

## The complaint

Miss S and Mr S complain that Bank of Scotland plc trading as Birmingham Midshires ("BM") increased their contractual monthly payments ("CMPs") following a system change without adequate notice or explanation.

## What happened

Miss S and Mr S have two buy to let mortgages with BM. Both mortgages are on a fixed rate. In July 2021 BM wrote to inform them of changes to the way their mortgages would be managed following a system change taking place in September 2021. According to BM the CMP was previously calculated from payment date to payment date whereas the new system calculated the CMP from the start to the end of the month.

BM says that in July 2021 it wrote to Miss S and Mr S to advise them of changes to the way their mortgage would be managed and that a system change would be in place for September 2021. It says it then wrote to Miss S and Mr S on 11 September 2021 notifying them of the increase in the CMP in October. Miss S and Mr S say that as they're on a fixed interest rate, their expectation was that the CMP wouldn't change during the fixed rate period.

## Our investigator's view

Our investigator didn't recommend that this complaint should be upheld as BM increased the CMP for their properties but was able to do that under the terms of the mortgage and gave Miss S and Mr S reasonable notice of the change in line with its terms and conditions. Mr S and Mrs S disagreed saying in summary that BM hasn't explained how the figures are arrived at and didn't give adequate notice of the increased payments in accordance with BM's obligations in accordance with the direct debit guarantee.

## My provisional findings

As my view of this complaint differed from our investigator I issued a Provisional Decision in this complaint and said the following:

*"In October 2021, Miss S and Mr S found that their CMPs on their mortgage account had increased. On one account an increase of £2.37 and on the other account by £2.00. Miss S and Mr S want this refunded. Is it due? In its letter of August 2022 BM says that due to a change in its system from October 2021 the CMP would now include interest for the calendar month in which the payment fell due rather than being based on the month prior to the date the payment was collected. But that meant there would be a period of unpaid interest between the last payment date and the end of that calendar month. The letter sets out BM's calculations of what the missing interest would be for both accounts which it calls Held Over Interest (HOI). This is then held on an interest free account and paid over the lifetime of the mortgage by a small addition to the CMP. The other reason for the small additional payments of £0.06 and £ 0.03 is that these were to cover fluctuations in the balance of the account."*

*So, in that letter BM explains why the additional payment has arisen, the basis of its calculation and the figure it arrived at. I also note that under the terms and conditions of the mortgage that it was able to make this change. So, I consider that BM could make these changes. But there is a separate issue as to whether when it made the change BM communicated the system change and the fact of the increased CMP in a manner that was "clear fair and not misleading".*

*Miss S and Mr S got notice of a change to how their mortgage was managed in July 2021. They say they only got one letter referring to one property although they had two mortgages with BM. The letter said that in September 2021, the mortgage was moving to a different system. In October 2021 they got a letter from BM dated September 2021 this time referring to the mortgage on the other property saying that their mortgage was going up a small amount of £2.37 "not because of a system change" but possibly because of charges, costs, or unpaid interest, neither of which were due by Miss S nor Mr S.*

*Miss S and Mr S raised this as a complaint with BM but not, according to the records I've been shown, until many months later in August 2022 and BM replied at that time to say that the increase was because as a result of the transition of systems an amount of interest wasn't collected. This was now called Held over Interest (HOI) and would be collected interest free over the term of the mortgage adding a small amount to the CMP.*

*Miss S and Mr S complain that the increase in their monthly payments was as a result of the new system although the letters they got indicated it wasn't. It seems to me that BM's correspondence was unclear and if a company is increasing a borrower's monthly payments it should communicate with them in a way which is "clear fair and not misleading". I don't consider that in advance of the increase in the mortgage payment that BM met that standard.*

*I accept that subsequently BM has explained how the additional payment arose as set out in its letter of 26 August 2022. It's just unfortunate that this letter didn't precede the increase in payments as it could have avoided a lot of the subsequent customer dissatisfaction that resulted.*

*There are other issues that Miss S and Mr S raise as to whether BM was able to amend the system and it appears to have done so to ensure that the mortgage debt with interest was repaid by the end of the mortgage term in accordance with the terms and conditions of the mortgage. BM say that the letters notifying the borrowers of the increased payments were sent on 11 September 2022 well in advance of the due date of the next payment. Miss S and Mr S refer to the direct debit guarantee scheme and that BM collected the additional payments without adequate notice in breach of the scheme. The purpose of the notice is so that borrowers will have adequate notice that a direct debit will be collected so that they can have finance in place to meet their commitments. There is clearly some dispute between Miss S and Mr S and BM about whether adequate notice was given. But even if I concluded that insufficient notice was given for the first payment collected, I could require BM to refund £4.37 but that would still be due to BM and would be collected by BM later with adequate notice. It doesn't seem to me that any lack of notice was a significant problem for Miss S and Mr S otherwise I expect they would have raised it immediately at that time. I assume they didn't do so as they had a letter informing them of the increase in payment.*

*In summary, Miss S and Mr S had a fixed rate mortgage product and the rate of interest didn't change although there was a small change in the CMP. But as long as the change in the CMP is in accordance with the mortgage contract, there's nothing wrong with that. I don't consider that BM adequately explained why the CMP increased before the increase, but I'm satisfied that this is fully and reasonably explained in its letter of August 2022 including a*

*satisfactory explanation of how the increased figure is arrived at. I consider that BM failed to adequately inform Miss S and Mr S of the reason the increase was occurring to their CMP at the time the increase occurred. I'm not sure how, until they made their complaint, Mr S and Mr S would have known the real reason their payments went up. Because of that I am upholding the complaint. I recognise that this issue must have caused Miss S and Mr S a degree of distress so that they eventually brought the complaint to us and should be compensated for that. I note that the amount of HOI involved in total was about £250. I believe £150 represents fair compensation.*

*Subject to any further submissions or evidence I receive from Miss S and Mr S or from BM by the date referred to above I intend to uphold this complaint and require BM to pay Miss S and Mr S compensation of £150."*

BM disagreed with my Provisional Decision for the reasons set out below. Miss S and Mr S said that they had nothing further to add.

### **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.

BM disagreed with my provisional decision saying that although the pre-migration letter didn't describe all possible outcomes of the migration, the letter sent in September 2021 included more information about Held over Interest. BM make the point that as generic correspondence it couldn't cover all possible scenarios and it's not fair to describe the correspondence as I have done as falling below the standard of being clear, fair and not misleading. BM say that if Miss S and Mr S were concerned about it that they could always have contacted BM as they eventually did and got the response which I have noted was a full and reasonable explanation.

But the letter of September 2021 tells Miss S and Mr S that:

*"Your total monthly payment from 20 October 2021 is £203.35. This has gone up by £2.37.*

*Your monthly payment is more because the amount you owe has gone up since we last worked out a new monthly payment - it's not because of the system change. But could be for a number of reasons, such as:*

- We've added charges or standard costs to your account - we would've written to you about these when we added them to your account*
- There's unpaid interest because you've missed payments and may be in arrears."*

BM says that in this generic letter explaining why the CMP is increasing that it's not covering all the reasons why a CMP may rise. But the two reasons it suggests - charges or arrears on the account suggest that the borrowers have done something wrong that would incur charges or because they missed payments. But the payments went up because of the system change - nothing to do with the borrowers' actions - or as BM said in August 2022 because of the *"transition of systems and interest calculation"*. Instead of telling Miss S and Mr S that in September, BM told them that it wasn't related to the system change but suggested it was to do with charges or missed payments or some sort. I don't consider that the letter is clear and to the extent that it suggests that the increase had nothing to do with the system change but to do with some failures on the part of Miss S and Mr S misleading

for them.

In the light of BM's submissions, I've reviewed the file but remain of the view that my Provisional Decision represents a fair outcome to this complaint.

### **Putting things right**

Bank of Scotland plc trading as Birmingham Midshires should pay Miss S and Mr S £150.

### **My final decision**

My Decision is that I uphold this complaint and require Bank of Scotland plc trading as Birmingham Midshires to pay Miss S and Mr S £150.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S and Mr S to accept or reject my decision before 16 August 2023.

Gerard McManus  
**Ombudsman**