

The complaint

Mr C and Ms L, through their representative, have made a wide-ranging complaint about the actions of Bank of Scotland over a period of several years. I give more detail about the exact nature of their complaint below.

What happened

The background to this complaint is complex. It is well known to the parties, so I will set it out very briefly. I mean no discourtesy by this; my approach simply reflects the informal nature of the Financial Ombudsman Service.

Mr C and Ms L began running a business in 1990, initially as a partnership. In 2014 they set up a limited company, and traded through the company whilst continuing their existing business as a partnership. The company and the partnership both had products from Bank of Scotland, including an Enterprise Finance Guarantee (EFG) loan taken by the company in 2014, other loan accounts, and overdrafts on their current accounts.

Mr C and Ms L's position is that the bank's poor behaviour eventually led to the collapse of both of their businesses. The company was dissolved in 2021, and the partnership's property was sold. They told us that the bank has driven them to the edge of personal bankruptcy, and caused them to lose their livelihood and their home. It is clear that they have had a very difficult time, and I thank them for their openness with us.

The bank's position is that the majority of Mr C and Ms L's complaints fall outside the jurisdiction of the Financial Ombudsman Service, and the remainder should not be upheld.

One of our investigators looked at the papers referred to us, and broadly agreed with the bank. She said that we cannot consider anything that happened to Mr C and Ms L's company, nor can we consider any complaints that are in any way related to personal guarantees that Mr C and Ms L gave for the company's borrowing before April 2019. She said we could consider the complaints Mr C and Ms L have made in their capacity as partners in a partnership, but she did not think that any of those complaints should be upheld.

Bank of Scotland accepted our investigator's findings, but Mr C and Ms L's representative did not. He said that their comprehensive list of questions about the bank's behaviour, sent to us on 1 April 2024, are still largely unanswered. He said they do not feel as though the bank has been "called to account", and that they are disappointed that the Financial Ombudsman Service does not appear to have even asked relevant questions.

My provisional decision

I issued a provisional decision on this complaint in September 2024. Briefly, I said:

- The Financial Ombudsman Service does not have the power to consider the complaints Mr C and Ms L make in their capacity as guarantors of their limited

company's debts, because those guarantees were given before 1 April 2019 and our rules do not allow me to consider complaints about them.

- We do not have the power to consider the complaints Mr C and Ms L make on behalf of their limited company, because that company has been dissolved and no longer exists.
- We do have the power to consider the complaints Mr C and Ms L make in their capacity as partners in a partnership, but I did not think it would be appropriate for me to uphold any of those complaints.

I gave more details as to why I did not intend to uphold the complaints Mr C and Ms L made as partners, and said:

"I have gone on to look at the allegations I can consider, which are that the bank: "pulled the plug" on the partnership's business (point 2 [in the partners' list of complaints]); bullied and neglected the partnership (point 3); pressed for a fire sale of the partnership's property (point 5); didn't visit the partners to offer support (point 13); refused to meet with the partnership's representative (point 14); failed to reply to emails about the partnership (point 17); failed to provide copies of Mr C and Ms L's personal data within the prescribed time period (point 18); and failed to properly carry out its duty of care towards the partners (point 19).

Having carefully considered all of the evidence, there is very little I can add to what our investigator has already said about the allegations that I can consider. I know that Mr C and Ms L disagree strongly with our investigator's opinion on those issues, and if they or their representatives provided further evidence by the date shown at the top of this provisional decision, I will of course consider their further comments.

"Pulling the plug"

Mr C and Ms L explained that when they said the bank "pulled the plug" on their partnership business, they meant that "after pushing the limited company ... into liquidation the bank immediately wrote to the partnership ... demanding immediate repayment of its loan capital and current account borrowings, leading to the demise of the partnership business".

In my view, this issue is closely connected to the bank's 2019 decision to issue a formal demand for the company's borrowing, as well as its decision to call in the personal guarantees Mr C and Ms L had given. I cannot consider those issues, for the reasons given [earlier in my provisional decision]. I can consider the bank's decision to remove the partners' ability to transact through their Bank of Scotland partnership accounts.

Operating a business like Mr C and Ms L's partnership without access to a bank account would not have been possible in practice. The bank has told us that it did not prevent Mr C and Ms L from opening bank accounts elsewhere. Whilst I have seen nothing to suggest that the bank's evidence is untrue, it is likely that any alternative bank would have considered the entire situation – including Mr C and Ms L's personal guarantees and their company's position – before deciding whether to offer banking facilities to the partnership. I therefore agree that the actions the bank took had the practical effect of preventing Mr C and Ms L from continuing to trade as a partnership, whether or not that was the bank's intention.

However, based on the evidence I have seen, I cannot say that the bank was wrong to take the actions it did with respect to the partnership – nor can I say that the partnership would have been able to continue trading if Bank of Scotland had given more notice that it intended to withdraw the partnership's banking facilities.

Like other banks, Bank of Scotland would reasonably have considered the partners' entire situation. Although I cannot consider Mr C and Ms L's position as directors/shareholders of their limited company or as guarantors of the company's debts, I think it was reasonable for Bank of Scotland to have taken the non-partnership issues into account when deciding whether to continue to provide banking facilities to the partnership. Given the deteriorating financial position of the company, I cannot say that the bank was wrong to decide that it was no longer prepared to support the company's shareholders in their other ventures.

I acknowledge that Mr C and Ms L will find it particularly difficult to accept my opinion on that point, given that they consider the company's financial position would have been substantially better but for the actions of the bank. But I have no legal power to consider what the bank did in relation to the company or the guarantees, and so I must consider the partnership's position as it actually was – including the fact that the partners owed considerable amounts of money to the bank in respect of the company's debts.

Fire sale of property

The bank's position is that Mr C and Ms L voluntarily sold their partnership property in August 2020, and repaid their debt from the proceeds.

I understand that Mr C and Ms L accept that the sale was technically voluntary, in the sense that it was not court ordered, but they say the bank pressured them into choosing to sell the property at a price substantially below its value.

In practical terms, the formal demand Bank of Scotland issued in respect of the company's debt may well have meant that Mr C and Ms L had no realistic alternative to selling their partnership property. But I have seen no evidence that the bank put any inappropriate pressure on the partners.

Bullying, neglect and lack of support and care

Several of the partners' allegations about neglect, the bank's failure to meet them, and duty of care, are intertwined. I have therefore considered them together.

It is clear that the partners feel very strongly that if the bank had given them more support their businesses would have continued to be successful. I cannot comment on anything related to the company, but in respect of the partnership I haven't seen anything to suggest that the bank failed to treat its customers fairly. The bank was not required to meet with the partners at all, nor was it required to meet with a representative of the partners' choice.

In addition, I have not seen any evidence to persuade me that Bank of Scotland bullied the partners. The language in some of the bank's correspondence is very direct, and I think it would be understandable if the partners had found it distressing. The situation was itself very distressing, and I was sorry to hear of the impact on Mr C and Ms L. But I haven't seen anything that I think amounts to bullying; instead, it appears to me that the bank was robustly setting out its position.

Customer service

The remaining issues that I can consider (points 17 and 18) broadly relate to customer service.

I can see that there was considerable correspondence between the bank and the partners' representative after the bank made the decision to stop providing banking services to the partnership. There were clearly also some attempts at negotiation, but those attempts did not produce the result the partners wanted.

Looking at the matter in the round, I have no concerns about the customer service provided by the bank. Overall, I consider that it treated the partners appropriately. In any event, I am not persuaded that Mr C and Ms L would now be in a better position if the bank had provided better customer service to them in their position as partners.

So far as the subject access request is concerned, I can see that Mr C and Ms L's representative say that the bank took too long to provide documents. The representative's position is that a request was made on 7 April 2022, but the relevant documents were not delivered until 20 May 2022. Bank of Scotland's position is that Mr C and Ms L's representative did not provide an appropriate letter of authority until 17 April 2022. It says it began processing the request once it was satisfied that request had been validly made, and it provided the documents digitally on 17 May 2022 and as a hard copy on 18 May 2022. I consider that Bank of Scotland's explanation for its delay is reasonable, and I do not intend to uphold this aspect of the complaint."

Bank of Scotland accepted my provisional conclusions, but Mr C and Ms L did not. So far as our jurisdiction is concerned, their representative said that they were not happy about the rules that apply to our service – and they would like us to consider more of their case – but they do understand that we are bound by our rules. In respect of the merits of the complaint, Mr C and Ms L's representative reiterated the points he had made previously. In particular, he said:

- Mr C and Ms L would like to have their "day in court", where Bank of Scotland would be required to disprove that it has acted unfairly and unreasonably.
- Bank of Scotland had a duty of care to his clients, and it has failed to carry out that duty.
- His clients would like to ask further questions of the bank in respect of their blackmailing allegations (that the bank attempted to blackmail them by saying it would not pursue an alleged debt if they agreed not to complain about the bank).
- His clients would also like to ask the bank to return a sum of around £6,200 that was wrongly used to pay off the bank's exposure to corporate borrowing.
- He would like to know whether anyone else has alleged that they were bullied by the Bank of Scotland staff member who dealt with Mr C and Ms L.
- He would like a full copy of all of the correspondence between Bank of Scotland and our service, because he is concerned that the bank has not been honest.

Mr C and Ms L's representative also requested that I convene a hearing. I have written to him separately to explain why I am satisfied that a hearing is not necessary in this case, and that the matter can be fairly resolved without one.

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.

Having done so, I have reached the same conclusions as I did in my provisional decision, for the same reasons. I now confirm those provisional conclusions as final.

I have not considered Mr C and Ms L's allegations of blackmail, nor have I considered their concerns about the £6,200 that they consider the bank should not have accepted. I am satisfied that those points relate to the way Bank of Scotland treated them in their capacity as directors of their dissolved company and/or as guarantors of the limited company's debt – and for the reasons I explained in my provisional decision, I do not have the legal power to consider those issues.

Looking solely at the way Bank of Scotland treated Mr C and Ms L in their capacity as partners in a partnership, it is not the role of the Financial Ombudsman Service to call the bank to account, nor is it my role to give them their day in court or to find answers to their questions. My role is to determine the complaint they have made in a way that is, in my opinion, fair and reasonable in all the circumstances of that complaint – subject of course to that complaint being within my jurisdiction.

Mr C and Ms L's representative noted that I said in my provisional decision that I thought Bank of Scotland "would reasonably" have taken his clients' wider position into account when deciding whether to offer banking facilities to them. He considers I should have said that Bank of Scotland "should", rather than "would", have done that – and I accept his point. However, in light of Bank of Scotland's evidence I am satisfied that the bank did in fact take all of Mr C and Ms L's circumstances into account. The bank then made a commercial decision that it was not prepared to offer the support that the partners wanted. My view is that the bank was entitled to make that decision, and I do not criticise it for doing so.

I acknowledge that Mr C and Ms L would very much like to know if anybody else has made similar allegations of bullying about the Bank of Scotland staff member involved. But my role is to consider the individual circumstances of this complaint, not to carry out a wider investigation into the conduct of Bank of Scotland's staff. Even if the staff member had been accused of bullying by others, that would not necessarily imply that he had bullied the complainants in this case (nor would it necessarily imply that he had bullied anyone at all – given his role, he will often have found himself in the position of delivering unwelcome news).

I understand that Mr C and Ms L's view is that they were bullied into selling their partnership property, and/or that Bank of Scotland's staff member created conditions such that they had not realistic choice other than to sell the property. But in the circumstances, I consider that Mr C and Ms L would have had to sell the partnership property in any event. I think it was reasonable for Bank of Scotland to have wanted Mr C and Ms L to repay their debt to the bank, and it does not appear that they had any way to do so unless they sold their partnership property. Even I had found that they had been bullied by the bank (which I have not), I would not have concluded that they had suffered financial loss as a result.

I also acknowledge that Mr C and Ms L are concerned that Bank of Scotland might not have been honest in its communications with us. I accept that there is a possibility that Bank of

Scotland has not been honest, just as there is always a possibility that any respondent firm (or indeed any complainant) might not tell the truth when providing evidence. That is not a problem that is unique to the Financial Ombudsman Service; it is also possible for people to lie in court. But I have seen nothing here that causes me any concern about Bank of Scotland's conduct. It is understandable that Mr C and Ms L are disappointed that I have chosen to accept Bank of Scotland's evidence, but on balance I am satisfied that the bank did treat Mr C and Ms L fairly in respect of the complaints they make in their capacity as partners in a partnership. (I make no comment about whether Bank of Scotland treated them fairly as directors or as guarantors; for the reasons I explained in my provisional decision I have no power to consider those issues.)

My final decision

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'm required to ask Mr C and Ms L to accept or reject my decision before 20 December 2024.

Laura Colman
Ombudsman