

The complaint

Mr E and Ms E complain that, although Mr E hasn't changed how he makes the payments to this mortgage with Bank of Scotland trading as Birmingham Midshires ("BM"), they are now getting late payment markers put onto their credit files.

What happened

Whilst this complaint is brought by both Mr E and Ms E, as the mortgage is in both their names, our dealings have mostly been with Mr E. So I'll mainly refer to him in this decision.

Mr E said he'd had a mortgage with BM for some years, and had always paid on either the last day of the month, or the first day of the following month. Mr E said BM hadn't objected to this, until in September 2021 it made changes to his mortgage account, including consolidating his previous separate accounts into one. Mr E said all sorts of things started to go wrong then.

Mr E said that after this, the first payment made onto his consolidated account was made on the first of the month, and this resulted in a "missed payment" entry on his credit file. He said he complained, and this was changed to "one month late". Mr E said this happened on the next two monthly payments, and he complained again each time.

Mr E said that each time he complained, BM paid him compensation, and changed the credit file entry to say "one month late". Mr E said he'd then paid on 31 December 2021, 31 January 2022 and 1 March 2022 as per usual. Mr E said BM wrote to him again after the 1 March payment, and his credit rating had gone down, but there was no entry on his credit file.

Mr E said BM seemed to have the worst accounting system, resulting in many mistakes, but also there was no consistency with how it deals with his payments. Mr E said for the last year, he'd made payments in the same way, either the last of the month or the first of the next month, and he now had three entries on his credit file saying that he'd paid "one month late" which just wasn't how he was paying. Mr E said his mortgage with BM ends soon, and until these markers were removed, he couldn't get a new mortgage.

BM has sent Mr E a number of complaint response letters since it consolidated Mr E's mortgage and updated its payment systems. I think it's worth setting out here what each of those letters dealt with.

On 28 September, BM confirmed his new mortgage number (ending 900) which it had notified him of in July. It was sorry it had credited a payment to the wrong sub-account, and it would sort that out. It paid him £100 to say sorry.

On 31 December, BM said it had checked Mr E's mortgage again, and it had incorrectly allocated a payment, so it was putting that right. In this letter, BM also said it used to apply Mr E's payments to the month that had passed. Mr E completed his mortgage on the 2nd of the month, so his first payment was collected on the 2nd of the following month. But now BM was applying payments a month in advance. This change meant there was a small amount (less than £25) of unpaid interest, for the changeover day. Mr E could either pay that over

the lifetime of the mortgage or in a one-off payment. BM also said it had changed some of Mr E's mortgage from interest only to interest and repayment when it moved to the new system. It had fixed that too. BM paid Mr E £150 to say sorry.

On 19 January, BM wrote the first letter which refers to Mr E's complaint about his credit file. BM said it would pay back the £15 Mr E had paid to check his credit file, but it wouldn't uphold his complaint about late payments being reported to credit reference agencies ("CRAs"). BM said Mr E was paying late. Since the account system update, if Mr E didn't make his monthly payment in the same calendar month that it was due, BM would report this to the CRAs as a late payment.

Confusingly, having said it wouldn't uphold his complaint, BM did then offer to amend Mr E's credit file for September, October and November 2021, given the confusion around his payments when his account migrated to the new system. This letter says BM has submitted a request for his credit file to be amended. It then asks him to send proof that his payments left his bank account on time in those months. So BM may have been waiting for this proof, before it updated his credit file.

BM also said in this letter that in future, Mr E could change the payment due date for his mortgage to the beginning of the month. That would make sure he paid his mortgage in the same calendar month.

BM sent a letter chasing arrears on 1 March, and then a letter thanking Mr E for payment on 8 March.

On 14 March, BM sent a further complaint response letter, dealing with Mr E's complaint about the 1 March arrears letter it had sent him. BM said it was sorry that he'd had a few problems since it migrated his account to the new system, but it didn't think the 1 March letter was caused by that. BM said Mr E was regularly making a manual payment on the last day of the month. Sometimes BM wasn't getting that until the start of the next month. It didn't receive the payment due on 28 February until 1 March 2022 and because of this it wrote to Mr E to let him know the payment had been missed. BM also explained why Mr E was being asked for a different amount.

In this letter, BM said that as Mr E makes manual payments, he might want to think about making the payment the day before this is due, to ensure the funds are credited to his mortgage in time.

On 5 April, BM sent yet another letter, saying it hadn't changed its mind. It explained how Mr E had ended up with a small credit balance, and said that it couldn't confirm when Mr E had made his November payment, just that it was only received by BM on 2 November.

Our investigator didn't think this complaint should be upheld. She said Mr E's complaint was primarily about how BM had changed its approach to the payments Mr E made, and was now recording some payments as late, although how Mr E made his payments hadn't changed.

Our investigator said that BM had changed the system it uses for processing payments in September 2021. She said we'd expect it to have warned Mr E about this change, and it did so in June 2021. BM sent a follow up letter in September 2021. So our investigator thought BM had been fair, in warning Mr E of upcoming changes.

Our investigator said that BM had to provide accurate reporting to CRAs, like all lenders. Our investigator said she could see that Mr E's payments for September, November and December 2021 didn't clear before the end of the month. So they were late payments, and

BM had reported that to the CRAs. Our investigator said BM had made three compensation payments to Mr E, but none of those were linked to mortgage payments being made late.

Our investigator understood Mr E's frustration, because he hadn't changed what he was doing, but she said BM had changed, and it had told Mr E about the changes. She said BM had offered to amend his credit file if he could show the payments for September, October and November 2021 left his account in the right months. And BM had suggested Mr E might want to pay his mortgage by direct debit in future. She didn't think it had to do any more.

BM agreed, but Mr E and Ms E both replied to say they didn't.

Ms E said compensation should also be paid to her. She hadn't received any money from BM, but her credit file had also been affected. She wanted to know when she would be paid.

Mr E said that although BM might be telling him now that he could pay by direct debit, it had previously told him he couldn't do that. And he set out a number of dates between 2018 and 2021 when he had previously paid after the calendar month when payment was due, without any impact on his credit file.

Our investigator didn't change her mind. She said BM was saying now that Mr E could pay by direct debit, and the payments he'd shown us where his credit file weren't impacted were made before the September 2021 change BM had told him about.

Mr E wanted us to show when BM had told him he could pay by direct debit. And he said that he'd also made a payment on 1 March 2022, which wasn't recorded as a late payment. Mr E said that poor and inconsistent record keeping by BM was the problem. He wanted an ombudsman to review his complaint.

Our investigator sent Mr E the letter that BM issued in September 2021, and noted this suggested he might want to pay by direct debit.

Mr E had already requested that an ombudsman consider this complaint, so this case was passed to me for a final decision. I then reached my provisional decision on this case.

My provisional decision

I issued a provisional decision on this complaint and explained why I did propose to uphold it. This is what I said then:

I note that Mr E told us BM had made amendments to his credit file, and that it had paid compensation for the impact that the late markers on his credit file had caused. But I don't think that's what's happened here. It's not clear that any amendments to Mr E's credit file have been made, and I don't think the payments of compensation BM made were in respect of the late payment markers on his credit file.

I do think it's unfortunate that the change to BM's systems has caused some complications with the amount of payment expected for Mr E's mortgage. But, unlike Mr E, I think this is a separate issue to the question of whether his payments should be recorded late.

In June, BM wrote to Mr E to tell him its payment systems were going to change. I don't think that letter was as clear as it could have been about the impact that this change would have. It didn't set out that BM was changing the way it reported to CRAs, and that Mr E would have to be particularly careful to make sure his payments were made on time, as it would report late payments much more quickly to CRAs in future.

BM says Mr E has been paying late for a considerable time, and it has never suggested he do this, or said this is ok. But before September 2021, BM hasn't been reporting these to CRAs as late payments either.

I think if BM was going to change its accounting system, so that any payment not received in the same calendar month as payment is due would count as late, then it did need to give Mr E reasonable warning of this. And I don't think its June 2021 letter did that.

So I don't think that Mr E could reasonably have anticipated that his September payment, made in the same way as he'd been making payments for some years, would be recorded as late with CRAs.

I do think the letter BM issued in September 2021 did explain to Mr E that how BM received and processed payments had changed. And I note that this letter also made a number of suggestions about how Mr E could avoid having late payments recorded on his credit file.

Making a change to his payments, so that he always paid in the same month as payment was due, is something that I would expect Mr E to take a little while to adjust to. I note that BM sent out its letter about system changes in June, for changes to take effect in September. And its terms set out that if BM is changing Mr E's payment date, it will give him at least three months' prior notice.

I know BM says it wasn't changing Mr E's payment date, just enforcing the existing date. But I think a change from tolerating late payments with no penalty, for some years, with no consequences, to reporting payments only a day or two late, is comparable, and similar notice should be given.

Additionally, I think the picture was, as I've said, further complicated by a number of mistakes that BM made when it first migrated Mr E's mortgage to its new system. He was receiving letters saying his payments were late, but BM appears to have explained this by reference to its mistakes, in the first of its complaint response letters that I've set out above. It wasn't until January 2022 that BM told Mr E the late payments it was recording were because he wasn't paying in the right month.

So I think BM should remove any late payment markers on the credit files of Mr E and Ms E, from September 2021 up to and including January 2022. That's because BM didn't tell Mr E before September 2021 that it was changing how it would treat Mr E's payments, and it then muddied the waters with a number of other minor errors on his account, which appeared to Mr E to be the cause of its late payment notifications.

But I don't think BM has to continue to excuse Mr E's late payments forever, just because it has done so in the past. And by January 2022, I do think Mr E had been given enough notice that BM wasn't going to ignore payments made in the wrong month, in the way it previously had done. So I don't think BM has to amend Mr E or Ms E's credit file for payments made after January 2022, if it has recorded late payments since then.

I also think both Ms E and Mr E have experienced some inconvenience from the impact this issue has had on their credit files. I note that BM has not previously paid any compensation in respect of the credit file impact on either party to the mortgage. So I think BM should also pay £200 in compensation to Mr E and Ms E, to be divided equally between them.

I invited the parties to make any final points, if they wanted, before issuing my final decision. Only BM replied.

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 E and Ms E didn't respond to my provisional decision. BM simply said it had nothing to add, and would agree with my suggested resolution.

Neither side has offered any further evidence or argument, and I haven't changed my mind. I'll now make the decision I originally proposed.

My final decision

My final decision is that Bank of Scotland plc trading as Birmingham Midshires must ensure, so far as it is able, that any arrears markers in respect of mortgage payments made between September 2021 and January 2022 are removed from the credit files of Mr E and Ms E. And Bank of Scotland plc trading as Birmingham Midshires must pay Mr E and Ms E £200 in compensation, divided equally between them.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms E and Mr E to accept or reject my decision before 28 December 2022.

Esther Absalom-Gough

Ombudsman