

## **The complaint**

Mr H complains that Bank of Scotland plc trading as Birmingham Midshires refused to accept a reduced amount in settlement of his buy to let mortgage and secured personal loan and didn't send him a redemption statement.

## **What happened**

Mr H has a buy to let mortgage and secured loan with Birmingham Midshires. In March 2021 he received an offer to buy the mortgaged property – but it wasn't enough to clear the balance outstanding, service charges and other costs associated with selling. Mr H said he asked Birmingham Midshires to consider a reduced settlement amount to repay the balance. But Birmingham Midshires never got back to him.

Mr H said that the property is empty as the tenant left when Birmingham Midshires threatened repossession. He has now lost the offer to buy the property and is left to maintain the mortgage and other costs relating to the property.

Mr H said he had been disputing the balance of the mortgage with Birmingham Midshires since 2019. He had over £40,000 equity in the property at that point and now he has almost nothing. He wants Birmingham Midshires to accept £100,000 in settlement of the mortgage.

In September 2021, Birmingham Midshires said it would accept £150,000 in settlement of the Mr H's debts. But Mr H declined that offer because Birmingham Midshires said he owed £156,093 – and that was £10,000 less than he'd been told in March 2021.

The investigator thought the complaint should be upheld in part. He said that Birmingham Midshires should pay Mr H £200 to reflect that it didn't set out how the balance was made up in September 2021. The investigator didn't think Birmingham Midshires was responsible for Mr H not selling his property.

Mr H didn't accept what the investigator said.

## **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.

It appears that Mr H's relationship is with Bank of Scotland trading as Birmingham Midshires. The complaint was originally set up against another bank in the same group. But I'm satisfied the correct business is Bank of Scotland trading as Birmingham Midshires.

I am not considering any complaint about the balance of the mortgage or secured loan as part of this complaint. That is being dealt with separately. I can't see how I could reach a fair outcome on whether the balance was correct in March or September 2021 while there is another investigation going on into whether the balance was/is correct. That would involve me making findings on the balance that would interfere with the ongoing investigation and potentially restrict the findings the investigator could make. And I note that Birmingham Midshires' final responses to the issues with the balance were issued after this complaint was referred to us.

The facts of this complaint aren't in dispute. It took two weeks for Birmingham Midshires to send Mr H a redemption statement. That was longer than it should have been. And it took around six months for Birmingham Midshires to agree a reduced settlement figure. Again it wasn't fair or reasonable for Birmingham Midshires to take that long. And the information on the settlement agreement wasn't clear. I can see why Mr H questioned it. In saying that Mr H was contractually obliged to pay the full amount due (although the balance due is disputed). It was a concession for Birmingham Midshires to agree to accept a reduced amount. And I can see why that might have taken longer than Mr H wanted – although six months was unreasonable.

Where a business has made a mistake, the starting point for me is to put the affected party back in the position they would have been in had the mistake not occurred.

Mr H considers that he wasn't able to sell the property because the offer he had wasn't sufficient to repay the mortgage and loan and meet other costs associated with selling. But even if Birmingham Midshires had responded in a reasonable timescale, I don't have sufficient evidence that the sale of the property would have gone through. I say that because Mr H hadn't exchanged contracts. There are many reasons why a sale might fall through.

I also understand that Mr H took his property off the market in March 2021. This was his decision. But I don't see how Birmingham Midshires could fairly be held responsible for any losses and costs he has incurred as a result of that. While I appreciate why he couldn't accept the offer he'd received in March 2021, his actions prevented the possibility of another offer being made. That may have been sufficient to cover any of the losses he is now claiming.

I accept that Mr H has been caused distress and inconvenience because of what happened. But I am only making an award to reflect the distress and inconvenience caused by Birmingham Midshires where it hasn't acted fairly or reasonably. Mr H was already in a stressful situation. His mortgage was in arrears, he'd lost his tenant and he'd had to manage the ongoing cost of the property. I don't consider that Birmingham Midshires is responsible for all of the distress and inconvenience that Mr H has experienced as a result of this matter. I agree that its failures have contributed and added to the stress Mr H has suffered. But after careful consideration, I consider that a total payment of £500 is a fair amount to compensate Mr H for Lloyd's errors.

### **My final decision**

My final decision is that Bank of Scotland plc trading as Birmingham Midshires should pay Mr H a total of £500 in respect of this complaint – less any payments it has already made.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 25 October 2022.

Ken Rose  
**Ombudsman**