

## **The complaint**

Mr C complains that Bank of Scotland plc trading as Birmingham Midshires (BM) won't engage with his offer to settle his outstanding mortgage.

## **What happened**

Mr C holds a mortgage with BM. It looks like it was originally taken out in 1986 but it was added to in subsequent years, such that there were several separate component parts to the mortgage. It looks like these component parts were merged in 1998 and that the last part of the mortgage was due to end in March 2021.

In 2020, Mr C raised concerns with BM about the accuracy of the mortgage balance. He wasn't satisfied with BM's explanation of why the balance of the mortgage was what it was and he was concerned that he didn't have a way of verifying the accuracy of what BM had said.

An Ombudsman here issued a final decision in October 2021, not upholding the complaint. In summary, the Ombudsman said that Mr C hadn't provided a substantive argument as to why he thought the balance was incorrect. The Ombudsman said that it was open to Mr C to arrange for the account to be audited by a suitably qualified and independent party, in which case he then may be able to raise a further complaint.

It doesn't look like Mr C arranged an independent audit, but instead he asked BM to provide him with copy statements so that he could review them himself. In February 2022, Mr C wrote a letter to BM saying he'd been unable to complete his audit (because BM hadn't supplied the statements between 1986 and 1996) and that, as such, he didn't accept the outstanding balance communicated to him in August 2021.

Within the letter, Mr C set out the total amount he'd borrowed. He highlighted a number of concerns, including about the balance being higher than what he'd borrowed, which he said he couldn't accept. He said he'd been charged interest on too high a balance and also said he'd discovered he'd been charged for insurance that he hadn't needed because he had his own separate insurance in place. He asked BM to suggest a proposal to reach an agreement on a figure to settle the loan.

In response, BM issued a final response letter dated 29 March 2022. It said it had previously responded to all of the points Mr C had raised in his letter, apart from what he had said about being charged for insurance.

In terms of that, BM said that Mr C ought to have been aware he was being charged for insurance from the annual statements issued at the time. It said Mr C was therefore out of time to complain about this. The final response letter said that Mr C could refer his complaint to the Financial Ombudsman Service, but that he'd need to do so within six months of the date of the letter.

Mr C rang BM in April 2022 saying he needed to speak to someone about his letter of February 2022. He said he was also unhappy that he'd been kept waiting on the phone for

over an hour.

BM issued another final response letter dated 05 May 2022. In summary, it said that it had explained to Mr C it wasn't prepared to discuss his complaint about the balance any more and that he could be put through to mortgage servicing for it to provide a redemption figure. But that when this happened, Mr C started talking about the balance again. As such, the time spent on the phone was caused by Mr C wanting to discuss something that BM had told him it would not discuss any further. BM told Mr C he could refer his complaint to the Financial Ombudsman Service and that he would need to do so within six months of the date of the letter.

In August 2022, Mr C asked BM to stop sending him arrears letters as it was causing stress and worry. He asked BM to come back to him with a proposal based on the letter he had sent in February 2022. BM issued a final response letter a few days later, referring back to the letter it had sent in May 2022.

In November 2022, Mr C rang BM to say he had the funds available to pay what he thought the balance should be (£17,795.25). BM wrote to Mr C a few days later saying it was unable to accept the offer and that the full outstanding balance needed to be repaid. This letter was not a final response letter.

BM's records show that in January 2023 it received a letter from Mr C dated 02 December 2022. The letter included figures Mr C was deducting from the outstanding balance, to arrive at the £17,795.05 settlement figure. The deductions were based on things Mr C had raised in February 2022.

In May 2023, Mr C rang BM to complain that he hadn't received a response to the letter he'd sent containing the offer to settle the mortgage. BM's contact notes suggest that it explained the complaints department had responded to his proposal in November 2022 and that it had acknowledged the subsequent letter, asking Mr C to call to discuss. Mr C said he wanted someone with authority to make an agreement to contact him. He said he planned to make a payment of around £10,000 to show goodwill and said he wouldn't pay any interest which had accrued since expiry as the delays had been caused by BM.

In August 2023, Mr C contacted the Financial Ombudsman Service about his concerns. He said he disputed the £30,000 balance BM said he owed and that he had made an offer to settle the account. But BM was not engaging with him about this and instead had sent a letter saying it would be starting legal action to repossess the property.

An Investigator here asked Mr C if he was only complaining about the balance of the mortgage to which Mr C replied that yes he was complaining about the balance.

The Investigator issued an assessment saying the complaint wasn't one we could look at, because it had been brought more than six months after BM had issued final response letters. They said that even if the complaint had been brought in time, it's likely we wouldn't look at the merits of the issue because the Financial Ombudsman Service had previously considered the same issue.

Mr C disagreed with this outcome. He said the complaint he was bringing was new – being about BM not engaging with his offer to settle the account. He said the Ombudsman's previous final decision allowed for him to audit the account and submit evidence that the figures were wrong, which he had done. He said he had paid nearly £13,000 as a show of good faith and that receiving the computer generated letters from BM was very stressful and failing to meet the Consumer Duty on many counts.

As the matter remained unresolved, it was escalated to me as an Ombudsman.

I issued a Provisional Decision (PD) in March 2024 setting out my thoughts on the parts of Mr C's complaint that I considered were within my jurisdiction. In the PD, I said:

*"BM not engaging with Mr C's proposal to settle the mortgage"*

*Mr C made his proposal over the phone in November 2022 (and after in writing) after BM had told him in May 2022 that the full outstanding balance remained payable and that it wouldn't engage any further on the topic. This is important context – it means Mr C was asking BM to engage with something it had told him it wasn't prepared to discuss any further.*

*I can see that, following the proposal Mr C made over the phone in November 2022, BM wrote to him to say that it was unable to accept an offer below the full settlement amount. This wasn't a final response letter and so this complaint point is 'in time'. BM's records indicate that it acknowledged the letter Mr C subsequently sent in detailing the offer he'd made over the phone in November and that it asked him to call to discuss. It looks like Mr C next made contact in May 2022 saying he was unhappy no-one had gotten back to him and asking if BM was prepared to accept the proposal.*

*I can't see that BM has acted unfairly here. It told Mr C in May 2022 it wouldn't be engaging any further about his concerns to do with the outstanding balance being incorrect. It also responded to Mr C's proposal to say it would not accept an offer less than the full outstanding balance. I appreciate that Mr C wanted BM to take a different stance in relation to his offer to settle, but I'm satisfied that BM made its position clear and I can't reasonably say that it has acted unfairly.*

*BM sending Mr C computer generated letters and threatening legal action to repossess the property*

*It isn't generally unreasonable for a lender to send letters to a borrower about the account and repayments whilst an account remains unsettled, including where there is an issue with the payments being made. There is nothing about Mr C's circumstances that means BM has acted unfairly here. Mr C's unhappiness that BM has continued to send what he describes as computer generated letters is linked to his unhappiness about its response (or as he sees it lack of response) to his offer to settle the account for less than the outstanding balance. As above, I haven't found this means that BM has acted unfairly.*

*Given the mortgage term was due to end in March 2021, it doesn't seem unreasonable for BM to threaten repossession action with a balance still outstanding some two or so years later.*

*Finally, Mr C has said that BM's actions mean that it has failed to meet the standards of the Consumer Duty (CD) in its dealings with him.*

*In July 2023, the FCA introduced new standards for lenders under the CD. This sets higher and clearer standards of consumer protection across financial services and requires businesses to put their customers' needs first. As Mr C referred his complaint to the Financial Ombudsman Service in August 2023, it's possible that he received some correspondence from BM after the duty came into effect.*

*I have considered the CD and its application to this case. But it doesn't lead me to change the outcome on the elements of this case I can consider."*

I also set out my provisional thoughts on the parts of Mr C's complaint that I thought fell outside of the Financial Ombudsman Service's jurisdiction, because they'd been brought outside of the time limits that apply. I've returned to this in a separate decision under the same case reference.

In relation to the issues I said were within my jurisdiction, BM said it had nothing further to add. Mr C provided a response. In summary, he raised the following points:

- He still didn't think BM had complied with the four requirements of the Consumer Duty rules. It was up to BM to prove and demonstrate to me that it had complied with the Duty and it hadn't done so. Mr C urged me to reconsider and fully apply the Consumer Duty.
- BM saying it would not discuss the mortgage balance any further meant there was not a good outcome and also that it hadn't provided support. It is not fair for BM to do this when he is showing goodwill and willingness to resolve the issue – demonstrated by the letters he'd sent.
- BM failed in its duty of care and hadn't provided fair value.
- He never received the alleged response to his letter dated 2 December 2022.
- BM sending meaningless letters not replying to his letters is also a breach of Consumer Duty.
- His offer to settle the balance still stands and he is happy to discuss numbers. He cannot accept or pay for something that is wrong.

### **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.

Having done so, I've reached the same overall outcome that BM hasn't acted unfairly and doesn't need to do anything further. I do appreciate this will come as a disappointment to Mr C.

Much of Mr C's response is to do with the Consumer Duty. It's important that I clarify that when the Consumer Duty came into force on 31 July 2023, it did not impose a retrospective requirement on firms to meet the Duty. This means the Consumer Duty doesn't apply to anything that happened before it came into force. This is relevant to Mr C's complaint, because the majority of concerns he's raised are to do with things that happened before Consumer Duty came into force.

Having said that, before the introduction of the Consumer Duty, there were already significant regulatory requirements imposed on firms such as BM. Many of which can be summed up in a requirement for firms to treat customers fairly.

I appreciate Mr C feels strongly that it isn't fair for BM to not be willing to engage further with him about his concerns to do with the accuracy of the outstanding balance and his view of what a fair settlement would be.

However, my view on this is unchanged from what I said in the PD (which forms part of this final decision). It remains the case that BM told Mr C in May 2022 it wouldn't be engaging any further about his concerns to do with the outstanding balance being incorrect. It also

responded to Mr C's proposal to say it would not accept an offer less than the full outstanding balance.

As noted in the 'what happened' section above, the deductions Mr C was suggesting in his letter to BM in December 2022, were based on things Mr C had raised in February 2022. This means that when trying to get BM to re-engage about the outstanding balance, Mr C was mentioning the same reasons he'd previously mentioned for why he thought the balance was wrong - that BM had already considered.

Bearing this in mind, I remain satisfied that BM made its position clear and that I cannot reasonably say that it has acted unfairly by not engaging with Mr C any further about the same issues he had previously mentioned and that it had previously considered. If in the future Mr C were to raise different arguments about why he thinks the balance is inaccurate, it might then not be fair for BM to simply ignore this.

I note Mr C says he didn't receive any response from BM to his letter of 2 December 2022. BM's notes suggest it sent a response. Given what I've already said about this issue, it isn't necessary for me to make a firm finding on what happened here – as it doesn't affect the outcome.

Nothing Mr C has said has changed my view that it isn't generally unreasonable for a lender to send letters to a borrower about the account and repayments whilst an account remains unsettled, including where there is an issue with the payments being made. There remains nothing about Mr C's circumstances that means BM has acted unfairly here.

I have considered the Consumer Duty and its application to this case, in light of the comments Mr C made in response to my PD. As mentioned earlier, the Consumer Duty only applies from 31 July 2023 and isn't retrospective. So it isn't relevant to most of the concerns Mr C has raised. I still find that the introduction of the Consumer Duty on 31 July 2023, doesn't lead me to change the outcome on the elements of this case that I can consider, where Consumer Duty is relevant.

### **My final decision**

My final decision is that I don't uphold the parts of this complaint that I can consider.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 24 May 2024.

Ben Brewer  
**Ombudsman**