

The complaint

Mr and Mrs M complain that Bank of Scotland plc (trading as Birmingham Midshires) gave them poor advice about their buy to let mortgages when they were in financial difficulties. Mr M asks that it stops contacting them about the arrears, removes adverse data from their credit files and retrospectively applies a one-year fixed rate product.

What happened

Mr M called Birmingham Midshires in October 2021. He said while they weren't yet in arrears, they wouldn't be able to maintain payments for their buy to let mortgages when rates increased (they had six buy to let mortgages, four of them with Birmingham Midshires).

Mr M said he'd spoken to a mortgage broker and been told he didn't meet affordability tests for a fixed rate mortgage. Mr M said other brokers hadn't got back to him.

Mr M complains that the person he spoke to at Birmingham Midshires:

- wasn't aware of the upcoming increase in mortgage rates and didn't watch television
- was able to view his bank accounts with a bank in the same group
- told him to cancel his direct debits and set up weekly payments by standing order, causing his accounts to fall into arrears
- gave him details of a company which provides details of independent financial advisers, but the brokers he tried to contact didn't call him back.

Mr M says this resulted in adverse data on his credit file which caused a loan application to be declined. Mr M raised further issues, including that credit limits for other accounts have been reduced, Birmingham Midshires made inappropriate comments about his spending and it only allows product switches via a broker.

I sent a provisional decision to the parties explaining why I didn't intend to uphold this complaint. In summary, I didn't think Birmingham Midshires treated Mr and Mrs M unfairly and it wasn't responsible for their accounts being in arrears.

Mr M didn't agree. He said Birmingham Midshires admitted providing incorrect advice about opening seven separate bank accounts and I would hear this if I listened to all of his calls. He said he was questioned about why he was buying coffee in his situation, which he found intrusive and rude.

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.

Where the evidence is incomplete, inconclusive or contradictory, I reach my decision on the

balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

Mr M contacted Birmingham Midshires in October 2022. He said they couldn't afford to maintain payments if interest rates increased as he expected. Mr M said he'd spoken to a broker who said they didn't meet affordability tests for a fixed rate mortgage. He said other brokers didn't get back to him.

Mr M said they were already overdrawn and if he left his direct debits in place they would bounce. He said he'd cancelled his direct debit for a buy to let mortgage with another lender and started to pay weekly in arrears.

I think Mr M was aware before the call that he could only apply for a product switch via a broker. This is Birmingham Midshires' policy and it confirmed this during the call. It didn't need to waive this for Mr and Mrs M.

Birmingham Midshires gave Mr M details for a website that provides details of independent financial advisers. Mr M wasn't happy with the brokers he contacted via the website. He said they weren't interested in advising him or asked for a fee for their advice. Birmingham Midshires wasn't responsible for this. I think it was fair for Birmingham Midshires to give Mr M details of the website – especially as he'd said he'd had difficulty getting in contact with brokers.

Mr and Mrs M couldn't apply for new products while their accounts were in arrears. It's unclear as to why they didn't apply for new interest rate products before late 2022 but there's nothing to suggest this was due to an error by Birmingham Midshires. I don't think it's fair and reasonable to require Birmingham Midshires to retrospectively apply a fixed rate product from late 2022.

I don't think it made any difference to the outcome that a staff member told Mr M she didn't watch television. The staff member didn't need to engage in a discussion about possible future interest rate increases. She explained what might happen if an account was in arrears and what information Birmingham Midshires would need to set an arrangement. I think this was fair. She told Mr M the status of the mortgage accounts, each of which had a credit of about £100.

The staff member told Mr M he could make smaller payments in November 2022 and use the credit on the accounts for the difference. Mr M was aware of the amount of the credit, so he'd have known he'd need to make payments in full after November 2022 to avoid being in arrears.

There was a discussion about when Mr and Mrs M's mortgage payments were due. Mr M said he'd received texts from the provider of his current account suggesting the mortgage payments had been made. He said he was driving and couldn't check the account. The staff member checked the account and explained what payments had come out of the account and when mortgage payments were due. There was also a discussion about Mr M's different accounts and the balances. Mr M participated in this discussion and didn't raise any concerns about the staff member accessing his bank accounts.

There was also a discussion about whether Mr M could set up separate accounts for each property – the advantage being that Mr M could keep track of payments relating to each property. Mr M said he'd previously tried to do this, but his provider had said it didn't allow it and Mr M didn't want to pay for a business account. I don't think it's fair to say that Birmingham Midshires told him to set up separate accounts.

Mr M says he told another staff member at Birmingham Midshires that he'd been told to open seven separate bank accounts and this person said this wasn't possible and he shouldn't have been advised to do this. It seems that this staff member was commenting on what Mr M said he'd been told. I've listened to a recording of the call when separate bank accounts for each buy to let property were discussed: I consider this good evidence as to what was said on that call. I don't need to listen to all of Mr M's calls to reach a fair outcome.

Birmingham Midshires gave Mr M information about his accounts and his mortgage payments, and what might happen if the accounts were in arrears. It made it clear that it was for Mr M to decide what to do. I think this was fair. I'd note here that letting property is a business, and this includes managing mortgage accounts and payments.

Mr M told Birmingham Midshires in October 2022 they were unable to maintain their mortgage payments and if he didn't cancel the direct debits they would bounce. He said he'd done the maths and their position wasn't sustainable.

It was Mr M that said he could cancel the direct debit and make weekly payments – as he'd done for a buy to let mortgage with another provider. Birmingham Midshires told Mr M that if he cancelled his direct debits he'd be responsible for making payments.

It was Mr M's decision to cancel the direct debits and make payments by standing order. Mr and Mrs M's buy to let mortgage accounts fell into arrears because these payments didn't cover their CMPs.

I think it was fair for Birmingham Midshires to write to Mr and Mrs M when they didn't make payments in full. It was right to keep them updated as to the status of the accounts and what could happen if payments were not maintained.

Birmingham Midshires has to report accurate and up to date information to the credit reference agencies. Mr and Mrs M accounts were in arrears and I don't think it was unfair for Birmingham Midshires to report this. I don't think it's fair and reasonable to require Birmingham Midshires to remove this from Mr and Mrs M's credit files.

Mr M says their credit limits have been reduced and a loan application was declined. I don't think I can fairly find that this was due to an error by Birmingham Midshires. Mr M told Birmingham Midshires in October 2022 they were heading into a period of financial difficulty. I don't think it was wrong or unfair for Birmingham Midshires to record arrears on Mr and Mrs M's credit files. Mr M was upset that Birmingham Midshires didn't accept a mortgage payment by credit card. Birmingham Midshires has said that, as a responsible lender, this isn't something it allows. I don't think Birmingham Midshires had fairly to accept a payment by credit card from Mr and Mrs M.

Mr M says Birmingham Midshires made a comment about buying coffee which he found rude and intrusive. If it did – and I'm not making a finding here either way – I don't think this makes it fair and reasonable to require Birmingham Midshires to pay compensation or take other steps regarding this complaint.

I don't think that Birmingham Midshires made an error here or treated Mr and Mrs M unfairly. I don't think it's fair and reasonable in the circumstances to require it to take further steps in respect of this complaint.

My final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and Mrs M to accept or reject my decision before 28 February 2024.

Ruth Stevenson
Ombudsman