

## **The complaint**

Mr R complains about how Bank of Scotland plc, trading as Birmingham Midshires (BM), has handled his mortgages. He also complains about its poor communication with him.

## **What happened**

Mr R had three buy-to-let (BTL) mortgages with BM. Following his bankruptcy in early 2015 (from which he has since been discharged), his trustees took over one of the mortgaged properties and sold it. The sale left a shortfall of just over £27,000.

In 2017, Mr R complained to BM that he was still being asked to pay the shortfall debt. BM sent him its final response about this on 30 August 2017. It apologised, said it would stop asking Mr R for payment, and paid him £500 compensation. It says it later increased compensation to £750.

In 2022, Mr R complained to BM that the shortfall debt was still showing on his credit file and that had been the case ever since the property was sold. He said this wasn't right, since his bankruptcy meant he wasn't liable for the debt. He wanted it removed so he would have a better chance of getting a residential mortgage.

On 10 January 2023, Mr R referred his complaint to the Financial Ombudsman Service. He said he had written to BM eight times but it had failed to respond to him, and he had made multiple requests for his credit file to be corrected.

Mr R also complained about one of his other mortgages with BM, saying that BM hadn't told him until recently that he couldn't live in the mortgaged property, and so the mortgage had been mis-sold.

Our Investigator found that BM had sent Mr R a final response letter on 28 June 2022, and that Mr R had asked us to look into this complaint more than six months later – outside the time limit. The Investigator concluded that we can't look into Mr R's complaints that BM didn't make it clear he shouldn't live in a BTL property and that the mortgage on that property was therefore mis-sold.

The Investigator also found that we can look into Mr R's complaints about BM's failure to amend his credit file, and BM's complaint-handling.

Since Mr R referred his complaint to us, BM had sent him another final response letter in February 2023. It apologised for having reported wrong information on Mr R's credit file and for not replying to his correspondence, and said it would pay Mr R £800 by way of compensation.

Our Investigator noted that BM said it had corrected Mr R's credit file, and he thought its offer of £800 was fair.

Mr R didn't accept that conclusion. He reiterated that he had written to BM eight times in response to its letter of 28 June 2022, but it had failed to reply – and his referral to the

Financial Ombudsman Service was only a few days over the six-month time limit. He didn't think it was fair that part of his complaint should be time-barred given that BM had failed to reply to him, and these are exceptional circumstances. He also said he should fairly receive far more compensation for the way BM had treated him and the length of time it had ignored him.

I issued a decision setting out which parts of Mr R's complaint I can and can't consider. I concluded that I can't consider Mr R's complaints about not having been told BM didn't consent to him living in a property subject to a BTL mortgage and that the mortgage was mis-sold on that basis, because he had referred them to us too late. I found that I can consider Mr R's complaints about the information BM reported on his credit file about the shortfall debt and its lack of response to his correspondence.

This final decision sets out my conclusions on the parts of the complaint I can determine.

### **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.

There's no dispute that BM put wrong information on Mr R's credit file in respect of the balance which was left outstanding following the sale of one of the mortgaged properties a number of years ago. There's also no dispute that BM failed to reply to Mr R's correspondence about this. BM has apologised to Mr R for its mistakes and said it would amend his credit file and pay him £800 in compensation.

In all the circumstances, while I realise this isn't the outcome Mr R was hoping for, I think BM has done enough to put things right, and it has made a fair and reasonable offer of compensation.

Mr R was concerned about the impact the shortfall debt on his credit file could have on an application for a new mortgage, and I think that's understandable. However, his bankruptcy wasn't discharged until 2021, and, as our Investigator pointed out, Mr R had said in July 2022 that he hadn't looked for better mortgage interest rates in the past. Mr R's financial situation would have affected any application, and in any event he hadn't been looking to apply for a new rate.

Against this background, I find I can't fairly conclude Mr R has lost out financially because of the information BM wrongly recorded on his credit file. BM has said it has now amended Mr R's credit file, and the records it has provided reflect that.

Mr R sent BM multiple letters and emails, but BM failed to respond to them – despite telling him at one point that it would do so and get back to him. As a result, it took significantly longer than it should have done for Mr R's credit file to be amended and for him to get a response to his complaint.

It's clear that BM's failure to reply to Mr R's correspondence caused Mr R distress and upset, as well as inconvenience, and he has had to spend some considerable time on this matter. I consider that he should fairly receive compensation to reflect that. However, awards I make aren't intended to be a fine or a punishment for financial businesses; I don't have the power to make punitive awards. There is more information about awards the Financial Ombudsman Service makes on our website.

In all the circumstances, and having taken careful account of what Mr R has told us, I find £800 is a fair and reasonable award, so I don't require BM to pay any more than that.

**My final decision**

My final decision is that Bank of Scotland plc, trading as Birmingham Midshires, has made a fair offer to put things right. It should pay Mr R £800 compensation if it hasn't already done so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 13 June 2023.

Janet Millington  
**Ombudsman**