

## The complaint

Miss A has complained about customer service by Bank of Scotland plc (trading as Birmingham Midshires Mortgages and referred to here as BM). To settle the complaint, Miss A has asked BM to compensate her for the time she spent trying to get through to BM on the telephone, as well as additional interest paid on her mortgage through not being able to pay a lump sum off her mortgage.

## What happened

Miss A has a buy-to-let (BTL) mortgage with BM which is currently on a fixed rate, with an early repayment charge (ERC) applying until 30 September 2023 if the mortgage is repaid in full or in part before that date. The mortgage offer says:

*“... Sometimes you may be offered an opportunity to make regular or lump-sum overpayments without making an early repayment charge. These offers change from time to time. You should ask for details of any current offers before you start making overpayments. Any offers are only a concession and may be changed or withdrawn at any time...”*

The complaint is about the difficulties Miss A had in contacting BM over a period of about two weeks beginning on 28 October 2021, when she tried to telephone BM to make an overpayment on her mortgage. Miss A wanted to check what (if any) offers were available before she could decide what to do.

Miss A has set out in some detail the problems she had trying to speak to someone at BM, and her dissatisfaction and concern in relation to calls she received from BM, when Miss A was asked for security information at a time when she was in a public place.

Miss A complained to BM, which issued its final response letter on 9 November 2021, explaining that it had gone over to a new phone system, which regrettably had resulted in longer waiting times for customers. BM offered to compensate Miss A for the cost of phone calls.

Ms A raised her complaint with the Financial Ombudsman Service. An investigator looked at what had happened. She noted BM had apologise for the long call wait times, but didn't think BM needed to do anything further.

Miss A didn't accept the investigator's findings. She clarified that her complaint wasn't just about her dissatisfaction with the waiting times, but was that she'd not been able to find out if there were any concessions that would have allowed her to make an overpayment without incurring an ERC. As a result, Miss A says she may have missed an opportunity to save interest.

Miss A continued to pursue this with BM, and received a second final response letter in May 2022. BM explained that Miss A was able to overpay up to 10% of the mortgage balance each year (running from 1 January to 31 December) without incurring an ERC. Although

concessions were sometimes available, as at May 2022, BM wasn't offering any other concession.

### **Provisional decision of 12 August 2022**

I issued a provisional decision, in which I reached the following conclusions.

This complaint isn't just about the call waiting times. The main point of concern for Miss A is this: Miss A says that, because she wasn't able to get through to BM on 28 October 2021, she wasn't able to find out if any concessions were available over and above the 10% annual allowance that would have enabled her to pay a lump sum of £70,000 off her mortgage without incurring an ERC. As a result, Miss A doesn't know if she's lost out on an opportunity to reduce her mortgage balance without paying this charge, and, as a result, paying less interest on the mortgage.

BM didn't originally acknowledge this complaint in its original final response, concentrating instead on the problems with its phone system. But in May 2022 BM issued a final response after Miss A continued to press BM for a response.

Miss A told BM she wanted to overpay £70,000. BM said that it didn't "*currently*" have an offer available where customers can overpay more than 10% of the balance without incurring an ERC. But BM didn't say whether or not this had been available on 28 October 2021. Because this is a continuation of the same issue Ms A had raised in her first complaint (and which BM didn't properly address at the time), I think it's appropriate for me to look at this issue here rather than setting up a separate complaint.

I think that if Miss A had been able to get through to BM on 28 October 2021 she'd have been told whether or not a concession was in place. Miss A would then have known whether or not she'd be able to overpay more than 10% of the balance with no ERC. But, as BM has explained, due to issues with its call system, Miss A wasn't able to speak to anyone about this.

However, notwithstanding this, I'm satisfied that Miss A would still have been able to overpay up to 10% of the balance if she'd wanted to, and could have done this by online transfer, whether or not she'd been able to speak to anyone on 28 October 2021. So Miss A could have taken steps to mitigate her position by reducing the balance by up to 10%, thus reducing the interest on the mortgage, even though she might have wanted to overpay by £70,000.

I also think that BM's customer service fell short, not only in relation to call waiting times, but also in BM failing to take Miss A's concerns about security into consideration. Miss A has explained that she told BM she was in a public place, yet was asked for security information which she wasn't comfortable about providing within earshot of strangers. I think this was reasonable and BM should have been more sensitive to Miss A's concerns about this.

BM offered to reimburse Miss A for the cost of her phone calls when she was on hold for extended periods. Miss A has explained that she has an 'all inclusive' phone package, and so isn't charged for individual calls. So whilst BM's offer might seem reasonable, it doesn't, in fact, compensate Miss A at all – either for the time Miss A wasted trying to speak to someone at BM or for the distress and inconvenience in relation to the security issues that I've identified above.

To put things right, I thought BM should do the following:

**Overpayment:** I require BM to confirm whether or not any concession was in place to allow overpayments above 10% with no ERC on 28 October 2021.

If such a concession had been available on that date, Miss A should now be allowed to make a lump sum payment, less 10% of the mortgage balance as it stood on 28 October 2021 (which Miss A could have paid on that date in any event without reference to BM), such lump sum payment to be backdated to 28 October 2021 with interest adjusted as a result.

**Customer service:** For the customer service issues I have detailed above, I require BM to pay compensation of £150 for distress and inconvenience.

## **Responses to the provisional decision**

Miss A hasn't responded, despite a reminder from the investigator, and the deadline set in the provisional decision having passed.

BM confirmed that there was no concession in place over and above the annual 10% allowance that would have enabled Miss A to make a capital reduction to the mortgage without incurring an ERC. BM also confirmed that at no time in the period from October 2021 to date has there been any concession or offers in relation to overpayments, so Miss A hasn't missed out on any additional allowances.

BM confirmed that it agreed to put Miss A back in the position she'd have been in if she'd made the available 10% overpayment on 28 October 2021; in other words, if Miss A made a 10% overpayment, it would be backdated as if she'd made it on 28 October 2021 with the necessary interest adjustment.

BM also agreed to pay £150 for customer service issues.

## **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 see no reason to depart from the conclusions reached in my provisional decision. I'm satisfied that there was no additional concession available in October 2021, nor at any time since. In the circumstances, Miss A hasn't lost an opportunity to pay more than the allowable 10% reduction without incurring an ERC. Miss A is, of course, free to pay more than the annual 10% allowance if she wants to, but this will incur an ERC.

BM has agreed to put Miss A back in the position she'd have been in if she'd been able to speak to someone on 28 October 2021. As I said in my provisional decision, Miss A could have made a 10% overpayment at that time online, so I think the bank's offer is fair and reasonable. I also do not intend to make any changes to my award for distress and inconvenience.

### **Putting things right**

Miss A is now able to make a 10% overpayment on her mortgage which BM has agreed to backdate to 28 October 2021. If Miss A wants to do this, she must do so before 28 October 2022.

I also direct BM to pay Miss A £150 compensation for distress and inconvenience arising from customer service issues.

### **My final decision**

My final decision is that I uphold this complaint. In full and final settlement I direct Bank of Scotland plc trading as Birmingham Midshires Mortgages to settle the complaint as directed above. I make no other order or award.

This final decision concludes the Financial Ombudsman Service's review of this complaint. This means that we are unable to consider the complaint any further, nor enter into any correspondence about the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A to accept or reject my decision before 12 October 2022.

Jan O'Leary  
**Ombudsman**