

## **The complaint**

Mr N complains delays in Bank of Scotland plc trading as Birmingham Midshires (BM) providing confirmation they'd allow the charge over his property to be released if he sold it at a shortfall, has caused him financial loss.

Mr N is represented in this complaint by his solicitors.

## **What happened**

Mr N had an interest only mortgage with BM which was coming to an end in September 2019. Knowing he'd have to pay the mortgage back, he put the property on the market and in December 2019 agreed to sell it for around £170,000. His estate agents told him that was above market value, but he was still in negative equity.

In January 2020, Mr N instructed his solicitors to deal with the sale. The solicitors asked BM at the beginning of January to confirm their requirements, given the shortfall, for discharging the mortgage once the sale had gone through. When BM didn't reply, the solicitors chased them at the end of the month.

At the end of February BM asked the solicitors to resubmit their request for a redemption statement as the property address information didn't match their records. They provided a redemption figure in mid-March. The notes attached to that letter set out that they wouldn't release the charge if they received insufficient funds and they'd recover any shortfall from Mr N. The solicitors replied asking BM to confirm they'd agree to discharge the mortgage if Mr N paid them the net proceeds of sale even though there would be a shortfall. They noted the buyer was ready to exchange contracts and said BM's delay was holding up the sale.

BM didn't reply and the solicitors chased them again on 12 May 2020 and 19 June 2020. They'd also tried unsuccessfully to contact BM by phone. They pointed out the delay was causing Mr N to pay additional interest when the sale could go ahead, and the mortgage debt could be crystallised.

At the end of July 2020 the solicitors said since they'd been unable to give an undertaking to discharge the mortgage, the buyer had withdrawn from buying the property and the chance to discharge the mortgage and reduce what Mr N owed BM had been lost. The estate agents had advised Mr N that to sell the house at that point, he may need to reduce the price. The solicitors again asked BM to say what their requirements for discharging the mortgage were if a further sale could be agreed, and they made a complaint about BM's failure to respond on that issue. Mr N had another offer to buy the property for around £167,500 at the end of July 2020.

In response to the complaint, BM said they hadn't been able to respond to the solicitors to answer the questions they'd raised, as they didn't have authority to deal with them. They had, however, been trying to contact Mr N direct. BM explained that because of the coronavirus pandemic, all negative equity applications had been put on hold from 20

May 2020 and apologised for failing to let the solicitors know. They asked the solicitors to get Mr N's authority for them to discuss things with the solicitors going forward.

Mr N's solicitors brought his complaint to this service in October 2020 as they were unhappy with BM's response. Our investigator thought there'd been a lack of communication by BM which had obstructed the sale process for Mr N. BM acknowledged they could have done more to make all parties aware they needed Mr N's specific authority for the solicitors to manage their negative equity process on his behalf. They agreed to pay the £600 compensation our investigator felt was fair to resolve Mr N's complaint. Mr N didn't think that covered all his losses and didn't accept our investigator's view. So, his complaint was passed to me to look at afresh.

I recently issued a provisional decision, an extract of which follows:

***What I've provisionally 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'm sorry to hear of Mr N's financial difficulties and the problems that have arisen as he's tried to sell his property. I'm aware things have moved on since Mr N made his complaint in July 2020. This decision only considers what happened up to the date BM responded to his complaint on 25 August 2020. Mr N's solicitors are aware he needs to make a separate complaint to BM about what's happened since then. Mr N can bring that complaint to the Financial Ombudsman, once BM have had the chance to respond, if he remains unhappy.*

*From the available information I can see BM were in contact with Mr N over a long period leading up to the end of his mortgage term to discuss the arrears on his account. In August 2019 BM discussed with Mr N putting a hold on any recovery action while he looked to sell the property. They reviewed his account regularly. But, unfortunately, there was poor communication between the parties involved in this complaint after that.*

*As I understand it, BM were unable to agree to their security over Mr N's property being discharged until they'd considered if Mr N qualified for their negative equity scheme. I understand that under the scheme, which is discretionary, BM may allow a customer to sell their property with negative equity and arrange to pay the shortfall through a payment plan if BM's scheme requirements are met. A borrower has to be in negative equity, have a buyer lined up, not be buying another property and have discussed their options with BM's toolkit team. From what I've seen, I don't think BM explained the process to Mr N or his solicitors during the period this complaint covers, although they tried to contact Mr N about the negative equity situation.*

*The solicitors said BM knew they were acting for Mr N and they had sufficient authority to provide them with the redemption figures they'd asked for. If further authority was needed to consider the request about releasing the charge given the negative equity situation, they'd expect BM to have told them. The solicitors complained they hadn't been able to get through to BM on the phone and that Mr N had had a similar experience. They said Mr N didn't hear anything from BM until a letter dated 22 July 2020 asking him to contact BM's "toolkit team", but his calls to them weren't answered.*

*BM explained they hadn't been able to correspond with Mr N's solicitors about the request to release their charge as they didn't have appropriate authority from Mr N to do so. They acknowledge they could have explained that to the solicitors. But they said they'd tried*

unsuccessfully to discuss things with Mr N. I've looked at BM's records and can see that, although they didn't make the solicitors aware, they'd been trying to discuss things with Mr N both before and after he'd instructed his solicitors to deal with the sale of his property. They found it difficult to get in touch with Mr N, and their records suggest he didn't always respond to their attempts to contact him.

BM knew there was negative equity on the property by early October 2019. They understood from speaking to the estate agent in early December 2019 that an offer had been received, and that in early January 2020 the sale process was in its early stages. They tried unsuccessfully to speak to Mr N, but he doesn't appear to have returned their call.

In January 2020 BM let Mr N know they'd asked an agent to visit Mr N at the property to discuss his situation. Field agents went to his property twice in February. Although they thought his property was occupied, no one answered, and they didn't succeed in speaking to Mr N then. BM rang Mr N twice at the end of the month to discuss the negative equity position. There's no record he returned their calls. They did speak to Mr N when his solicitors wrote to them at the beginning of March. He said he'd contact his solicitors and get back to BM with an update.

BM issued a redemption statement to the solicitors in mid-March. But by mid-April they had no record of Mr N contacting them to discuss the negative equity application. And despite several attempts to ring him, they couldn't get hold of Mr N. BM tried to speak to Mr N's solicitors on around 22 May to let them know negative equity applications were on hold, but weren't able to speak to anyone there.

I understand that whilst BM considered Mr N's solicitors had authority to receive information about the redemption figure, they required separate authority to discuss the negative equity scheme. I don't think that's unreasonable. But I think they could have made that clear when Mr N's solicitors first asked them about discharging the shortfall in January 2020. BM have acknowledged they didn't do enough to make all parties aware they needed specific authority for the solicitors to manage the negative equity process on Mr N's behalf and that potentially this could have avoided delays.

But I think BM made reasonable efforts to contact Mr N to discuss things and, from what I've seen, he often didn't respond to them. So, whilst I can understand Mr N's solicitors found BM's lack of response frustrating, Mr N's failure to speak to BM contributed to the overall delays.

I understand that once Mr N's solicitors were aware of the process that needed to be followed, a discussion took place between Mr N, his solicitors and the toolkit team in around October 2020. It's possible that discussion could have happened sooner if Mr N's solicitors had been aware of the process earlier and they'd been able to advise Mr N about it. But I don't think that ought to have been necessary. If Mr N had responded to BM's attempt to contact him in early 2020, I think it's more likely than not they could have explained the process he needed to follow and the authority they needed to speak to his solicitors about it.

Even if Mr N had made an application sooner, I can't be sure it would have been considered before the scheme was put on hold in May 2020; how quickly an outcome would have been known if it had been considered sooner; whether the application would have succeeded; and if it would have saved Mr N's sale. So, whilst I understand Mr N has incurred additional fees and charges because of the sale falling through, and the value of his property fell, I can't reasonably say BM is responsible for that.

*Overall I think BM could have done more, as they've accepted, to let Mr N and his solicitors know they needed specific authority for the solicitors to manage the negative equity process on Mr N's behalf and what the process entailed. Despite the solicitors writing over several months, BM failed to respond on that issue. I can understand losing the sale will have caused Mr N distress and inconvenience given his already difficult financial circumstances, the impact a reduction in the value of the property would have on the shortfall debt he will owe BM, and the time and effort involved in marketing the property again. Bearing everything in mind, I think it's fair and reasonable for BM to pay Mr N the £600 compensation they're prepared to pay to put things right.*

### **My provisional decision**

*I intend to direct Bank of Scotland plc trading as Birmingham Midshires to pay £600 compensation to Mr N for distress and inconvenience.*

### **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.

Birmingham Midshires accepted my provisional decision and Mr N hasn't made any comments on it. So, I see no reason to change the conclusions in my provisional decision.

### **Putting things right**

For the reasons I explained in my provisional decision, I think Birmingham Midshires should pay Mr N £600 compensation.

### **My final decision**

I direct Bank of Scotland plc trading as Birmingham Midshires to pay Mr N £600 compensation for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 1 June 2022.

Julia Wilkinson  
**Ombudsman**