

The complaint

Mrs B complains that Bank of Scotland plc trading as Birmingham Midshires (BM) isn't treating her fairly because it's reporting the conduct of buy to let mortgages she's no longer responsible for to her credit file.

What happened

Mrs B and her former husband owned a portfolio of buy to let properties, which have mortgages with BM secured over them. The mortgages are also in joint names.

As part of the divorce settlement, the court ordered that Mrs B's interest in the properties was to be transferred to her former husband. The court also ordered that he was to try to secure Mrs B's release from the mortgages and in the meantime to indemnify her against any ongoing liability.

Since then Mrs B's former husband has not made applications to transfer the properties to his sole name, and has not applied to BM to transfer the mortgages into his sole name either. He has also not made payments to the mortgages, which are in arrears as a result.

Mrs B says that she believes Mr F is refusing to comply with this – and several other – parts of the financial settlement order not because of financial difficulty but in order to control and punish her, perpetuating an abusive relationship.

Mrs B says that she understands that the properties are tenanted and there should therefore be no reason for the mortgage payments not to be made. But under the terms of the settlement she has no control over the properties and no access to the rental payments. And she can't afford to pay nine buy to let mortgages in addition to her own residential mortgage from her own resources.

The arrears are being reported to Mrs B's credit file. She says this is having a very serious impact on her. It's meant that she's not been able to access credit or re-mortgage her residential mortgage to an affordable interest rate. She also runs the risk of losing her job as a result because she's subject to regular fitness and background checks as part of her role.

Mrs B is therefore very worried about the ongoing impact of the credit file reporting. She recognises that she's still a party to the mortgages. But that's not a situation of her own making – it's only because her former husband is refusing to comply with the court order.

Mrs B has returned to court to try and enforce the order but is very concerned about the impact on her and her family in the meantime. And the reality is that she has no control over the mortgages or whether they're paid.

Mrs B asked BM to make an exception and not report the mortgages to her credit file. She said she had no control over or ability to influence the mortgages or their repayment. The reporting was having a disproportionate impact on her.

BM said it was sympathetic to her situation. It would do what it could. It said that if Mrs B

managed to get herself removed from the title to the properties – either by application to the Land Registry, or by a court order – it would then agree to remove her from the mortgages even if her former husband hadn't made an application. But it couldn't stop reporting to her credit file in the meantime.

Mrs B was grateful for the other assistance BM had provided and said it would provide. But she said she couldn't wait for the mortgages to be transferred because of the impact the credit file reporting was having on her now. She asked us to review whether BM was acting fairly.

My provisional decision

I issued a provisional decision setting out how I thought the complaint should be resolved. I said:

"I agree with Mrs B that, in many respects, BM has treated Mrs B fairly and sympathetically. It's listened to what she's had to say, taken careful note of her very difficult circumstances, and offered to go some way towards a solution – in particular, by agreeing to remove her from the mortgages once she can get herself removed from the property titles even if her former husband doesn't make an application. In all those respects, BM has acted fairly and taken appropriate steps to assist a vulnerable customer in a difficult situation.

The only remaining point at issue is that BM says it has to continue reporting the mortgages to Mrs B's credit file. I've thought very carefully about what it says about this. Having done so, I don't think that's fair in the particular circumstances of this case.

BM says it's obliged to report the mortgages to Mrs B's credit file. But I don't think that's the case. There's no legal obligation on a lender to do so. And these are unregulated buy to let mortgages, so there can be no regulatory obligation either. The law says that if BM makes a report it must do so accurately. But it doesn't say it must make a report – it could lawfully choose not to do so.

I've also borne in mind the purpose behind credit file reporting. In essence, it's to share information among credit providers about the conduct of credit accounts, to enable future lenders to make better lending decisions. This protects lenders from lending to customers more likely to default, and protects customers from taking on credit they might not be able to afford.

Credit files should therefore be a fair and accurate record of a borrower's credit history. In one sense, Mrs B's credit file is a fair and accurate record. She is party to the mortgages, the mortgages are in arrears, and that's what her credit file says.

However, in another sense, Mrs B's credit file is not fair and accurate. It's not fair or accurate to say that she has chosen not to make payments, or that she is mis-managing her credit commitments, or that she is unable to manage her commitments because of financial difficulty. The reality is that she has no control over these mortgages or the properties they are secured on. Contractually, she remains jointly and severally liable for them. But in practical terms there is nothing she can do.

That's an important factor to bear in mind – but it's not determinative of itself. There are many situations where two people jointly agree to take on a credit commitment, the relationship between them breaks down, and they agree between them that one or the other will take over managing the commitment. That doesn't change the fact

that both of them agreed to take it on, and both of them remain jointly and severally liable for it. And it's not in principle unfair for a lender to continue to report the conduct of the account to both parties' credit files.

However, I'm not deciding a general principle here. I'm deciding what's fair and reasonable in the particular circumstances of an individual case. In this particular case, a court has made it clear that Mrs B has no interest in, or liability for, the properties. The court said that her former husband should try and get her released from the mortgages. There doesn't seem to be any reason why such an application wouldn't succeed – but he hasn't made it. BM agrees that she has no interest in the properties or mortgages, no control over them, and no means of ensuring the rent is used to repay. And, for all the reasons Mrs B has explained about her own individual situation, continuing to report the loans to her credit file is having, and risks continuing to have, a disproportionate impact on her.

In my view, in the particular circumstances of this complaint, reporting the conduct of these loans to Mrs B's credit file as if she was responsible for them does not present a fair or accurate picture of her creditworthiness or ability to manage debt. While she remains contractually liable, BM has made clear it doesn't hold her liable in practical terms and is willing to do what it can to help her be released from them. And in the meantime the ongoing reporting paints an inaccurate picture of Mrs B's true situation, and has caused her significant detriment already and risks more and worse consequences. BM is not obliged to report the loans to Mrs B's credit file, and in all the circumstances of this case doing so is not in my view fair and reasonable."

In the wake of my provisional decision, matters moved on – Mrs B has now managed to have herself removed from the title entries of all but one of the properties at the Land Registry, and as a result BM has agreed to remove her from the mortgage accounts. It's also agreed to remove all credit reporting in respect of the mortgages from her credit file from the date of the court order onwards – though it said that would have the effect of removing them from the other party's credit file temporarily too. BM said it would add the entries back once the mortgages were in his sole name, but it was concerned it would be in breach of its obligations to report accurately in the meantime.

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'm pleased that matters have moved on. For the avoidance of doubt, BM should remove the entries relating to the final mortgage from Mrs B's credit file too. I've noted what BM has said about its obligations. But it also has obligations to treat Mrs B fairly and reasonably. As I said, reporting the conduct of these loans to Mrs B's credit file as if she was responsible for them does not present a fair or accurate picture of her creditworthiness or ability to manage debt. I think the wider circumstances of Mrs B's situation are also relevant here. And in those very particular circumstances, I don't think it's fair and reasonable that Mrs B's credit file shows that she's responsible for – and not managing – this debt.

Mrs B has explained that she is likely to undergo routine employment checks shortly. And so I would urge BM to implement this decision as soon as possible. In the event that matters aren't resolved before the checks take place, Mrs B may wish to show her employer a copy of this decision to explain the wider circumstances.

My final decision

My final decision is that Bank of Scotland plc trading as Birmingham Midshires should remove all reports of the mortgages secured over the properties transferred to Mrs B's former partner in the court order from Mrs B's credit file, with effect from the date of the court order onwards.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 21 March 2024.

Simon Pugh
Ombudsman