

## **The complaint**

Mr and Mrs M complain that Bank of Scotland plc trading as Birmingham Midshires (BM) refused to extend the term of their interest only mortgage.

## **What happened**

Mr and Mrs M took out an interest only residential mortgage with BM in 2005 – it was on part interest only part repayment terms at first, and converted to fully interest only in 2007. The term of the mortgage expired in April 2022 and BM asked Mr and Mrs M to repay the capital balance, then around £230,000.

Following the end of the term, BM allowed Mr and Mrs M around eighteen months additional time to repay the mortgage – it didn't formally extend the term, but it agreed to allow extra time without taking recovery action.

At the end of that grace period BM said it would require the mortgage to be repaid and wouldn't allow a further extension. So Mr and Mrs M complained – and also complained about interest they'd been charged since the end of the term.

That complaint was dealt with by another ombudsman, who issued a final decision. In her final decision, she said:

- BM had fairly charged interest since the end of the mortgage term. Although it hadn't initially increased their monthly direct debit to collect additional interest when the interest rate increased, Mr and Mrs M declined to agree to an increase when it offered to do so later. So she didn't think Mr and Mrs M had lost out by not having their monthly payments increased sooner.
- Having taken Mrs M's health issues, and Mr and Mrs M's wider circumstances into account, she didn't think BM had acted unfairly in not allowing further time for the mortgage to be repaid. The term had ended and the capital was due for repayment. Mr and Mrs M had substantial assets, including other properties being rented out, which they could use to repay this mortgage. It wasn't fair and reasonable to expect BM to wait for repayment of money it was owed so that Mr and Mrs M could use the funds for other purposes.
- BM had rejected a specific proposal whereby Mr and Mrs M would take out an equity release mortgage with another lender – but because that wouldn't be enough to repay the borrowing in full, they wanted BM to agree to lend them the shortfall secured by a mortgage over one of their other properties. Rejecting that proposal wasn't unfair.
- The ombudsman was satisfied that, in allowing Mr and Mrs M 18 months to take advice, explore their options and raise the funds to repay their mortgage, BM had acted fairly and in accordance with its obligations.

Although related to the previous complaint, this complaint is about a separate issue – that

Mr and Mrs M applied for a term extension around three years before the end of the term of their mortgage, and BM refused their application; and that it wouldn't consider term extensions after that either. And that BM also refused to extend the term of the mortgage in conversations with Mr M in 2021 and 2022.

In addition, Mr and Mrs M remain unhappy with the findings of the previous ombudsman, and want the matters raised in their previous complaint re-considered.

BM said that Mr and Mrs M had spoken to its end of term team in September 2019. At that time they had said they were looking at three options to repay – selling this property, selling one of their other properties, or taking an equity release mortgage. It said Mr and Mrs M asked what would happen if they were still in the process of selling the property when the term ended. BM says it told them that if the property was on the market, it would allow six months for a sale to complete – with potential extensions to a maximum of 14 months. BM said that it hadn't agreed to formally extend the term at the time of that conversation, or given any indication that it would do so in the future. It said it had given Mr and Mrs M correct and not misleading information.

Our investigator said that he couldn't re-consider things that had been decided by the previous ombudsman. He said that BM had given Mr M correct information in 2019, and again when Mr M asked for a term extension from 2021. He didn't think BM had acted unfairly.

Mr M didn't agree and asked for an ombudsman to review his complaint. He made clear he remained unhappy with the previous decision, and didn't believe that the ombudsman had considered all the relevant evidence. He said that he had received misleading information in 2019 – he was not told that he wouldn't be able to get a term extension if he wasn't selling the property. Then in 2020 he was told he couldn't get a term extension at all. In 2021 he explored re-mortgaging with Bank of Scotland but a repayment mortgage wasn't affordable, and again was told that the term could be extended if he was selling the property but not if he intended to stay in it.

Mr M said that because of changes in circumstances, and because of covid, he could not sell the buy to let properties in time to repay the mortgage. He was not advised that the debt would increase because of interest being added above the monthly payments. He said that in light of his situation BM ought to have extended the term in 2021 – Mr and Mrs M had a plan to repay, but needed more time. An extension of two to three years would not have disadvantaged BM.

### **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.

Once an ombudsman issues a final decision, the powers of the Financial Ombudsman Service are at an end. A final decision can't be changed, or overturned – by me or any other ombudsman. And because a decision is final, we won't generally consider a further complaint about the same subject matter either – unless there is material new evidence which has become available to the complainant since the previous decision, and which is likely to affect the outcome.

There is some overlap between this complaint and the previous one. Both are about the circumstances leading up to and around the expiry of the term of Mr and Mrs M's mortgage. In her decision, the previous ombudsman made clear that she hadn't considered the 2019 call or what Mr M saw as BM's change in stance following it, because that hadn't formed part

of the original complaint. So I can consider those matters in this decision.

But I'm not going to re-consider any matters that the previous ombudsman made a decision on. I'm not persuaded that there is material new evidence likely to affect the outcome of the previous complaint. I appreciate Mr M strongly disagrees with what the ombudsman said. That's unfortunate, but it's an inevitable part of an impartial dispute resolution service that, from time to time, one or other party to a dispute will disagree with the outcome.

Mr M has since obtained recordings of his calls with BM via a subject access request. The previous ombudsman didn't have recordings of those calls when she made her decision – but she did have the contemporaneous notes of the conversations, and it would have been open to her to request recordings of any of the calls from BM if she felt that listening to the recording was material to her decision. I don't therefore think that the call recordings are material new evidence which wouldn't have been available at the time had the ombudsman considered them material.

And even if those calls were material new evidence which wasn't available at the time, I'm not persuaded they are likely to have changed the outcome she reached.

I've listened to the September 2019 call, in which Mr M spoke to BM. During the call:

- Mr M said he was calling about his mortgage, which was expiring in a couple of years. He said he was looking at several options – to sell some buy to let property to pay the mortgage off; to get an equity release mortgage to repay; or sell this property and downsize. He asked what would happen if they took the option to sell, starting the process around 12 months before the end of the mortgage – would there be an option to extend if the sale process overran?
- BM said that after the expiry of the mortgage, it would allow two months to put the property on the market, and then once BM could confirm it was on the market it would allow six months for it to sell. If it still hadn't sold, it would consider a further six months – making 14 months in all.
- Mr M said that if they took this option they would look to market the property 12 months before the end of the term, and if they did so would let BM know.
- BM said they should let it know, and then it could offer the holds on taking further action as discussed.
- Mr M asked what would happen if he put the property on the market say 12 months before the end of the term and 8 months later it still hadn't sold and he contacted BM – would it offer an extension then, or would it wait for the end of the term?
- BM said it would depend on the progress of the sale. A sale might still complete before the end of the term. It would need an update by the end of the term, and if by that point it hadn't sold it would apply a hold on further action.
- Mr M said that allowed some wriggle room, if the property was on the market and it overruns and doesn't get sold by the end of the term, they would be allowed a couple more months or more.
- BM said that was correct, but Mr and Mrs M would need to speak to BM if that happened, and it would need evidence that the property was on the market, such as being able to see it on a property sales or estate agent website.

- Mr M said he understood and if that arose he would be able to give copies of sales particulars to show the property was on the market. He said it was a desirable property in a desirable area so should sell quickly but he was being cautious and didn't know how the market would be in two years' time, so wanted to make sure there was wriggle room if they took that option and it didn't sell as quickly as they hoped.
- BM said it would write more regularly between now and the end of the term. Mr and Mrs M wouldn't need to contact BM unless their plans changed – but should get in touch if they do.
- Mr M said they had three options. Selling was most likely, but they would see, and wanted to confirm there was some flexibility.

I don't think there was anything incorrect or misleading about this conversation. At no time did BM say that the term of the mortgage could be extended following its expiry. What it said was that if Mr and Mrs M decided to sell their property to repay – which was their preferred option at the time – but hadn't managed to do so by the end of the term, it would allow them further time to do so, up to a maximum of 14 months. That would not be a formal term extension, it would be an agreement not to take action to recover the debt for a series of short periods while Mr and Mrs M were taking steps to repay.

Over the next couple of years Mr and Mrs M's plans changed. They discovered problems with the property meaning it needed substantial work. That work was delayed because of the covid lockdowns and problems with contractors. It also meant that the property was worth less than they hoped – until the work was done – so they weren't able to borrow enough on an equity release mortgage to repay in full. And because of the covid lockdowns, it was more difficult to remove the tenants from their buy to let properties and sell those – which anyway they didn't want to do, because they relied on the income from those properties and saw them as their family inheritance.

Mr and Mrs M also explored taking a retirement interest only mortgage, and re-mortgaging to another part of Bank of Scotland, on repayment terms – but neither of those options were possible.

The call recordings document these changing plans, and the discussions Mr M had with BM over this time. But I'm not persuaded that if the ombudsman had listened to those calls, rather than taking into account the notes made at the time they happened, the recordings would have led her to reach a different conclusion. She found that BM had acted fairly and reasonably in expecting Mr and Mrs M to repay their mortgage, while also offering them additional time to put plans in place to do so – which had reached around 18 months beyond the end of the term by the time of her decision. The call recordings show that BM asked Mr and Mrs M to keep it updated with their plans to repay and it would try to work with them if they did so; that's what happened; and that's what the ombudsman said was fair. The ombudsman also said that BM had fairly charged interest since the end of the term, and I'm not persuaded that the contents of the call recordings impact on her reasons for that conclusion either.

As far as the matters included in this complaint which weren't considered by the previous ombudsman are concerned, I'm also not persuaded that BM has acted unfairly. The 2019 call was clear and not misleading. BM answered Mr M's specific questions accurately, indicating that it would allow further time beyond the end of the term for the property to sell if necessary – which was Mr and Mrs M's preferred option at the time.

I don't agree with Mr M that BM said the term would be extended in that situation – it said it

would allow further time for a sale to go through beyond the end of the term before taking recovery action, if needed. That's not the same as a formal variation to the contract to extend the term.

I also don't agree that BM ought to have told him that the same arrangement wouldn't be offered if Mr and Mrs M decided not to sell. That wasn't what Mr M asked about, because at that stage selling was the intention. And in any case, BM *did* allow Mr and Mrs M time beyond the end of the term to try and get to a point where they could repay, even though they no longer wanted to sell the property. As the previous ombudsman found, it had allowed them 18 months by the time of her decision.

So I don't think that BM acted unfairly, either in what it said in 2019 or what it said later in 2020 and 2021. I think it was consistent throughout that the term of the mortgage expired in 2022, and that it would expect Mr and Mrs M to try and put themselves in a position whereby they could repay by the end of the term. But it wanted them to keep it updated with their plans in the meantime, and if for any reason they were unable to repay by the end of the term it would look at their situation at that point and try and work with them to give them further reasonable time to repay without taking action to recover the balance – though it wouldn't formally extend the term. That's what it said. And, as the previous ombudsman found, that's what it did.

### **My final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and Mrs M to accept or reject my decision before 28 November 2024.

Simon Pugh  
**Ombudsman**