

The complaint

Mr W complains that Bank of Scotland Plc trading as Birmingham Midshires is unfairly holding him liable for four buy-to-let mortgages that he said were taken out without his knowledge or consent.

What happened

In 2006, four buy-to-let mortgages with Birmingham Midshires were set up in Mr W's name. He said that it was a close relative who bought the properties, renovated them and mortgaged them. But since 2021, the freeholder of the properties has taken action which means that the properties could not be let. As a result, the mortgages have fallen into arrears.

Mr W said he only found out the properties were in his name in around 2021 when the council contacted him about council tax due on the properties. He complains that Birmingham Midshires is unfairly holding him liable for the mortgages. He said he did not understand how the mortgages were taken in his name and the properties were overvalued when they were taken out. Mr W wants his name removed from the mortgages and his credit file amended.

The investigator said that we could not consider the sale of the mortgage as that was more than six years ago and Mr W was aware that the mortgages were in his name more than three years ago.

Mr W was also complaining about an ongoing issue – that the properties were overvalued to begin with so the mortgages could go ahead and the properties are now worth around £20,000 less than they were valued for in 2006. Mr W considers that by allowing the mortgages to be approved in 2006 – and by allowing four mortgages to be set up in his name without his consent – Birmingham Midshires has participated in and perpetuated an unfair relationship. Although Mr W had not specifically raised s140A of the Consumer Credit Act 1974, it was relevant law for us to take into account.

In a recent case (Smith v RBS) the court found that deciding whether a relationship is unfair required consideration of all potentially relevant matters that might have given rise to unfairness, whenever they took place, and that consideration should take place at the date of a trial or, if earlier the end of the relationship.

In this case the relationship was continuing and therefore Birmingham Midshires had an ongoing obligation to put it right. So we will need to consider all matters relevant to that. Even though some of the events happened more than six years ago, that does not mean we can't take them into account for the purposes of whether the ongoing relationship is unfair.

The investigator said that if Mr W was correct, and he didn't take out the mortgages and they should not be in his name then there would be no relationship with Birmingham Midshires – and therefore the above points would not apply. But he considered the evidence showed that Mr W was aware of the mortgages for many years and treated them as if they were his.

The investigator did not consider that Birmingham Midshires needed to do anything. He said that the evidence we have supports that Mr W was aware of the mortgages in 2009 and that it was more likely than not that Mr W was an is the borrower. So Birmingham Midshires has not treated him unfairly.

Mr W did not accept what the investigator said. He made a number of points, including:

- Birmingham Midshires had offered him very little support.
- He wants Birmingham Midshires to take control of all four properties. He has sent evidence to support that they are not his properties.
- He was aware of the mortgage applications in 2006 but he did not consent to them being in his name. He'd provided evidence from several people confirming he had discussed that with them at the time.
- His close relative let the properties and received an income from them. He has not received any financial gain from them.
- The cause of the arrears was that the freeholder was breaching the lease and stopping the electrical and water supplies to the properties. There was no mention of the risk of that in the mortgage applications or contracts.
- The FCA had issued a final warning against Bank of Scotland in June 2020. It supports that Birmingham Midshires had not taken account of his personal circumstances.
- He only saw the applications and loan contracts in April 2024. That is when he became aware of what happened.
- Birmingham Midshires ought to have declined the applications. It should not have allowed four leasehold properties in the same building to be mortgaged by one person.
- His close relative acted as Birmingham Midshires' contact for the mortgage until 2023.
- The valuations were adjusted to allow the deposit criteria to be met as the seller was providing the deposit. The valuations were incorrect and Birmingham Midshires should not have accepted them.
- He was not sure if s140a is applicable as he never agreed or understood the mortgage applications or contracts.
- His close relative added him to the mortgages with his "best intentions". While he was aware of his plans he made it clear that he wanted no involvement.
- He had never accepted the borrowing. While he was aware of it, he did not consent to it.
- If Birmingham Midshires had assessed the applications properly then he would not have any relationship with Birmingham Midshires. The applications did not set out all of the potential risks to the borrower.
- Birmingham Midshires had not asked to see proof of identity or proof of income.

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.

At the ombudsman service we have a set of rules, which say what types of complaint we can (and can't) look at. That includes time limits for consumers to bring a complaint. I must apply those rules and decide whether a complaint is one we can look at. If I were to make a decision about the merits of a complaint where we did not have the power to look at under our rules, that decision would not stand.

Mr W has made two complaints:

- 1) The four mortgages were set up without his knowledge or consent.
- 2) That the properties were overvalued when the mortgages were taken out and that has created an ongoing unfair relationship with Birmingham Midshires.

I will explain what that means for which parts of the complaint we can consider – and what the outcome of the complaint is for any parts we can look at.

Complaint 1

I am not making any decision about whether Mr W's complaint about Birmingham Midshires is valid or he has a point. My decision here is limited to considering the complaint about the sale is one that I have the power to look at. And after considering everything, I agree with the investigator that this complaint has been brought outside our time limits. I will explain why.

Our rules say that I can't consider a complaint that is made:

- More than six months after the date the business sent its final response.
- More than six years after the event being complained of; or, if later
- Three years from the date the complainant became (or ought reasonably to have become) aware that they had cause for complaint.
- Unless the complainant referred the complaint to the business or us within that period and has a written acknowledgement or some other record of the complaint having been received.

Unless:

- The failure to comply with the time limits was as a result of exceptional circumstances; or
- The business consents to us looking at the complaint.

Mr W made his complaint in 2024. The event here is the sale of the mortgages in 2006. That is more than six years ago. So I must consider when Mr W became (or ought reasonably to have become) aware he had cause for complaint.

A complaint is defined by the Financial Conduct Authority's handbook as an expression of dissatisfaction whether justified or not, from a person about a financial service, which alleges that the complainant has suffered (or may suffer) financial loss, material distress or inconvenience.

What I am considering is when Mr W knew (or reasonably should have known) that there was a problem, that might cause him a financial loss and that the lender was responsible for that. Mr W wouldn't need to know everything that had gone wrong or know exactly what had gone wrong.

In his response to the investigator's view, Mr W said he was aware of the borrowing but did not consent to it. That alone is enough for me to find that he had cause for complaint at the time in question. In any event, I consider the other evidence we have supports that is more

likely than not that Mr W did have cause for complaint more than three years before he made this complaint.

Mr W has provided a statement from a colleague. Mr W said he discussed with his colleague in 2006 *"the distress I was experiencing in being asked to be involved in applications I refused to be connected with"*. The colleague said that Mr W refused to be involved with any part of his close relative's property.

Birmingham Midshires has given us copies of its notes of conversations it had regarding the mortgages. On 23 April 2009, Birmingham Midshires made the following note of a phone call it made regarding the mortgages:

Arrears: does not have d/c will get his [close relative] to call...ok with nmp [new monthly payment] going forward rfa [reason for arrears] due date should have changed but wasn't.

It seems likely that was a phone call between Mr W and Birmingham Midshires. I say that as the person it spoke to said they would get their close relative to call – and Mr W said that his close relative looked after things in respect of the property. It seems unlikely that anyone else would say that they would get their close relative to speak to Birmingham Midshires about the property. On balance, I think it is more likely than not that Mr W spoke to Birmingham Midshires in 2009 regarding the mortgages.

Bearing in mind the content of the note, I am satisfied that Mr W knew there were mortgages in his name – he was able to pass Birmingham Midshires' security questions and spoke about the monthly payment and the reasons the mortgages were in arrears. It seems more likely than not that Mr W knew that the mortgages were set up in his name in 2009.

Mr W has also provided a witness statement from his neighbour, which said in 2016 Mr W *"confided in me to discuss finding a way to be disconnected from the properties his family had involved him in."*

I note that when Mr W spoke to the investigator, the investigator said Mr W knew about the properties in 2021 but Mr W said, *"I knew before, I'd asked my [close relative] to have my name removed for years."*

Looking at all of the evidence we have, I consider it more likely than not that Mr W was aware of the mortgages by 2016 at the latest – and probably earlier than that. It follows, that if he did not know of our consent to those mortgages he had cause for complaint more than three years ago.

The fact that Mr W claims not to have seen the mortgage offers or other paperwork until 2024 would not make any difference to my findings that he ought reasonably to have been aware he had cause for complaint more than three years before he made this complaint. I say that as he would not need to know everything that had happened to have cause for complaint.

There were no exceptional circumstances that prevented Mr W complying with our time limits and Birmingham Midshires has not consented to us considering the complaint. I am satisfied that the complaint about the sale of the mortgage has been referred outside our time limits.

I note that Mr W has asked several questions regarding the steps a lender should take during a mortgage application. But for the reasons I have explained, I do not have the power to consider the complaint about the sale, so I will not be considering those points. I would add that only a court can make a finding whether there has been fraud or not.

Complaint 2

Mr W has also complained that the properties were overvalued. That meant Birmingham Midshires created an unfair relationship when the mortgages were taken out. If the properties were overvalued that meant that Birmingham Midshires lent more than it otherwise would have and in the circumstances there is potential detriment to Mr W. Although Mr W has not explicitly raised the point about an unfair relationship, I am satisfied he has complained about it. He is dissatisfied with the valuation of the properties and that has contributed to the unfair relationship he has found himself in.

I know Mr W considers that whether there is unfair relationship is not relevant. But it is the only way I'd be able to consider events around the sale of the mortgage. The difficulty I have is that if, as Mr W says, the mortgages were taken out without his knowledge or consent, then there is no relationship to become unfair. So that would not help him. I would be unable to consider the valuations as there was no valid relationship between Mr W and Birmingham Midshires.

On the other hand, if there was a relationship between Mr W and Birmingham Midshires, that relationship is continuing Midshires and there is potentially ongoing unfairness, then Birmingham Midshires has an ongoing obligation to put that right. So the complaint about whether there is an unfair relationship is not out of time. I can therefore consider what in my view is fair and reasonable in the circumstances of the complaint.

I've already found that Mr W had cause for complaint by 2016 at the latest – and probably earlier than that. So he knew he was potentially incurring a loss on the mortgage and that might give rise to an unfair relationship. But Mr W did not take any action in respect of the mortgages until 2024. It follows that for many years, Mr W effectively accepted the borrowing was his and did not take any steps to prevent any loss or harm growing. I do not consider it would be fair and reasonable in those circumstances to say that Birmingham Midshires could reasonably be required to do any more – particularly bearing in mind the stance taken by Mr W.

I can see that Mr W's close relative might have been involved in the borrowing and managing the properties, it does not follow that Mr W was not aware of the arrangement. And as I explained the only way I could consider the sale was if there was a valid relationship between Mr W and Birmingham Midshires. But if there was, Mr W ought reasonably to have taken action to address any unfairness relating to the sale sooner than he did.

Other matters

Mr W wants Birmingham Midshires to help him. It should treat him fairly if he is experiencing financial difficulty. But that would require Mr W acknowledging the debts are his. I can't see any reason why Birmingham Midshires would be required to remove him from the mortgages, amend his credit file, sell the properties for a certain price, or help him in any dispute with the freeholders or anyone involved in the alleged fraud.

I would add that the final warning that Bank of Scotland received from the FCA in 2020 related to how it handled arrears on regulated mortgage contracts. The mortgages in Mr W's name are unregulated buy-to-lets. They are not regulated mortgage contracts. The same rules do not apply to buy-to-lets.

Ultimately, Mr W would need to seek legal advice to see what recourse is available against any of the parties he has disputes with. I understand the reasons why he might not want to do that – but it does not follow that Birmingham Midshires is required to help him to the

extent he believes – even if what he said about his involvement in the mortgages is true.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 7 January 2025.

Ken Rose
Ombudsman