

## **The complaint**

Mr S complains that Bank of Scotland plc trading as Birmingham Midshires (BM) didn't collect payments on his buy to let mortgages, leading to them going into arrears.

## **What happened**

Mr S has several buy to let mortgages with BM, and has done for many years.

In 2022, Mr S was contacted by BM because two of the mortgages were in arrears. No direct debit payments had been taken since September 2021.

In September 2021, BM had written to Mr S to tell him that it had updated the computer system that managed his mortgages. It told him what the changes were and what his monthly payments would be. It also said that it would continue to collect the direct debit set up for each of his mortgage accounts – unless the direct debit was set to come from a savings account (rather than a current account), in which case Mr S would need to set up a new direct debit from a current account.

Mr S says he didn't receive this letter. It was sent to the correspondence address BM had for him – an address I'll call M – but Mr S hasn't lived at that address for some time.

When payments weren't made, BM sent out arrears letters, again to address M. Mr S says he didn't receive these letters either – he only became aware when BM sent a text about the arrears to his mobile phone number.

Mr S complained. He said that his payments were being made by direct debit. The direct debits must have been cancelled when the system changes were made – that wasn't his fault and because BM had written to an old address he hadn't realised the payments weren't being made. He said he had also complained to his bank, which had said there was no evidence that BM had requested direct debits be set up.

BM said that as part of the migration to its new system it had changed the account numbers for Mr S's mortgages. That meant it had cancelled the direct debits on all his mortgages to amend the reference numbers, replacing them with new direct debits with new reference numbers. This went through successfully, and the payments for September 2021 – after the migration – were collected without problem. The first payments that were missed were in October, not September, and its systems showed that the direct debits on these two mortgages were cancelled by Mr S or his bank, not by BM.

Our investigator initially said that it wasn't clear whether the error was caused by BM, or by Mr S's bank. BM said that it hadn't cancelled the direct debits, but the bank said it had no evidence that BM had set up or called for them. The investigator said that Mr S hadn't done anything wrong, and as he had since cleared the arrears it was fair to remove the resulting arrears markers from his credit file. BM agreed to this.

Mr S didn't agree – he said BM was at fault. He provided further evidence from his bank which he said showed that BM had not requested the direct debits to be set up. He also said

that he had been caused substantial losses, because his intention was to re-mortgage these loans, borrowing more money to fund other projects and fixing the interest rates. Because of the adverse entries on his credit file, he hadn't been able to do that. He estimated his losses at around £47,000.

Our investigator considered the further information that had come to light. He thought it suggested that it was more likely than not that it was BM, rather than Mr S or the other bank, that was at fault. But he wasn't persuaded that Mr S had been caused financial loss. He said that BM should pay Mr S £750 compensation in recognition of the considerable stress and upset Mr S had been caused, as well as the amount of time and inconvenience it had taken to resolve. BM agreed with that but Mr S didn't, and so the case comes to me for a final decision to be made.

### **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.

Since BM accepted the investigator's view but Mr S didn't, the main point at issue that I have to decide is what BM needs to do to put matters right.

But before I consider that, I'll just say that I agree with the investigator that it's more likely than not that BM, rather than Mr S or the bank that provides his current account, is responsible for the direct debit failure. That's because:

- The problem occurred immediately after a change to BM's systems – with no changes being made either by Mr S or the other bank. There was sufficient money in Mr S's account to cover the payments and he had not requested any changes to his direct debits.
- The other bank has confirmed that the old direct debit, prior to the system migration, remains live even though BM says its process was to cancel it and replace it with a new one using the new account number as a reference.
- BM says that what should have happened is that the first payment after the system change was made using the old direct debit, and if that validated its systems would then replace that direct debit with the new one. The other bank has shown that BM did make the first payment request following the migration using the old direct debit, and BM's account records show it was received. But the payment after that, which should have been taken via a new direct debit, didn't happen.
- The other bank received no instructions to cancel the old direct debit. The old one remains live on Mr S's account, though BM hasn't used it to call for payment since October 2021.
- BM's transaction history for the mortgages shows a failed direct debit collection. But the other bank has no record of receiving the new direct debit payment request at that time. It appears this was because BM's system used the new reference but the old originator code when calling for the direct debit – so it wasn't recognised by the other bank and no payment was made.

The system migration went smoothly for Mr S's other mortgages, but it appears that there was an error in migrating these two accounts. This error meant that either the new direct debit was not set up correctly or that payment requests were not made correctly, so no payment was received; and although the old direct debit mandate remained live, BM didn't

call for payment on that either.

As a result, Mr S's mortgages fell into arrears. The problem continued for several months, until Mr S received a text message from BM in February 2022 – at which point new direct debits were set up correctly and the problem was resolved.

So I'm satisfied that this situation began because of an error or malfunction in the migration of these two mortgages from BM's old system to the new one, or in the setting up of new direct debits that ought to have followed. However, I don't think it's fair to hold BM entirely responsible for the consequences of that for Mr S.

BM wrote to Mr S several times about the arrears on the account. It hadn't identified that it was at fault, but it had identified payment wasn't being made. If Mr S had contacted BM when the first payment was missed and BM wrote to him, the situation could have been resolved much quicker and more straightforwardly.

BM wrote to Mr S at least once a month on both of the accounts that were in arrears – around ten letters in all. These letters were all sent to the correspondence address BM had, an address I'll call M. But Mr S no longer lived there so he didn't see the letters. It was only when BM sent him a text message in February 2022 that he realised there was a problem.

I think BM acted reasonably in writing to Mr S at the correspondence address he had given it. These were buy to let mortgages, so it wouldn't ordinarily write to the property address – and if it had, Mr S might well not have seen letters sent there either.

It's up to Mr S to make sure his mortgage lender has his up to date contact details, and if he didn't do that it wouldn't be fair to hold BM responsible for letters not reaching him. Mr S says that BM could have rung or texted him sooner. It could, but there wasn't any obligation on it to do so. And generally important correspondence about a mortgage is sent by letter.

Also, because the payments weren't reaching the mortgage accounts, they also weren't leaving Mr S's current account. Mr S says he didn't notice this because he has a substantial property portfolio, so didn't notice two relatively small payments hadn't been made. But as a property professional I would expect Mr S to monitor the income and expenditure of his rental business and make sure his liabilities were being met.

So while BM should have ensured the direct debits were set up properly following the system migration, the error would have been picked up and resolved much sooner if it had the correct correspondence address for Mr S, or if Mr S had noticed that mortgage payments for two of his properties weren't being paid. It's for those reasons that I don't think I can fairly hold BM entirely responsible for the consequences that followed.

### **Putting things right**

Mr S says his losses are substantial. He says that because of the arrears recorded on his credit file when he came to re-mortgage in 2022 he wasn't able to do so. It wasn't until later in the year, when BM corrected his credit file, that he would have been able to apply for re-mortgages. He didn't do so immediately because he'd complained to BM and was expecting that it would put him back in the position he would have been in had the error not happened. And by the end of 2022, when BM said it wouldn't lower the interest rate on his mortgages, Mr S was facing cashflow problems caused by the higher rates – so wasn't actually able to re-mortgage until he'd resolved that in May 2023. Mr S says that as a result he's had to pay higher interest in the meantime and he's now on higher interest rates than were available in February 2022. He estimates these losses at around £47,000.

Mr S also says that when re-mortgaging, he'd intended to raise further finance for business purposes – but missed out on that. And he says that the whole situation has caused him substantial stress and inconvenience – including causing health problems.

I've carefully considered everything Mr S has said about that. But I don't think it would be fair to require BM to repay Mr S's estimated financial losses.

Had Mr S found out about the problem in around November 2021 – which could have happened if BM had his correct address, or if he'd noticed the payments not being made – it could have been resolved by the time he intended to re-mortgage in 2022. I've explained why I think BM was responsible for the original problem – but not for the delay in Mr S finding out about it.

In addition, there's no guarantee Mr S would have been able to borrow the further funds he intended. And while he's provided mortgage illustrations from 2022, no applications were made at that time. BM didn't have new rates available to him, so Mr S would have needed to apply to new lenders. I appreciate he didn't make any applications because he thought they wouldn't be successful because of the arrears on his credit file. And I agree that's likely – but it doesn't automatically follow that they would have been successful but for the credit file issue. They might – but they might not. Mr S might not have met the lending criteria of those lenders for other reasons, such as the size of his portfolio or because of something about the individual properties. The difficulty is that I don't have evidence that means I can safely conclude it's more likely than not Mr S would have been able to re-mortgage or if so at what interest rate. So even if I were to hold BM entirely responsible for no applications being made in 2022, it would be difficult for me to say that Mr S has made a loss or if so to quantify that loss.

I've also considered the health information Mr S has provided, which relates to physical and mental health issues which he says are stress related, and which were not present before this all happened.

The medical evidence shows that Mr S has those conditions. It doesn't show they were caused by BM's actions. But nevertheless I accept that, even if Mr S might have become ill in any event, it's likely the stress and upset of the situation he found himself in would have worsened his conditions and their impact on him.

Overall, I'm satisfied that this whole situation has taken a considerable amount of time and effort on Mr S's part to resolve and has had a substantial impact on him. And while, for the reasons I've said, I don't think BM is entirely responsible I do think it's fair that it pays him substantial compensation for its part in what happened. BM accepted our investigator's recommendation of £750 compensation and I think that's fair in all the circumstances.

Finally, if it hadn't already done so I would have directed BM to remove the records of the arrears from Mr S's credit file. It's clear that this problem began with BM's systems migration and that Mr S was in a position to have paid the mortgage payments had BM called for the direct debits that should have been in place. It wouldn't be fair or accurate for his credit file to show that Mr S failed to pay his mortgage when that was due to BM failing to collect payment rather than Mr S being unable or unwilling to make it.

### **My final decision**

For the reasons I've given, my final decision is that I uphold this complaint and direct Bank of Scotland plc trading as Birmingham Midshires to pay Mr S £750 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or

reject my decision before 29 September 2023.

Simon Pugh  
**Ombudsman**