

## **The complaint**

Mrs E, who's represented in this complaint by her son and attorney Mr E, complains that Bank of Scotland plc (BoS) over-valued her property when she wanted to redeem her shared appreciation mortgage (SAM). This meant she paid too high a redemption amount. Mr E's brothers, who jointly hold power of attorney with Mr E, have consented to the complaint.

## **What happened**

Mrs E and her late husband took out a SAM many years ago. SAMs are not regulated mortgages, and the lender – a separate firm to BoS – is not a regulated entity which falls within the jurisdiction of the Financial Ombudsman Service. However, BoS administers the agreement on behalf of the lender. BoS does fall within our jurisdiction and in administering the loan is carrying on a regulated activity. BoS is therefore responsible for answering this complaint.

Under the terms of the loan, when the property is sold Mrs E must pay back the original sum borrowed plus 75% of the amount by which the property has increased in value since the loan was taken out. The redemption amount therefore depends on the value of the property at the time it's sold. And to ensure that's determined independently, the loan terms and conditions say that the valuation is to be set by a professional valuer – rather than using an agreed sale price.

In 2023 Mrs E decided to sell her property. A valuer was appointed by BoS, and the valuer valued the property at £370,000. A valuation is only valid for three months. As the sale didn't complete within this time, BoS required a further valuation. This time the property was valued at £405,000 – which resulted in Mrs E being asked to repay a larger sum.

Mr E complained on his mother's behalf. He said that while Mrs E was selling the property for £405,000, that price included the sale of a separate piece of land which adjoined the property but was not on the same title and not subject to the mortgage or part of the security. So that agreed sale price was more than the value of the property itself.

Mr E said the second valuer had discovered the sale price and applied it to the valuation of the property alone – but because the valuation of the property should not include the land, this was an inflated figure. Mr E said that in current market conditions the property would not have increased in value by 10%, compared to the first valuation, in a few months. He said that BoS should refund the difference between the redemption figure based on the higher valuation and what it would have been based on the lower.

BoS said it had no input into the valuation. It was carried out by an independent surveyor. The valuer had confirmed that he had valued the property – not including the land – at £405,000 and BoS was entitled to rely on his professional opinion in setting the redemption amount. It said that Mr E could have requested a new valuation if he disagreed with it, and if he'd done so redemption would be based on that amount.

Our investigator didn't think that BoS had acted unfairly. Mr E didn't agree and asked for an ombudsman to make a final decision.

## **What I've decided – and why**

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

As I explained at the outset, BoS isn't the lender here. It was administering the mortgage on behalf of the lender. As such, BoS's obligation is to act in line with the loan's terms and conditions and act fairly in doing so. But it isn't responsible for what the terms and conditions themselves say.

The terms and conditions and the mortgage agreement say that Mrs E is required to repay the original borrowing plus 75% of the increase in value (appreciation) of the property since then. And the terms and conditions also say that the repayment figure is to be determined by an independent valuation – not any sale price – and that a valuation is only valid for three months.

So in principle it was fair and reasonable for BoS to require a valuation – and, when that valuation expired before the mortgage was repaid – to require a second one.

The first valuation was for £370,000. The second was for £405,000. I can understand why Mr E was surprised that the property value appeared to have increased by around 10% in a few months. And why he questioned that valuation of £405,000 for the property alone – when that was the agreed sale price for both the property and the land.

Where there's a question or dispute about a valuation, I'd expect a lender to put any reasonable concerns to the valuer for comments. And I can see BoS did that in this case. The valuer confirmed that the valuation was solely for the property and didn't take account of the land. And the valuer explained the increase in valuation by the availability of more comparable agreed sale figures in the area – allowing the earlier valuation, reached in the absence of comparables, to be refined.

This strikes me as a plausible explanation. Valuation of property is a professional skill, but it's not an exact science. It's an assessment based on the valuer's professional judgement, assessment of the property, knowledge of the local market – and evidence of sales of comparable local properties.

Mr E says that the valuer obtained the agreed sales price from the estate agent and simply adopted that figure – without accounting for the separate but linked sale of the plot of land.

The valuer confirmed that they did take the agreed sale price into account. But they said that they'd reached the valuation based on other factors too.

Ultimately the valuation was carried out by a qualified and experienced professional. Mr E's concerns were put to the valuer, but not accepted. The valuer explained the basis of their valuation and said that the land had not been included.

BoS does not carry out valuations itself. It instructs independent qualified professionals to do that. That's what it did here. It's entitled to rely on the expert opinion of the valuer. I understand why Mr E raised the concerns he did, but they were considered and not accepted by the valuer. I don't think there's clear evidence that the valuer was wrong such that it was unreasonable for BoS to have relied on their assessment of the property's value.

I also bear in mind that BoS offered Mr E the option of a third valuation, on the basis that it would use the lower of the outcome of that valuation or the £405,000 reached in the second valuation to set the redemption figure. But Mr E didn't take up that option.

Mr E has also raised concerns about the fairness of SAMs as a product, and the fairness of enforcing the 75% appreciation figure. But those aren't matters I can consider as part of this complaint. They're issues for the lender, and the lender doesn't fall within my jurisdiction. As part of this complaint, all I can consider is whether BoS acted fairly and reasonably in administering the loan on behalf of the lender – exercising the lender's rights and obligations as set out in the terms and conditions.

BoS followed the terms and conditions in requiring a valuation, and then a second valuation when the first expired. It acted fairly and reasonably in relying on the professional opinion of the valuer in setting the redemption price – having taken account of Mr E's concerns and the valuer's response to them – but offering the option of a third valuation. When there was no third valuation, it acted fairly and reasonably in setting the redemption price in reliance on the second. For those reasons, I don't uphold this complaint.

### **My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E on behalf of Mrs E to accept or reject my decision before 23 April 2024.

Simon Pugh  
**Ombudsman**