

The complaint

Mr N has complained about a buy-to-let mortgage he held with Bank of Scotland plc (trading as Birmingham Midshires).

What happened

I won't set out the full background to this complaint as it is extensive and goes back many years, but I can confirm that I have read and understood everything that has been said and provided.

There has been previous complaints and litigation, culminating in the property being taken into possession and sold in 2022.

I issued a provisional decision in February 2023 which set out my thoughts on which parts of this complaint we should consider, and also whether or not I thought the complaint about the parts we should consider should be upheld.

Both sides have had an opportunity to comment on my provisional thoughts, and a few days ago I issued my decision setting out which parts of this complaint we should consider. I now issue this decision explaining whether or not I uphold the remaining part of the complaint.

What I've decided – and why

I issued a provisional decision in February 2023, my findings – about the merits of the part of the complaint we'll be considering - said:

"The property was taken into possession and sold. Mr N has complained that he is being pursued for the shortfall in the mortgage repayment, as the property sold for less than the amount owed.

As I've explained, I'm not considering a complaint about whether the property should have been repossessed or whether there was a valid debt outstanding. That means, my starting point here is that because the property was sold for less than the amount owed, Mr N owes the shortfall sum, and therefore that sum isn't being falsely claimed.

Mr N has said he's received threatening demands from a debt collection agent "maliciously and falsely claiming" the shortfall sum.

It's not possible for us to carry out a detailed or forensic audit of an account history. It's open to Mr N to instruct a suitably qualified independent accountant to do that for him. That would have to be at his expense, though if an error were found to his financial detriment he could include any reasonable costs of finding it in any fresh complaint that followed. But as things stand, I'm not persuaded that Bank of Scotland has mis-managed his account.

Having considered the letters Mr N has made reference to, I don't agree that they are malicious. They contain factual statements about the debt and ask Mr N to make contact so matters could be discussed. That is entirely what I would expect in this situation.

I appreciate that hearing about the shortfall debt was unwelcome, but Bank of Scotland hasn't done anything wrong in requiring that to be paid, or in instructing a debt collection agent. I would suggest that Mr N speaks to someone qualified to give him free debt advice about this - such as StepChange or Citizens Advice. We can provide Mr N with contact details for those agencies, if he'd like us to do so.

Having considered everything I'm satisfied Bank of Scotland is allowed to pursue the shortfall debt, and didn't act inappropriately when it appointed the debt collection agent to contact Mr N about it.

Mr N has also commented on an email he received from Bank of Scotland's solicitor in June 2022 in which it said it had been instructed to close its file and any further correspondence should be sent to the bank directly. It is unclear what Mr N feels Bank of Scotland did incorrectly here as by then the property had been sold and so the solicitor's role in the process had come to an end. I wouldn't expect Bank of Scotland to keep its solicitor instructed in these circumstances.

I've considered everything Mr N has said and provided about what has happened since the property was taken into possession and sold and I don't think Bank of Scotland has acted unfairly or unreasonably. For the reasons given I don't uphold this part of the complaint."

Mr N responded to my provisional findings but everything he said related to the points I'd said I wouldn't be considering. He didn't raise any new points about this issue.

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, and having reviewed the full file afresh, I see no reason to depart from my provisional findings on this point.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 10 April 2023.

Julia Meadows
Ombudsman