

The complaint

Mr and Mrs P complain about what happened when they asked Bank of Scotland trading as Birmingham Midshires ("BM"), for an additional advance on their existing Buy To Let mortgage. They said they should have just been able to draw down the funds, but weren't.

What happened

Mr and Mrs P are portfolio landlords, owning a small number of Buy To Let ("BTL") properties. They wanted to buy a new property, and as part of funding that purchase, they wanted to borrow some more money on a property they already owned, which was mortgaged with BM. Around February 2023, a broker working on Mr P's behalf started asked BM for extra funds.

Mr P has maintained throughout that the mortgage he already had with BM was flexible, and all he needed to do was ask BM to draw down extra funds. He says that isn't what ended up happening. Instead, he said that although BM kept telling him he could have the money imminently, it also told him to make changes to update his mortgage, so he could restore flexibility. But then BM wouldn't lend him the money he wanted, and he found he had to pay an ERC of over £2,000 to move his mortgage elsewhere and get the lending he wanted.

Mr P is also unhappy about the number of credit checks BM has done. BM has said it will respond on that separately, as it hasn't had a chance to comment on that yet. So I won't look at that here.

Mr P said not only did BM turn him down, but it took a very long time to do so. And then, because of its advice, he had to pay to move his mortgage elsewhere. He wanted BM to refund the costs he'd incurred, and provide compensation for his other consequential losses.

BM said that Mr P applied to switch his existing BTL mortgage to a new, fixed interest rate mortgage deal in late April 2023. That new deal came with an ERC, which was set out in the offer letter. Mr P accepted, and the deal was applied to his mortgage from 1 May 2023.

BM said Mr P also applied for further borrowing on this property, and had twice contacted BM about this application. Each time he was told the application wasn't complete, and he'd need to talk to his broker. BM said it had never told Mr P that the money was ready, and it never made a mortgage offer. His application was eventually declined. BM said it wouldn't waive the ERC on Mr P's mortgage.

BM has told us that Mr P didn't have a flexible mortgage, and it would not have advised Mr P or his broker that applying for a new product would make it easier to apply for further borrowing.

Our investigator didn't think this complaint should be upheld. He said that having listened to the relevant calls, he couldn't hear that BM had ever told Mr P that his further advance application was successful, or that the money was ready for him to draw down. BM just told

him to speak to his broker about his application. And BM had produced mortgage illustrations, which were not a commitment to lend. It never made an offer to Mr P.

Our investigator also said he couldn't see that Mr P had a flexible mortgage. So he did need to apply for further borrowing, which was subject to credit checks and needed to be underwritten to ensure affordability. Switching Mr P's mortgage to a fixed rate wouldn't have been part of this process.

Our investigator said Mr P had told us BM never informed him that his application had been rejected, but our investigator said he'd listened to a call where BM told Mr P's broker this, on 26 May. So it was up to Mr P's broker to communicate this to him.

Our investigator said he'd listened to a call on 6 June where Mr P's broker said she'd been advised to apply for a fixed rate on Mr P's mortgage to help Mr P meet the affordability criteria for extra lending. But BM couldn't find any record of this conversation. Our investigator said he couldn't hold BM responsible for Mr P's decision to switch to a fixed rate on his mortgage, which meant he had to pay an ERC when he then wanted to remortgage elsewhere. Our investigator thought Mr P had done that on the advice of his broker, not the advice of BM.

Our investigator said BM would respond to Mr P separately about the credit searches on his file. We aren't considering this here. But on the complaint issues he could look at, our investigator didn't think BM had to do any more.

In response, Mr P sent us a letter from his broker. The broker said she had made a new lending application for Mr P – not that Mr P was seeking to access an existing drawdown facility on his mortgage. The broker said that BM told them to change Mr P's mortgage type, so he was paying less interest on the lending, then the application could go ahead. But the lending was refused, and Mr P was left having to pay an ERC before he could apply elsewhere. Mr P also said there were more calls with BM, and he thought he'd been told the money was ready on a different call.

BM has firmly denied that it would have given such advice, and repeated that it cannot find any such call. It says that the broker wouldn't have spoken to an underwriter at that stage. Our investigator said there was no evidence that BM had given Mr P's broker the advice described, so he wouldn't change his view. And he still didn't think it was likely that BM had ever indicated to Mr P that funds were available for drawdown.

Mr P insisted he did have a flexible mortgage, and that the drawdown pot was shown on the annual statement. Our investigator has asked Mr P to show our service where on the annual statements this was set out, but I can't see that Mr P has replied to that point. However, Mr P has said he wants his case to be considered by an ombudsman, so it was passed to me for a 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've reached the same overall conclusion on this complaint as our investigator.

I'm aware I've summarised the events surrounding this complaint in less detail than the parties involved. No discourtesy is intended by my approach which reflects the informal nature of this service. I want to assure all parties I've read and considered everything on file. I'm satisfied I don't need to comment on every point raised to fairly reach my decision. And if I don't comment on something, it's not because I haven't considered it. It's because I've focused on what I think are the key issues.

I do think there has been considerable confusion in this case, both about the position of Mr and Mrs P's pre-existing mortgage with BM, and then with the advice given to their broker, about how the application for further lending might proceed.

I'd like to start with the pre-existing mortgage. Mr P has repeatedly referred to this as a flexible mortgage with a drawdown feature. I don't think it was.

Mr P has been making modest overpayments on this mortgage for some time. Looking at BM's internal notes, I can see references to previous flexibility on Mr P's mortgage. That may be why Mr P expected he would be able to access flexible features on his mortgage. But I haven't been able to see that this mortgage ever allowed the drawdown of a lump sum that Mr P wanted. This may only ever have been a reference to the option to underpay on this mortgage each month, if Mr P wished to.

I can also see that the notes BM made for this complaint include references to Mr P's terms having been updated on previous changes to this mortgage. And Mr P's statements show that a significant change to Mr P's mortgage was made some time between January 2019 and January 2020. The mortgage was due to end in early 2020, but before then the term was extended. And importantly, I haven't been able to see anything to indicate to me that Mr P had access to any flexible drawdown option on this mortgage after that date.

So I don't think BM had to extend Mr P's borrowing, just because he asked it to. I haven't been able to see that this was a feature of Mr P's mortgage in 2023. So I think that if Mr P needed additional borrowing, in addition to the amount secured on his pre-existing mortgage, he would have to make a new application for that.

Mr P said BM had told him the money was ready. He thought there must be other calls between him and BM, aside from the ones our service has listened to, where he was told that. But I can't see that BM had ever made an offer in this case. So I don't think it's likely that Mr P was ever told this money was available to him.

Mr P also said that he'd changed his mortgage product, switching to a fixed interest rate, because he was told that would give him access to flexible borrowing. I haven't seen anything to make me think that the fixed rate deal Mr P applied for in late April 2023, which was applied to his mortgage on 1 May 2023, included the flexibility to draw down additional borrowing. So again, I don't think BM had to offer Mr P further lending, just because he'd changed to this new mortgage.

Mr P's broker said something a bit different. She has sent our service a letter, which says she'd put in a further lending application on behalf of Mr P, in April, and at that time, the full application passed the credit score and no issues were anticipated.

The broker's letter said that on 21 April, an underwriter at BM suggested that Mr P's loan should be moved to the same rate that Mr P was applying for, on his extra lending – a five year fixed interest rate – and reapply once that rate was on the mortgage. The broker said that she thought the application was then a formality, and no one had raised concerns over the case at this point.

I think this letter falls somewhat short of suggesting that Mr P's broker had been told by BM that Mr P would definitely get the borrowing he wanted, if he changed to a new fixed rate mortgage.

I should also note that BM says any subsequent application for lending overwrites the previous one, so whilst it has full details of the last application Mr P made, it doesn't have complete details of the applications before this. But BM said Mr P's broker had originally applied in February 2023. So it doesn't appear encouraging to see that by April, Mr P's broker still hadn't been able to secure for him the extra borrowing he wanted.

There is some more information about what has happened here on the recorded calls I've listened to. On the recorded call of 6 June between that broker's administrator and BM, she said BM had initially said it wouldn't lend what Mr P wanted. He'd failed at the first stages, on affordability, and the broker's administrator said that although they tried changes, none of the changes they had made produced any results. I think it would be fair to say that things were looking quite negative at this point.

In April, the broker's administrator spoke with the processing team. (This doesn't seem to quite fit with the letter, which says that the brokerage spoke with an underwriter. It doesn't seem as if the application had reached an underwriter at this point.) She said she was told then that Mr P should pass affordability if he had a lower, fixed interest rate, on his mortgage. The processing team apparently then expected a different maximum lending amount to be produced.

So Mr P fixed his rate for the existing mortgage, moving to a new product, and at the same time tying himself into either staying with BM, or paying an ERC to move. But all that achieved for him, was to move his application to the next stage – the underwriting stage. And BM has explained to the broker in some detail why Mr P's application didn't pass that stage.

I do think it's likely that there was a conversation between BM and the administrator who supports Mr P's broker. But, like our investigator, I haven't been able to see that this was likely to include clear advice that Mr P's application would be approved, if the existing mortgage was changed to a fixed rate.

Importantly, I haven't been able to see that BM had ever promised that Mr P's application would be approved, if he took out a fixed rate mortgage. I do think it's likely that BM said that a change to a fixed rate would mean he cleared the first hurdle, of affordability. And it looks as if that's what happened. But I can't see that BM ever promised that making this change to Mr P's mortgage, switching to a fixed rate, would mean the application would be approved, and give Mr P the lending he wanted.

I think it's unfortunate if Mr P or his broker hadn't anticipated that the application for additional lending could still fail, after the change to a fixed rate, but I haven't been able to see that this was BM's fault.

BM's subsequent refusal of lending was clear, and was made on a number of grounds. So Mr P's only option then to secure the lending he wanted was to look elsewhere. The broker's assistant did ask if BM would do anything about the ERC that Mr P would then need to pay, but BM said it hadn't advised that he do this, and Mr P had taken that step at his own risk. BM maintains that position now.

On balance, I think that is a fair and reasonable stance for BM to have taken in this case. So I don't think BM has to refund now, the ERC it charged Mr and Mrs P when they moved their mortgage elsewhere.

I know that Mr and Mrs P will be disappointed, but I don't think this complaint should be upheld.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P and Mrs P to accept or reject my decision before 6 May 2024.

Esther Absalom-Gough
Ombudsman