

The complaint

Mrs E complains Bank of Scotland plc trading as Birmingham Midshires (BM) overcharged her on her mortgage which means she wouldn't have been in arrears when they took action to repossess her property.

What happened

Mrs E took out an interest only mortgage with BM in 2007. She fell into arrears. In 2010 BM capitalised arrears of around £9,865 adding them to the mortgage balance. Unfortunately, the account fell back into arrears and BM started possession proceedings. The court made a suspended possession order (SPO) in early November 2010 under which Mrs E was required to pay the contractual monthly mortgage payment (CMP) and an additional £300 a month to avoid being evicted.

Mrs E wasn't able to keep up with payments after around May 2021 and an eviction was arranged for later that year. The eviction was delayed when an arrangement to pay was agreed. Mrs E made a lump sum payment of around £15,400 in September 2013 to clear the arrears at the time. But arrears built up again. She was made bankrupt in April 2015. And BM went ahead with the eviction in around September 2015. The mortgage account was closed at the end of the year.

In April 2018, following a complaint, BM refunded Mrs E fees and charges she'd paid on the account of around £1,623. And in April 2019 they refunded additional fees and charges of around £834.

In November 2019 BM paid Mrs E around £2,140. That followed a remediation exercise that showed they'd been asking her to pay lower contractual monthly payments (CMP) than she should have been after arrears had been capitalised in 2010. In February 2022, after a review, BM found they hadn't paid Mrs E enough following the remediation exercise and sent her an additional amount of around £6,394.

After she'd received that payment, Mrs E asked BM to review her account. She said BM had created an incorrect level of debt by overcharging her, which had led to the repossession of the property. And she raised concerns about the service BM had provided and the payment she'd made in September 2013.

BM replied later that month. They said all the issues had been looked at previously by them and by the Financial Ombudsman Service. In April 2022 Mrs E asked BM to send copies of revised mortgage statements for the whole of her mortgage, taking into account the sums they'd paid her, so she could review things. In May 2022 BM said again that Mrs E's concerns had previously been addressed and they weren't able to provide revised mortgage statements as they needed to "reflect a true story of events".

In June 2022 Mrs E complained to BM. She said she hadn't been in arrears at the time her property had been repossessed. Since the repossession, BM had returned thousands of pounds since they'd overcharged her. Despite confirming previously she wasn't owed any further money, BM had paid her a further £6,394 after we'd issued a decision.

BM didn't uphold her complaint. Their response dated 19 August 2022 said:

- they'd made payments to Mrs E because *"we didn't calculate your payments accurately for a period of time, which meant the payments we asked you to make were less than they should've been. This payment represented the difference in the payments and would normally have been paid to the mortgage, but as the mortgage is closed, it was sent directly to you. However, the mortgage was still in arrears, and our decision to take the property into possession was correct"*;
- the sums paid through the remediation scheme wouldn't have prevented them from repossessing the property; and
- concerns about the administration of the mortgage and the calculation of interest and charges had already been reviewed by them and decided by the Financial Ombudsman Service, so couldn't be looked at again.

Since Mrs E remained unhappy, she brought her complaint to the Financial Ombudsman Service. She still thought there had been a miscalculation of interest and charges which had led to her property being repossessed. And she felt the payment BM sent her in February 2022 gave her the opportunity to raise questions about her mortgage that we'd said previously were out of time.

Our investigator didn't uphold Mrs E's complaint. She said we couldn't reinvestigate her previous complaints that had been decided by us. And she didn't think the remediation payment BM made to Mrs E made a difference to the repossession action since her arrears had been so high. Since Mrs E didn't agree, her complaint was passed to me to decide. I recently issued a provisional decision, an extract of which follows:

"What I've provisionally 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.

I'm sorry to hear of Mrs E's difficult personal and financial circumstances over past years and the impact it's had on her wellbeing. I can understand her concerns about the management of her mortgage account arose again when BM sent her a cheque shortly after the Financial Ombudsman Service had finished looking into a previous complaint.

Mrs E's set out some detailed points in support of her complaint. I won't set them all out here. No discourtesy is intended by that. It simply reflects the informal nature of the service we provide. I'll focus on what I consider key in coming to my decision. Mrs E has also raised concerns about BM's wider actions beyond her own complaint. Our role is to look into individual complaints, so I can't look into those.

Having considered everything carefully, I've come to broadly the same outcome as our investigator. My reasons are different in part, and I think BM should pay some compensation to Mrs E. So, I'm issuing a provisional decision to give the parties the chance to make further comments before I come to a final decision.

BM are right to say I can't look into issues the Financial Ombudsman Service has previously decided.

In February 2021 a previous ombudsman decided we couldn't consider the issues BM had addressed in their complaint response dated April 2018. That complaint was about BM's failure to refund fees and charges and the distress she'd suffered in contacting them to discuss her entitlement to the refund. BM explained that following engagement with the Financial Conduct Authority (FCA) they'd agreed to refund arrears management fees on customers' accounts between January 2009 and January 2016 (the redress scheme). For Mrs E, they'd agreed to backdate the refund to when her account opened in 2007. In June 2019 Mrs E wanted BM to reconsider making a payment for distress in relation to that complaint. The ombudsman said Mrs E had brought that complaint to us too late.

In September 2021 another ombudsman decided Mrs E's complaints about BM's service failures, and her concerns about the £15,400 payment BM asked her to make and her solicitors' actions.

Mrs E has mentioned issues we've already addressed in her correspondence about this complaint. There are no grounds on which I can reconsider them. But the crux of her current complaint is different. She's concerned that the payments BM have made to her were to repay sums they'd overcharged; if BM hadn't overcharged her, she would never have been in arrears; and if she hadn't been in arrears, BM wouldn't have been able to take action to repossess her property.

I've looked at the figures Mrs E's provided setting out the balances on her mortgage account from time to time. I appreciate the efforts she and her husband went to in putting the figures together from the statements BM provided. However, having looked at all the information available, I don't think they are accurate. For example, from what I can see, Mrs E's figures don't take into account that some of the mortgage payments she made were returned unpaid.

The parties agree BM have paid Mrs E a total of around £10,991 made up as follows, using rounded figures:

- April 2018 £1,623
- April 2019 £834
- November 2019 £2,138
- February 2022 £6,394

The sums paid in April 2018 and April 2019 were refunds of fees and charges. I understand they were made as part of the redress scheme. Mrs E received a total of around £2,457.

I'm not persuaded Mrs E would have avoided repossession of her property even if the fees and charges hadn't been added to her account. They, and the interest charged on them, will have built up over time. So, only a proportion of the £2,457 would have formed part of the arrears at the time of the SPO in November 2010. According to the SPO, the arrears were over £8,600. The statements show arrears management charges of around £1,000 at the time. The CMP was around £1,347. So, even if the charges hadn't been applied, Mrs E would still have been over five months in arrears. And even if the full amount of the refunds were deducted, she would have been around four and a half months in arrears - so the position would still have been the same.

Mrs E wasn't able to keep up with her mortgage payments in the following years. After she'd made the £15,400 payment in September 2013 arrears built up again. She was made

bankrupt in April 2015. And when the property was repossessed in September 2015, the arrears stood at over £17,000. Even if all the fees and charges had been refunded, it's unlikely to have made a substantive difference to her overall position on either occasion given the financial difficulties she's told us about.

I've considered whether, taking all the payments BM have made to Mrs E together, would have changed things. However, whilst the refund for fees and charges could be seen as overcharging by BM, the sums paid in November 2019 and February 2022 were different.

In simple terms, BM's error was to charge Mrs E less than they should have done – not to overcharge her. And the payments they made in 2019 and 2022 were essentially compensation payments, not refunds.

In line with FCA requirements, BM reviewed Mrs E's mortgage account as part of a remediation exercise carried out in around 2019 relating to a number of their customers. In Mrs E's case they found a mistake in their mortgage system had meant they weren't collecting a high enough payment from her each month. BM's mistake started after they'd capitalised her arrears in January 2010. They should have increased her CMP then to make sure she'd paid off the capitalised amount by the end of the mortgage term.

If the mortgage hadn't ended early - and Mrs E had been up to date with the CMP BM had actually been asking her to pay - the amount she would have owed at the end of the mortgage would have been higher than it should have been. In other words, the mortgage would have been "underfunded". To put things right, BM were obliged to compensate her by paying the amount by which the mortgage would have been underfunded, plus interest.

If Mrs E's mortgage account hadn't been closed by the time the remediation exercise had been carried out, BM would have paid the compensation into the account. But since it had been closed, they made a payment to her in 2019 instead. And when their 2022 review found the payment in 2019 had been too low, they topped it up.

It's artificial to consider what Mrs E's position would have been if the compensation payments had been made sooner, since the remediation exercise wasn't carried out until the account had been closed. If BM hadn't made a mistake about the CMP, they would have been asking Mrs E to pay more. Since she wasn't able to pay the full amount BM were asking for anyway, asking her to pay more would only have increased the arrears.

I appreciate Mrs E has remaining concerns about the way in which she feels BM have treated her. I can't consider the service issues, as I've explained. I don't think it's fair to ask BM to pay any additional compensation. They put things right in line with what we'd expect and the FCA required them to do where a lender hasn't charged a high enough CMP and the account is underfunded.

I can understand Mrs E was upset when she received the 2022 letter enclosing the further compensation payment since she thought it supported her view she'd been overcharged throughout the mortgage term. The letter referred back to the one they'd sent enclosing the previous payment in 2019 and it described the payment as a "refund". The explanations for the payments the letters set out weren't as clear as I think they ought to have been to meet FCA guidelines that firms should communicate in a way that is clear, fair and not misleading. BM provided a further, limited explanation in their complaint response that mentioned she'd been paying less for a period of time than she should have been. But I can understand why Mrs E was still concerned she'd been overcharged.

In addition, I don't think BM addressed Mrs E's complaint in their response as they took the view, wrongly, the issues she'd raised had previously been addressed. So, she's had to wait

some time for an explanation. In the circumstances I think it's fair for BM to compensate Mrs E for the distress and inconvenience she's experienced since BM responded to her complaint in August last year. Bearing everything in mind, I think compensation of £350 is fair to put things right.

My provisional decision

I intend to uphold the complaint in part and direct Bank of Scotland plc trading as Birmingham Midshires to pay Mrs E £350 compensation for distress and inconvenience."

Developments

BM have accepted my provisional decision.

Mrs E's commented on the compensation I recommended BM should pay. She doesn't think it's enough to put things right. In summary, she's made the following points:

- BM failed over eight years to explain the reasons for the payments they made to her which is not only distressing and inconvenient, but also negligent.
- BM failed in its duty of care to provide clear explanations over time increasing the level of damage they caused to her.
- The failure to provide reasons for the payments was due to BM's staff lacking in knowledge and training.
- When BM sent payments and invited a response, they failed to provide reasons and even agreed Mrs E's assumption they'd overcharged her.
- When the Financial Ombudsman Service investigated an earlier complaint BM told us they didn't owe Mrs E any more money. But they then made the payment of £6,394. Either BM had been intentionally misleading, or their staff had acted negligently.
- Given the lack of information still, including as to when BM first discovered their mistake and the fact more than one review took place, there remains some doubt about whether they've paid Mrs E all they owe her.

I've thought very carefully about the compensation that would be fair in the circumstances of this complaint bearing everything Mrs E's said in mind. And I will now go on to give my final decision.

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.

I can understand the time and effort Mrs E's put into the complaints she's made against BM have caused a great deal of distress and inconvenience over time, particularly given her difficult financial circumstances.

I can take Mrs E's situation and state of mind into account when considering the impact BM's mistakes in this complaint will have had on her. But I can't award compensation for other complaints she's made where previous ombudsmen have said her complaint is out of time or not upheld.

So, in this case I still think it's reasonable to focus on the impact of BM's poor communication relating to the additional compensation they paid in 2022. That's because BM explained why they'd reimbursed fees and expenses in 2018; whilst the underlying reason for making a payment in 2019 wasn't set out, BM did explain then that the payment was because of underfunding, and they provided a calculation of how they'd worked the payment out; and it wasn't until Mrs E received the second compensation payment in 2022 she raised concerns that the payments she'd had from BM might have made a difference to whether or not she'd lost her house.

I've noted Mrs E's concerns, but there's no evidence to show BM haven't now reimbursed all the fees and charges or paid all the underfunding compensation they are required to.

Bearing everything in mind, whilst I understand Mrs E will be disappointed, I see no reason to change my provisional decision for the reasons I explained there. I still think £350 is fair compensation in the circumstances of this complaint.

Putting things right

To put things right Bank of Scotland plc trading as Birmingham Midshires should pay Mrs E £350 compensation for distress and inconvenience.

My final decision

I uphold Mrs E's complaint in part and direct Bank of Scotland plc trading as Birmingham Midshires to pay Mrs E £350 compensation for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs E to accept or reject my decision before 27 December 2023.

Julia Wilkinson
Ombudsman