

## The complaint

Mr M and Ms J's complaint is about a mortgage account held with Bank of Scotland plc trading as Birmingham Midshires (and referred to here as BM).

Following a decision I issued on 22 October 2024, the issues I am able to consider in relation to this complaint are as follows:

- that BM failed to provide adequate support when the mortgage was in arrears, in the six-year period before the complaint was first raised with BM on 11 October 2017;
- that BM should have enforced possession of the property much earlier, in order to avoid the equity being eroded;
- that BM told Mr M that Ms J wasn't entitled to any of the equity in the property;
- that BM added a surcharge to the mortgage account when it was redeemed.

Mr M has dealt with the complaint throughout, with the consent of Ms J.

## What happened

I won't set out the full background to the complaint. This is because the history of the matter is set out in the correspondence between the parties and our service, so there is no need for me to repeat all the details here. In addition, our decisions are published, so it's important I don't include any information that might lead to Mr M and Ms J being identified.

So for these reasons, I will instead concentrate on giving a brief summary of the complaint, followed by the reasons for my decision. If I don't mention something, it won't be because I've ignored it; rather, it'll be because I didn't think it was material to the outcome of the complaint.

After taking advice from their own independent mortgage broker, Mr M and Ms J took out a mortgage in 2004 with BM, borrowing £144,500 on an interest-only basis. From at least 2008 the mortgage was in arrears and BM had a possession order on it. Mr M and Ms J separated in 2010 and Mr M was thereafter the sole occupant of the property. Although the mortgage account remained in joint names, Mr M was solely responsible for it from then on.

In October 2023, when the arrears were almost £70,000, the property was sold by Mr M and Ms J and the mortgage was redeemed.

Mr M was unhappy about the way the net proceeds of sale had been distributed, and complained to BM about this. Mr M also complained about what he considered to be a lack of support from BM. He thought that, rather than allowing the arrears to increase and erode the equity, BM should have taken possession of the property some years ago. He also said he'd been told by BM that Ms J wasn't entitled to any of the equity, and he was unhappy about a "surcharge" added to the mortgage when it was redeemed.

BM didn't uphold the complaint so Mr M brought it to our service. An Investigator explained we'd need Ms J's consent to consider it, which she provided. The Investigator explained that the complaint about the division of the proceeds of sale wasn't something for which BM was responsible. She also explained that we could only consider the complaint about the way BM had dealt with the arrears for the six years before the complaint was first raised – so only after 11 October 2017. The Investigator didn't uphold the other parts of the complaint.

Mr M asked for an Ombudsman to review the complaint.

### **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.

In my decision dated 22 October 2024 I explained why I am unable to consider the complaint about the division of the proceeds of sale. I will therefore make no further comment on this issue. I also explained in that decision that I can only consider arrears-handling for the six-year period from 11 October 2017.

The crux of Mr M's complaint is that he believes BM allowed the arrears to increase because it wanted to maximise the amount of interest it could recoup, and so it wanted the mortgage to run the full term.

The starting point is that lenders have a duty to treat all customers, but particularly those facing financial hardship, fairly. Balanced against that, one of the fundamental principles underpinning the mortgage contract is that a lender has the right to receive payment of the money owed to it.

The Mortgages and Home Finance: Conduct of Business Sourcebook (known as MCOB) sets out at MCOB 13 what lenders are required to do to help borrowers in arrears. A lender is required to explore ways to resolve an arrears situation, especially if the problem that created the arrears to begin with is one that looks to be short-term and capable of being resolved.

For long-term difficulties, a lender must also look at other ways to help, such as transferring a mortgage from capital and interest repayment to interest-only, deferring interest for a period of time or capitalisation of arrears. Balanced against that is the lender's obligation to ensure that any arrangement is affordable and sustainable.

I've looked at the contact notes from 11 October 2017 onwards. I can see that Mr M regularly contacted BM in relation to the arrears, and proposed payment arrangements to clear them during the periods when he was in employment. Mr M updated BM about his financial situation, for example, when he had lodgers in the property, or when he was applying for benefits. When payment arrangements were broken, BM tried to work with Mr M to see what could be done to help him.

Mr M regularly told BM he was intending to sell the property, but subsequently learned (not from BM) that he wasn't able to do this without Ms J's consent, as she was still a joint owner of the property. It took Mr M some time and expense to trace Ms J, but that's not something for which I can hold BM responsible.

Mr M also had some health difficulties, and was waiting for surgery, which was cancelled several times. I'm satisfied BM showed appropriate forbearance, particularly where Mr M said he had a job waiting for him once he was recovered from his surgery.

In 2019 Mr M told BM he didn't want to sell the property but instead wanted to stay in the property. BM had been considering enforcement action on the possession order, but wasn't able to do so because of a squatter in the property – one of Mr M's lodgers who had refused to leave. I understand Mr M had to involve the courts and the police to remove the squatter, and it took several months before the squatter could be evicted – but this wasn't something which BM could become involved in.

I therefore can't hold BM responsible for how long this took. BM couldn't carry out an eviction in relation to the mortgage if there was a squatter in the property. I note that Mr M told BM that the local authority was adamant that the squatter was a lawful tenant, and that there were legal proceedings arising out of this, resulting in a dispute between Mr M and the local authority. Mr M wasn't able to evict the tenant in 2020, due to the Pandemic, because the Government put a moratorium on evictions. All of this was outside the control of BM, but it couldn't take any action as a result, even if it had wanted to.

BM had also put recovery action on hold because Mr M had raised complaints about mis-sale of the mortgage and about the incorrect application of interest to the mortgage account. This is what BM would generally do, as it wouldn't be appropriate to carry out an eviction if there is a dispute about the mortgage. So any delay in this respect was as a result of Mr M raising concerns about the mortgage, rather than BM refusing to take any action.

In 2019 Mr M made a claim for Support for Mortgage Interest (SMI) from the Department for Work & Pensions (DWP), which took several months to be put in place. This is inconsistent with Mr M's contention that he wanted BM to enforce the possession action rather than let matters drag on over a long period of time.

Mr M also told BM he was due to receive compensation from the NHS for lost earnings and from the local authority, and would be using both to clear the arrears in full. BM therefore gave Mr M the opportunity to do this, but the arrears were not cleared.

In 2020 Mr M said he wanted more time to sell the property, because he thought the 'Crossrail' development would increase the value of the property. By this time, the mortgage had reached the end of its 16-year term and the balance was due in full. Mr M told BM in October 2020 that he was worried about BM carrying out an eviction, but BM confirmed this was on hold due to the Pandemic, and because the tenant was still in the property.

Mr M told BM in March 2021 that, once the tenant was out of the property, he'd be able to sell it, but was having to get his solicitors to trace Ms J. I note that it wasn't until November 2021 that the tenant actually vacated the property, but had left it in a poor state. Mr M told BM he would get the property decorated and marketed.

It took some time to sell the property, but I see that in March 2022 Mr M was concerned that, before it could be sold by him and Ms J, BM would take recovery action, and he didn't want this to happen. This is contrary to Mr M's current complaint – which is that he actually wanted BM to take possession years earlier.

The contact notes show throughout that Mr M's intention was to try to keep the property, but that when it became obvious that the property would have to be sold, he – not BM – wanted control of the sale. The property wasn't sold until October 2023, which was due to several buyers pulling out. Because Mr M and Ms J were selling the property voluntarily, BM had no control over this.

The contact notes also show that when Mr M asked BM about what would happen with the equity in the property, he was told he would need to take independent financial or legal advice. The call recordings do not state that Mr M was told Ms J wasn't entitled to any equity

either. Whilst BM's call handlers were sympathetic to Mr M's situation, it was made clear to Mr M that BM couldn't give him advice about this.

I note BM processed a Data Subject Access Request for Mr M, as he wanted to show that all the payments to the account had been made either by him or through his SMI claim. But overall I'm satisfied that BM did not tell Mr M that Ms J wasn't entitled to any equity in the property.

There was no "*surcharge*" applied to the mortgage, as Mr M alleges. BM charged a sealing fee of £50, which it was entitled to do, and was in line with the original mortgage offer. In fact, in the mortgage offer the fee is stated as being £100, but BM has since reduced it to £50.

## **Conclusion**

Having carefully considered everything Mr M and BM have said, I'm unable to find BM has done nothing wrong. BM showed appropriate forbearance when Mr M was in financial difficulties, and agreed payment plans when Mr M put forward his payment proposals. When Mr M told BM of his health difficulties, matters were put on hold, which was the right thing to do.

BM also wasn't able to take any action while Mr M was trying to evict the tenant. I appreciate this was a difficult and protracted process for Mr M, and I have no doubt it was an extremely upsetting time for him. But the difficulties Mr M had with the tenant weren't caused by BM.

The contact notes show that, whenever BM was considering enforcement action, Mr M would propose a payment arrangement, or tell BM the property was being sold. In the circumstances, I'm satisfied BM acted fairly and reasonably in not seeking possession in those circumstances.

I'm also satisfied BM didn't tell Mr M that Ms J wasn't entitled to any equity in the property. Finally, BM didn't add a "*surcharge*" to the mortgage account on redemption.

I know this isn't the outcome Mr M was hoping for, but after careful consideration of all the evidence, I'm unable to find BM has done anything wrong.

## **My final decision**

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

This final decision concludes the Financial Ombudsman Service's review of this complaint. This means that we are unable to consider the complaint any further, nor enter into any discussion about it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and Ms J to accept or reject my decision before 22 November 2024.

Jan O'Leary  
**Ombudsman**