Mr F personally and from another company of which Mr F was a director), legal charges and a mortgage debenture. In May 2006, two houses were sold but the outstanding debt had increased. In July 2007, the bank agreed a revised facility of £530,000, to be repaid later that year. By September 2012, the money remained unpaid, and the bank appointed a receiver under the Law of Property Act (LPA).

Mr F believes Bank of Scotland’s actions increased the debt. He also feels it’s responsible for the receiver’s actions. Mr F brought A Ltd’s complaint here and the adjudicator did not uphold it. Mr F does not agree so this complaint has been passed to me.

## **my findings**

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

It is clear that this project has taken far longer and cost far more than anticipated. I can appreciate that Mr and Mrs F have found events distressing. Particularly as they are in a situation where their company (and Mr F personally) still has significant liability to the bank.

Mr F has complained about the actions of the appointed receiver to this service. The adjudicator has explained to Mr F that we don’t have jurisdiction to deal with the acts of such receivers. Mr F has continued to take issue with what the receiver has done.

While I recognise Mr F feels differently, both the bank and our adjudicator are right that the action of the LPA receiver is a matter for him to take up with the receiver, not the bank. The receiver may have been appointed by the Bank of Scotland Plc. But the receiver was acting for A Ltd – and bound to do so in its best interests. In my view, the bank was entitled to seek the appointment of a receiver, given such little progress towards A Ltd repaying the debt.

Mr F has complained in strong terms about the valuation of works by the quantity surveyor appointed by the bank. He says this meant there were insufficient funds and this caused further issues and costs. Mr F first complained about this in 2013 to the bank. It invited him to provide it with any supporting evidence he wanted it to consider. Our adjudicator made a similar request. To date Mr F has not provided any persuasive evidence to support his view.

When the bank looked into this issue in 2013 its internal records state that there is no evidence that the over-spend was due to the conduct of the quantity surveyor. These records state that:

*“it was agreed that Mr F’s property would be the final property to be developed however his was actually one of the first to be completed and significant amount of the banks advance was spent on it as it was built to a higher specification than the other properties. This has already been put to Mr F and he has failed to provide any evidence to the contrary”.*

I cannot uphold the complaint without any evidence to support the allegation made. And Mr F’s concerns relate to works carried out several years ago, in the earlier stages of the development. I think it likely any persuasive evidence that might exist to support Mr F’s allegation would have come to light by now. It seems clear that the bank at the time thought that the over-spend was for other reasons.

In this type of development, it’s not unusual for a lender to require appointment of a quantity surveyor. A Ltd accepted this. And A Ltd was Mr and Mrs F’s business project. They were responsible for running and controlling the project. The quantity surveyor, while appointed at the bank’s request, was A Ltd’s agent. So it was for Mr and Mrs F to decide to what extent they would check up on the building contracts and other arrangements that the agent was making for them. I don’t consider that responsibility rested with the bank. Nor do I find that because of the appointment of the surveyor, the bank becomes liable for any cost over-run.

Mr F has complained about the interest being added to his facility. But a bank is entitled to charge for its services. And while money remains outstanding it is legitimate for it to charge interest. I appreciate that this has had a significant bearing on A Ltd’s debt, and – by extension – on Mr F. As there does not appear to be anything amiss with the charging of interest or the subsequent negotiations and agreements between Mr F and the bank, I have no reason to uphold this element of complaint.

Having considered the matter as a whole it would seem the bank has been pragmatic in its approach to the difficulties faced by A Ltd. Its actions appear to me to have been intended to give a degree of breathing space to A Ltd, offering the opportunity to complete the project. But it couldn’t be expected to do so indefinitely. The bank also seems to have tried to talk with Mr F regularly and its records from across the timespan of the project show this.

Whilst it is clearly disappointing for all parties that this development didn’t proceed as hoped I have not seen persuasive evidence to lead me to uphold any element of this complaint against Bank of Scotland Plc.

I know Mr F will be disappointed with this but I do not believe there is any evidence to say that the Bank of Scotland Plc has done anything fundamentally wrong here. So I cannot fairly direct it to take any specific actions to address Mr F’s concerns.

### **My final decision**

For the reasons I have explained, while I appreciate this may be a disappointment to Mr F, my final decision is that I do not uphold this complaint against Bank of Scotland Plc.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr F to let me know whether he accepts or rejects my decision before 8 June 2015.

Rod Glyn-Thomas  
**ombudsman**