

The complaint

Mr P complains that Bank of Scotland plc (trading as Birmingham Midshires) gave him conflicting and incorrect information about porting his buy to let mortgage. He asks for compensation and confirmation he can port the mortgage to the property he's currently living in.

What happened

Mr P has a buy to let mortgage with Birmingham Midshires, secured on a property which I'll refer to as property A. Mr P wants to move into property A and live there. He wants to port the buy to let mortgage to the property that he is currently living in, which I'll refer to as property B. Mr P intends to let out property B. Mr P intended to do this after the tenancy agreement for property A expired in February 2024.

Mr P contacted Birmingham Midshires in October 2023 to check that he'd be able to do this. Initially he was told this was possible, provided he had a tenancy agreement in place for property B by completion. However, Birmingham Midshires didn't send written confirmation of this. When Mr P contacted Birmingham Midshires again it told him that he'd have to move out of property B before submitting a porting application. Mr P raised a complaint.

After the complaint came to us, Birmingham Midshires said it couldn't port the buy to let mortgage product to property B. That was because it was Mr B's residence and rules on mortgage regulation say it would be treated as a consumer buy to let mortgage – which Birmingham Midshires doesn't offer.

Mr P told us that he has a number of buy to let properties, which means Birmingham Midshires can offer a buy to let mortgage for property B. On this basis, Birmingham Midshires agreed it would be able to port the buy to let mortgage product to property B, subject to the application meeting its lending criteria.

Birmingham Midshires said if Mr P wanted to go ahead he should submit a porting application and quote the complaint reference number in the application. It said once Mr P had submitted an application he should let the complaints team have the application number so that they could support the application.

Our investigator said while Birmingham Midshires had given Mr P incorrect information, she didn't think this had caused Mr P financial loss. But, given the amount of time it had taken to give Mr P correct information, our investigator said Birmingham Midshires should pay compensation of £500.

Birmingham Midshires agreed it made an error when it asked Mr P to provide evidence of occupancy or to vacate property B prior to completion. It agreed to pay £500 compensation (in total) for the time taken to acknowledge this. It said it had already paid £80.

Mr P didn't agree. He said he'd had further problems after making the porting application. He said his broker was again told he'd have to move out and tenant property B. Mr P said Birmingham Midshires then declined his application as his non-property income wasn't

sufficient to meet its criteria. Mr P was also unhappy that Birmingham Midshires said he'd be responsible for legal fees, which he disputes. Our investigator said these were new issues and our rules say we can't look into complaints unless they've first been raised with the respondent and it's had an opportunity to respond.

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.

Birmingham Midshires accepts it gave Mr P incorrect information when he asked it about porting his buy to let mortgage from property A to property B. It said, incorrectly, that he'd have to move out of property B while it considered the porting application.

Birmingham Midshires raised a further concern about a potential porting application after the complaint came to us. That was whether rules on mortgage regulation would require it to treat a mortgage on property B as a consumer buy to let mortgage. That matter was resolved within a short time: Mr P provided information about his other buy to let properties and said that property B had previously been let to tenants.

Birmingham Midshires agreed to pay £500 compensation. Mr P asks for compensation of about £75,000 for (in summary) lost rental income, cost of work to the properties, costs of utilities and services, future mortgage interest payments, the early repayment charge, brokers and conveyancing fees and the possible impact on his future earnings.

I have to consider what compensation, if any, is fair and reasonable in the circumstances. I need to consider the effect this error had on Mr P – for instance, if it caused him financial loss, worry or inconvenience. In doing so, I've taken note of the following.

- Mr P didn't intend to move home and port the mortgage until after the tenancy for property A ended in February 2024.
- Mr P contacted Birmingham Midshires in October 2023. He didn't submit a porting application at that time and, from what Mr P has said, I don't think he intended to do so. He just wanted to check it was something he'd be able to do when he was ready. Mr P was given conflicting and incorrect information about this in late 2023.
- By January 2024, Birmingham Midshires had confirmed (via this service) it would be able to port the buy to let mortgage from property A to property B, subject to the application meeting its lending criteria. It said Mr P didn't need to move out of property B until completion. Mr P could have submitted a porting application in January 2024.
- Mr P said he didn't submit an application as he wanted an assigned case manager or the head of mortgages at Birmingham Midshires to contact him. He didn't want to contact its call centre. In late February 2024 Mr P said his broker didn't submit an application as Birmingham Midshires had told the broker he'd have to move out of property B.
- However, Birmingham Midshires had said if Mr P wanted to go ahead he should submit an application and quote the complaint reference number in the application. It asked that he let the complaints team have the porting application number so that they could support the application.

- Mr P says this matter affected his plans for his properties and he'd agreed fees with contractors for building work. Presumably this is also the basis for Mr P asking for compensation for the potential impact on his future income. Any porting application would have to meet Birmingham Midshires' lending criteria. Even if Birmingham Midshires had given Mr P correct information throughout, he couldn't have been sure it would agree to port his mortgage until it had reviewed his application and supporting documents and offered a mortgage. If Mr P incurred costs before this, I don't think I can fairly say that was due to Birmingham Midshires' error.
- If Mr P needed to move ahead with the porting application, he could have submitted an application in mid-January 2024 on the basis recommended by Birmingham Midshires. It was Mr P's decision not to do so until after the end of February 2024.
- Mr P wants to port a buy to let mortgage from one of his properties (property A) to another of his properties (property B). He didn't lose the benefit of the mortgage rate due to Birmingham Midshires' error. He'd have had to make monthly mortgage payments regardless of which property the loan was secured on. Mr P hasn't paid an early repayment charge. So I can't fairly ask Birmingham Midshires to pay compensation for any of this.
- There were tenants in property A, and the rental value of property A is higher than property B. So Mr P didn't lose rental income in late 2023. The tenants were in place until February 2024. Mr P could have submitted a porting application in January 2024 and chose not to do so. So I don't think Birmingham Midshires is responsible for any delays and resulting loss of rental income after February 2024.
- Mr P asked for compensation for costs related to his properties, such as council tax and utilities and cleaning. These aren't costs he incurred due to Birmingham Midshires' error.
- Mr P says he has or will incur costs such as broker's fees and conveyancing. These are costs Mr P would have had to pay regardless of Birmingham Midshires' error. While the error could have led to additional broker fees, Mr P hasn't provided evidence that this is the case.
- Mr P says he used savings to make an overpayment into the mortgage account in October 2023. This was to reduce the loan to value ratio because property B had a lower capital value and rental value. Mr P says if the port wasn't possible, he wouldn't have done this as he'd have been better off with the money in a savings account. However, Birmingham Midshires hasn't said porting isn't possible. It said Mr P can submit a porting application, which will be subject to its lending criteria.

I don't think that Birmingham Midshires' error caused Mr P financial loss. But it did cause him inconvenience and upset. He wanted to check that he'd be able to port his buy to let mortgage from property A to property B. I appreciate that the circumstances here were unusual, but Birmingham Midshires ought to have been able to give Mr P clear information about this.

However, while I understand Mr P's frustration about the difficulties he experienced, I don't think that Birmingham Midshires' error caused a significant delay with him submitting a porting application. Mr P had correct information about this in January 2024 and chose not to submit a porting application until after the end of February 2024. Any application was always subject to Birmingham Midshires lending criteria, so Mr P couldn't have been certain of being able to port the mortgage until he received an offer from Birmingham Midshires.

Taking all of this into account, I think £500 compensation is fair and reasonable in the

circumstances.

Our investigator told Mr P that our rules don't allow us to look into complaints until they've been raised with the respondent, and the respondent has had an opportunity to respond. I appreciate that the recent issues raised by Mr P (that his application didn't meet income criteria and didn't come with free legal work) relate to the porting application. But these are new complaints that didn't form part of the complaint that was brought to us. So I can't look into those issues here.

My final decision

My decision is that Bank of Scotland plc (trading as Birmingham Midshires) should pay £500 (in total) to Mr P. It can deduct from this any compensation it has already paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 10 June 2024.

Ruth Stevenson
Ombudsman