

The complaint

This complaint's about two buy-to-let (BTL) mortgages Ms S holds, as part of a wider portfolio, with Bank of Scotland Plc trading as Birmingham Midshires (BM). At the heart of the complaint is the impact on Ms S' wider financial situation that she say flows from BM having recorded adverse information on her credit file.

What happened

The broad circumstances of this complaint are known to Ms S and BM; they've been set out in correspondence between both parties. I'm also aware that the investigator issued a comprehensive response to the complaint which has been shared with all parties, and so I don't need to repeat all of the details here.

Instead, I'll provide a brief summary of the key points, in my own words, rounding the figures, and then focus on the reasons for my decision. If I don't mention something, it won't be because I've ignored it. It'll be because I didn't think it was material to the outcome of the complaint.

Ms S is a property investor and her BTL portfolio is her sole source of income; two of the BTL properties are mortgaged to BM. In the period since the Covid-19 lockdown, Ms S has experienced periodic difficulties with her payments to the mortgages, which have prompted three separate complaints. All three complaints have been brought to this service and ultimately referred to an ombudsman for review and determination.

In July 2023, a fellow ombudsman issued a final decision on a complaint about the information BM recorded with credit reference agencies in relation to the January 2023 payment on one of her two BTLs. Briefly, the ombudsman decided that BM's reporting of the January 2023 payment as missed was unfair and should be removed, but she wasn't persuaded that the missed payment marker caused the financial detriment that Ms S said she then experienced thereafter.

In January 2024, the same ombudsman issued a final decision on a complaint about late payment markers BM recorded during 2021 as a result of Ms S' direct debit mandates having been cancelled in 2020 (due to a Covid-19 payment deferral) and not re-started. That complaint wasn't upheld at all.

The third complaint – the one before me here – is about what had happened since the missed payment of January 2023. That payment was made up at the beginning of February 2023, and the February payments were also made. So, as BM acknowledges in its final response of 4 August 2023, both mortgages were up to date and not in arrears at the end of February 2023.

Unfortunately, other than the occasional ad hoc manual payments, no full regular payments have been made since. By December 2023, when BM submitted its case file to us, the two mortgages were in arrears by around £21,000 and £23,000 respectively. The essence of this complaint is that the reporting of these arrears has:

- left Ms S on standard variable rate unable to agree new fixed rate deals on her BTLs;
- caused BM to send a field agent to visit one of the properties; and
- led to Law of Property Act (LPA) Receivers being appointed to manage the BTL properties.

Ms S has said separately that she has been denied the opportunity to re-finance other liabilities, including a bridging loan she had, and been forced to sell her residential home, which she shared with her two children. Ms S says she has also been forced to remove her children from their fee-paying schools at critical times in their education.

The investigator who considered the case began by making clear that he wouldn't be revisiting the subject matter from the other two complaints. Focussing solely on the events from February 2023 onwards, he wasn't persuaded BM had done anything wrong or treated Ms S unfairly.

Ms S asked for the case to be reviewed by an ombudsman.

What I've decided – and why

I'll start with some general observations. We're not the regulator of financial businesses, and we don't "police" their internal processes or how they operate generally. That's the job of the Financial Conduct Authority (FCA). We deal with individual disputes between businesses and their customers. In doing that, we don't replicate the work of the courts.

We're impartial, and we don't take either side's instructions on how we investigate a complaint. We conduct our investigations and reach our conclusions without interference from anyone else. But in doing so, we have to work within the rules of the ombudsman service, and the remit those rules give us.

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

From reviewing Ms S' submissions, in particular her phone conversation with the investigator on 27 February 2024, it's clear that Ms S remains of the view that the problem with the January 2023 payment caused the difficulties she's experienced since, and she still feels aggrieved that this wasn't recognised in the final decision on that complaint.

However, whilst I recognise Ms S' strength of feeling on this point, it's not open to me to revisit the decision of a fellow ombudsman. My remit is confined to looking at the payment record after that – and BM's response to it – on its own terms. When I do that, I can't fairly conclude anything other than that BM's treatment of Ms S during the period under consideration has been fair and reasonable.

The two mortgages went from being up to date at the end of February 2023 to being so heavily in arrears that I consider BM was justified in arranging a field agent's visit, and ultimately to deciding to appoint LPA Receivers. I note it has suspended that appointment whilst we've been looking at the complaint; it didn't have to do that (certainly we have no power to compel it to do so) but it was a reasonable thing to do in any event.

The information BM has recorded with credit reference agencies during the period I'm looking at is factually accurate; that's what it's required to be. Ms S may feel aggrieved by the background events that sit behind her failure to keep up with the payments, but I can't attribute those events to acts or omissions on BM's part.

There's something else; the only part of her credit file that Ms S has provided to us is that relating to the mortgages with BM. So I can't rule out the possibility that adverse credit reporting by other creditors, or other events in her capacity as a property landlord, have also contributed to her difficulties in arranging new financial agreements.

Included amongst the new arrangements Ms S says she's been unable to arrange are new fixed rate deals for the BTLs' themselves. It's important to remember that BTL mortgages aren't regulated, so assessing what is fair and reasonable is a less onerous test than it would be with a residential mortgage. BM's policy is not to provide new fixed rate deals on BTL mortgages unless they're up to date. I've no doubt that has been an unwelcome position for Ms S, but I can't say it's unfair, which is the test I have to apply.

My final decision

My final decision is that I don't uphold any part of this complaint.

My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further consideration or discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 21 May 2024.

Jeff Parrington

Ombudsman