

The complaint

Mr A complains that Bank of Scotland plc trading as Birmingham Midshires (“BM”) repossessed two properties that he had mortgaged with them in 2008, then sold them for much less than the outstanding mortgages. BM is now pursuing him for the shortfall.

What happened

Mr A told us he bought two buy-to-let properties in April 2005. They were mortgaged with BM. The properties were repossessed, and were sold in December 2008. Mr A wanted to complain that the properties were sold for less than the mortgaged amounts. He wanted to know what BM had done to try to ensure that the best price was achieved for both properties. And he said that it had taken BM more than six years to pursue him for this debt, so he thought the debts were now time barred.

Mr A didn’t think he should have to pay the shortfall, and he wanted our service to look at this.

At first, our investigator didn’t think we could look at this, because of the amount of time that had passed. But an ombudsman decided that the rules of our service mean we could.

BM said that it had sold both the properties that Mr A was complaining about in December 2008. It said that it got initial valuations on both properties. Those were still a bit less than the mortgage balances at the time. BM marketed both properties for a few months, but it had no real interest. It then sold them at auction. BM didn’t think it had done anything wrong.

BM said that it had contacted Mr A since about the debts, and he’d acknowledged the debt by making an offer in April and June 2013. The limitation period is 12 years for the capital on a secured debt, so BM said this debt wasn’t time barred.

Our investigator didn’t think this complaint should be upheld. He said that BM had obtained valuations from a firm which was a member of the Royal Institute of Chartered Surveyors. It had marketed the properties for some months with no offers, then they had been sold at auction. Our investigator didn’t think that BM had made mistakes or acted unreasonably. And he didn’t think BM had left it too long to ask Mr A to pay the shortfall from his mortgages. So he didn’t think BM had to do any more.

Mr A didn’t agree. He said we’d been too quick to accept what BM said, and to dismiss the merits of his complaint. Because no agreement was reached, this case was passed to me for 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.

I've reached the same overall conclusion on this complaint as our investigator.

Our investigator set out the steps that BM had taken to try to get the best price for the two properties it had repossessed. I'm also satisfied that BM did what I would expect it to do.

I know that Mr A thinks that BM didn't try hard enough to get a good price for the properties it sold. He doesn't think there should be a shortfall. But I think that BM would also have been better off if it had been able to get more money for Mr A's properties. And I think it did try.

BM has shown us its notes from the time, which include the valuations done for the properties, and notes from the estate agents about attempts to market them. So I can see that the properties were marketed for some months, with no real interest. BM reduced them on the advice of the estate agents, to match the asking price of other properties in the same block, but that didn't make any difference. The properties were then sold at auction.

As Mr A will know, these two properties are on mixed development of flats and houses. I think it's worth noting that, while Mr A's flats were being marketed, the agents reported that a much larger house with garage on the same development had recently sold at auction for rather less than the two valuations on Mr A's properties.

I don't think that BM let Mr A down, or that it's BM's fault that the properties didn't sell for enough money to clear the mortgages on them.

Mr A also said that BM hadn't asked him to pay this debt for some years, so he thought it was time barred. But this was a secured debt, and the time limits on those are different to unsecured debts, like overdrafts or credit cards.

It's not for me to decide on whether this debt is legally enforceable. Only a court can do that. I have to see whether BM has acted fairly or not. And I know that Mr A says it's a long time since BM last chased him for this debt, but I don't think that BM has been unfair in asking Mr A to pay the shortfall on these two mortgages.

I know Mr A will be disappointed, but I don't think this complaint should be upheld.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 27 May 2021.

Esther Absalom-Gough

Ombudsman