

The complaint

Mr H and Mrs O have complained about how Bank of Scotland plc, trading as Birmingham Midshires ("Birmingham Midshires") handled arrears and other administration issues with their main residential mortgage account as well as their buy-to-let mortgage.

What happened

Mr H says that he and Mrs O separated in 2015 and the cost of the divorce forced him to sell the property he had a buy-to-let mortgage on in 2017.

After the event, Birmingham Midshires informed Mr H that it had discharged the title deeds for the wrong property – the residential property instead of the buy-to-let property. Mr H says he had to speak to Birmingham Midshires several times over many months to sort out the error.

Mr H says Birmingham Midshires asked him, and Mrs O, to sign a confirmatory charge to replace the deed of consent on the property and he believes there was a section of that charge missing which allowed a second charge to be applied to his residential property later on. Mr H says Birmingham Midshires is responsible for the problems that arose from this mistake.

Mr H has raised other concerns as follows:

- He doesn't think Birmingham Midshires treated him fairly during the coronavirus, Covid-19 pandemic ("the pandemic"). Specifically, because it refused to offer him any payment deferrals during this time.
- He's asked a number of times for Mrs O to be removed from the mortgage and for the term to be extended, but Birmingham Midshires has not helped him with this.
- He has received conflicting information by letter. For example, he was invited to capitalise the arrears on the residential mortgage, while at the same time being told Birmingham Midshires was starting legal proceedings. And when he attempted to capitalise the arrears he was turned down.

Birmingham Midshires looked into Mr H and Mrs O's complaint and confirmed it had made an error when the buy-to-let property was sold. As the addresses were very similar it accidentally discharged the wrong property. But it said the second charge was a result of Mr H applying for lending through a third party and so it can't be held responsible for that.

Birmingham Midshires said despite the impact of the pandemic, Mr H and Mrs O had longstanding arrears dating back to 2015, so it considered Mr H's request for payment deferrals, but Mr H didn't meet the criteria it was applying at the time. This was because Mr H was in nine months' arrears and needed to be under six months' arrears to qualify. Birmingham Midshires said it felt a payment deferral might have been a temporary fix but would mean the monthly instalments would go up and it was not persuaded this was sustainable for Mr H.

Birmingham Midshires understood Mr H wished to remove Mrs O from the mortgage, but said it told him he needed to arrange this through a broker and complete the relevant application.

Our investigator looked into Mr H and Mrs O's concerns and suggested Birmingham Midshires rework the account as though six months of payment deferrals had been granted. They said this should be reflected on Mr H and Mrs O's credit files. That Birmingham Midshires should consider capitalising any remaining arrears and award compensation of £350 to Mr H and £150 to Mrs O for the stress and inconvenience caused by this and the incorrect discharge of title deeds. Finally, Birmingham Midshires should consider capitalising any remaining arrears. And Mr H and Mrs O should submit an application for changes to be made to the mortgage if they want to – Birmingham Midshires can then assess whether it's prepared to make those changes.

Birmingham Midshires accepted the investigators suggested settlement, but Mr H felt this wasn't enough, so the complaint was referred to me for a 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 want to start by acknowledging that Mr H has provided a considerable amount of information and has raised a number of additional complaint points since first approaching this service. Although I've read and considered the whole file, I'll only comment on what I think is relevant to this complaint and necessary to explain my findings. I say this because any further detail could reduce Mr H and Mrs O's anonymity when the decision is published. It's also not within my remit to include complaint points that Birmingham Midshires has not had the opportunity to investigate itself.

In relation to the points I have considered, I think Mr H and Mrs O's complaint should be upheld. I'll explain why.

Discharge of the wrong property

Birmingham Midshires has accepted that it accidentally discharged the title deeds of the wrong property and it has corrected this. Mr H says he wouldn't have had a second charge against the property if it weren't for this mistake – a second charge that resulted in him temporarily losing possession of his property. I've thought about this carefully, and I think Mr H and Mrs O should be compensated for the stress and inconvenience this caused. But I don't think Birmingham Midshires is responsible for the problems that followed.

It has transpired that Mr H's sister owned the freehold to both properties and decided to extend the lease on Mr H's residential property, having previously already extended the buy-to-let. Mr H told us he was unaware the lease had been extended on the residential property and ended up entering into a monetary loan to pay for the lease extension. He says he thought he was communicating with Birmingham Midshires through its solicitor.

Birmingham Midshires has confirmed it is not involved in anyway and did not hire the solicitor Mr H was in discussion with. As the complaint Mr H is making concerns a third party and not Birmingham Midshires, it wouldn't be appropriate for us to look into this further. If Mr H wishes to pursue a complaint about this he would need to take that up with the relevant business, which appears to be connected to the loan he took out.

Mr H says he spent several months trying to resolve these issues with Birmingham Midshires and I do think both he and Mrs O should be compensated for the stress and inconvenience caused to them. It does appear though that a significant amount of the confusion stemmed from third parties' involvement in Mr H and Mrs O's property and so I must make it clear that the compensation reflects the errors Birmingham Midshires was responsible for only. It's also fair to say that these events would have had a greater impact on Mr H than Mrs O as he was the one residing in the property and dealing with much of the correspondence involved.

Payment holidays

Mr H asked for a payment deferral in March 2020 and again in February 2021. Birmingham Midshires initially agreed to the payment deferral, but later declined it for the reasons explained above. Instead, in April 2020, Mr H was offered a three-month nil payment arrangement. Birmingham Midshires says this meant it would not be chasing him for payments or move to legal action, but it would also not recalculate the payment after this. And in February 2021, when Mr H asked for a payment deferral again, as the account was still in arrears of more than six months, Birmingham Midshires did not grant a payment deferral and he was not offered any other arrangement.

The Financial Conduct Authority ("FCA") issued guidance to businesses in relation to the pandemic in March 2020. It said the guidance applied to all customers regardless of whether they were in a payment shortfall and that customers in this situation should not be treated less favourably than other customers. So, while Birmingham Midshires may have relied on the guidance set out in its own policy – I don't think its decision in terms of Mr H and Mrs O's particular circumstances was in keeping with the recommended approach from the FCA.

While Mr H had been struggling to keep up with his contractual monthly payments ("CMPs") for some time prior, he did give valid reasons for his inability to meet his CMPs during the pandemic. Mr H was self-employed, and his work was directly linked to the industry he worked in, so it's understandable that his income suffered significantly during this time. Mr H confirmed that he had to make significant changes to his business during this time and prior to this, he had been making efforts to reduce his arrears.

For these reasons, I think Mr H should have been granted payment deferrals starting from his first request in March 2020. The payment holiday should then have continued for six months up to August 2020. As I think this should have happened, but didn't, I think Birmingham Midshires should rework the mortgage to reflect this. It should then capitalise the arrears which accrued during that period if Mr H and Mrs O agree. Mr H and Mrs O's credit files should also be updated to reflect that they had a payment deferral for this six-month period.

Again, I think Mr H and Mrs O should be compensated for the stress and inconvenience caused to them, but that the impact on them would have been different. Mrs O was affected in terms of her credit file, but Mr H was affected in terms of both his credit file and his exchanges with Birmingham Midshires while trying to arrange the payment deferrals. I say this because to my knowledge, Mrs O had not been contributing to the mortgage for some time.

Changes to the residential mortgage

I have seen evidence that confirms Mr H informed Birmingham Midshires he wished to remove Mrs O from the mortgage and extend the term. On each occasion, Mr H was informed that he would need to apply for any changes through a broker and his application would be reviewed.

While I appreciate Mr H may have expected Birmingham Midshires to be able to do this more easily for him – I don't think Birmingham Midshires has done anything wrong here. It cannot make those changes to the mortgage without assessing the circumstances properly and relevant forms would need to be submitted in order for it to do this.

Birmingham Midshires recommended Mr H do this through a broker and it was then up to him to decide what to do next. From what I've seen, Mr H chose not to submit any applications for changes, so Birmingham Midshires is not responsible for the property remaining in Mr H and Mrs O's names or for the term remaining as originally agreed. But it should consider Mr H and Mrs O's application/s should they chose to submit any.

Conflicting information

I understand Mr H was receiving letters with conflicting information and that this would have been confusing to him at the time. But I've seen call records where Birmingham Midshires explained the letters were auto generated and advised him to ignore the content of letters that conflicted with the information he had been given over the phone.

So, Mr H was encouraged not to place too much weight on the letters and considering the length of time his mortgage has been in arrears and he remains in the property – it seems the advice he was given over the phone was correct. I appreciate this would have caused some stress though and I think that is reflected in the overall compensation for the stress and inconvenience caused which I have set out below.

Putting things right

Bank of Scotland plc, trading as Birmingham Midshires should:

- Reconstruct Mr H and Mrs O's account as though payment deferrals were granted for six months from March 2020 onwards. It should then capitalise the arrears which accrued during that period, if Mr H and Mrs O agree.
- Correct Mr H and Mrs O's credit files for the period where they should have been on a payment deferral.
- Compensate Mr H with £350 for stress and inconvenience the above errors have caused him.
- Compensate Mrs O with £150 for the stress and inconvenience caused to her.

- Consider capitalising any remaining arrears once the above changes have taken place, and it should inform Mr H and Mrs O of any new CMP amounts before it makes any changes.

It should consider Mr H and Mrs O's application to change the ownership and term of the mortgage should they submit an application.

My final decision

For the reasons I've given, my final decision is that I uphold this complaint and direct Bank of Scotland plc, trading as Birmingham Midshires to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H and Mrs O to accept or reject my decision before 14 November 2022.

Hanna Johnson
Ombudsman