

The complaint

Mr A and Mr I complain that Bank of Scotland plc trading as Birmingham Midshires (BM) unfairly reported late payments to the credit reference agencies in relation to their mortgages.

What happened

Mr A and Mr I held two mortgages with BM. In or around June 2022 they were looking to refinance the mortgages and move to a different lender when they noticed a late payment had been applied by BM on their credit files. They felt this would delay their attempts to complete the refinancing.

Mr A and Mr I say they make the payments for the mortgages online via faster payments by the end of each month because they'd previously been victims of fraud, so they didn't like to leave large amounts sitting in their account. They felt that the transfer was immediate and said the payment was made on 30 April 2022 so felt the late payments had been applied unfairly. Mr A and Mr I asked BM to remove the late payment markers but after looking into things BM said it wasn't able to do this. Mr A and Mr I complained to BM about its refusal to remove the late payment markers.

BM said the mortgage payments needed to be made by the 28th of each month, although if payments were made by the end of the month, it wouldn't normally record a late marker. BM say that Mr A and Mr I's April payment wasn't received until 3 May 2022, so it didn't think it had acted unfairly and it didn't uphold their complaint.

Mr A and Mr I remained unhappy so referred the complaint to this service. Our investigator said BM hadn't made an error when it recorded the late payments for the mortgages because it was obliged to accurately report any missed or late payments and he was satisfied that Mr A and Mr I's payment for April 2022 was late.

Mr A and Mr I didn't agree. They said that they made the payment by the end of the month and didn't feel it was their fault that the payment didn't arrive with BM until 3 May 2022. They said the payment left their account on 30 April 2022, so it was made in time. Because they didn't agree the complaint has been passed to me to decide.

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.

Mr A and Mr I's payments were due on the 28th of the month. BM have told us that it collects payments between the 1st and 28th of each month because every month has 28 days. But where a customer chooses to make payments by a different method (anything other than direct debit) their payments for the month must clear by with it by the end of the month. Mr A and Mr I decided to make manual payments each month, so it was for them to ensure that the payment reached BM by the end of the month.

The general conditions of the mortgage set out that:

“Any payment will be credited to the borrower’s mortgage account on the day it is *received* as cleared funds by the Lender.”

Mr A and Mr I say that Mr I is registered blind, and he wasn’t made aware of the general mortgage conditions when he, in his sole name, took out the mortgages in 2008. But BM didn’t recommend the mortgage to him at the time, and it seems he took this out through a broker, who would have needed to make him aware of the terms and conditions relating to the mortgage. And it’s likely that Mr A would have needed to agree to the general mortgage conditions when he was added to the mortgage. BM have also told us they haven’t been made aware of Mr I’s disability, so overall I can’t fairly say BM has done anything wrong here.

In any event, I can see both Mr A and Mr I were sent a letter in September 2021 to both their individual addresses which set out the payment date for the mortgages as the 28th of the month. It said because Mr A and Mr I weren’t paying by direct debit they would need to ensure that the payments reach the account on time. And if the payments didn’t reach the account by the payment date their account could go into arrears.

I note Mr A and Mr I say they didn’t receive these letters, but I have been provided copies of them and they are correctly addressed to them. And whilst I accept that not all post reaches its destination and recipients, it remains that the vast majority of correctly addressed post is correctly delivered. So in the absence of independent evidence to the contrary (for example, evidence that Mr A and Mr I were both experiencing postal problems at the time), on balance I am satisfied that the letters would, most likely, have been correctly received. So overall I’m satisfied Mr A and Mr I should reasonably have been aware of when they needed to make the monthly payments.

I appreciate this could cause problems for Mr A and Mr I’s application for a new mortgage. But I don’t think it’s fair and reasonable to require BM to remove the late payments. I’ve explained why below.

- BM made Mr A and Mr I aware of the payment dates and also alternatives to making payments manually if they so wished.
- Mr A and Mr I say as long as they made the payments by the end of the month, their payments wouldn’t show as late. BM say that is right. However, in this instance the payments weren’t made into the mortgage account by the end of the month.
- The payment was sent on 30 April 2022 which was a non-working day, and the following Monday was a bank holiday – so even though it was made via faster payments, as the payment was made on a non-working day the regulations say that the payment can take up to the next business day to be received.
- Mr A and Mr I haven’t been able to provide evidence that they actioned the payments in the appropriate time, or that they arrived late due to a technical problem or bank error.
- BM has to record accurate and up to date information with the credit reference agencies. Mr A and Mr I agreed to this when they took out the mortgages. The payments were late, and there’s no evidence this was due to an error by BM. I don’t think it was incorrect or unfair to record the late payments.
- BM fairly considered Mr A and Mr I’s request to remove the adverse data. I think it

fairly considered the information provided by Mr A and Mr I that they made the payments on time. But I don't think it was unreasonable for BM to come to the conclusions that the payments had been received late.

I know Mr A and Mr I will be disappointed. But I don't think it's fair and reasonable to require BM to remove the late payments from their credit files.

My final decision

For the reasons mentioned above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A and Mr I to accept or reject my decision before 19 January 2023.

Jag Dhuphar
Ombudsman