

## The complaint

This complaint is about a mortgage Mr P holds with Bank of Scotland plc trading as Birmingham Midshires (BM). The gist of the complaint is that Mr P believes BM unduly delayed a decision on his request to split the title of his mortgaged property to allow him to build additional homes on part of the land. By the time it had agreed, planning permission for the build had expired. This, Mr P says, prevented him from generating the funds he was intending using to repay the mortgage.

## What happened

In what follows, I have set out events in rather less detail than they have been presented. No discourtesy's intended by that. It's a reflection of the informal service we provide, and if I don't mention something, it won't be because I've ignored it. It'll be because I didn't think it was material to the outcome of the complaint. This approach is consistent with what our enabling legislation requires of me.

It allows me to focus on the issues on which I consider a fair outcome will turn, and not be side-tracked by matters which, although presented as material, are, in my opinion peripheral or, in some instances, have little or no impact on the broader outcome.

Our decisions are published and it's important that I don't include any information that might result in Mr P being identified. Instead I'll give a summary in my own words and then focus on giving the reasons for my decision.

Mr P took this mortgage out in 2009; it was secured on a property I'll call 31B. The mortgage was for just under £217,000, including fees, on an interest-only basis, over a five-year term. The mortgage was sold by a third party intermediary, and BM agreed to lend the money based on Mr P's own declaration of his income. The mortgage offer specified that Mr P must make his own provision for repaying the balance at the end of the term.

When the mortgage fell due for repayment, BM agreed a five-year extension, taking the end date to March 2019. By 2018, Mr P's plan for repaying the capital was to split part of the land of 31B onto a separate title, build flats for sale, and repay the mortgage from the sale proceeds. Mr P had planning permission for the flats, but needed BM's permission to split the title. As part of its assessment of the request, BM arranged an updated valuation from an independent surveyor.

The surveyor reported back with doubts about whether Mr P was residing in 31B, based on which BM initially refused the title split. Mr P provided further information to satisfy BM that he was living in 31B, the title split was approved. By then, however, the planning permission had expired and Mr P didn't apply to renew it. The mortgage term expired in March 2019; an automatic one-year concessionary extension was applied.

Since then, BM and Mr P have discussed a variety of different strategies that he hoped might enable him to repay the capital, and the business has waited to see if any of these

strategies would come to fruition. None has, and at the time of writing, the mortgage is some five years overdue for repayment.

Meanwhile, Mr P complained in 2023 about BM's handling of the request to split the title in 2018, and what he saw as the lack of time he'd subsequently been given to arrange the sale of 31B to repay of the debt. BM addressed the complaint in final responses, dated 15 September 2023, 19 October 2023 and 11 March 2024.

Our investigator didn't think BM had treated Mr P unfairly. Mr P has asked for the case to be reviewed by an ombudsman. In doing so, he has sought to broaden the scope of the complaint to embrace problems he has with valuations on other properties he owns, which are mortgaged to other lenders.

### **What I've decided – and why**

I'll start with some general observations. We're not the regulator of financial businesses, and we don't "police" their internal processes or how they operate generally. That's the job of the Financial Conduct Authority (FCA). We deal with individual disputes between businesses and their customers. In doing that, we don't replicate the work of the courts.

We're impartial, and we don't take either side's instructions on how we investigate a complaint. We conduct our investigations and reach our conclusions without interference from anyone else. But in doing so, we have to work within the rules of the ombudsman service.

I fully understand Mr P's wider concerns about the activities of other lenders, alleged shortcomings with valuations on other properties and possible issues with title registrations. The investigator has provided Mr P with information on how he might pursue those other matters, and who he could contact to do so.

Under our rules, we can only consider a complaint against one business at a time, and the business in question must be one that is covered by our scheme (a point I'll come back to in due course). The business that is the subject of this complaint is BM, which means my decision here is confined to issues relating solely to the property in mortgage to BM, which is 31B.

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Where the evidence is incomplete and/or contradictory, I'm required to reach my decision on the basis of what I consider is most likely to have happened, on the balance of probabilities. That's broadly the same test used by the courts in civil cases.

It's for us to assess the reliability of evidence, from both sides, and decide how much weight should be attached to it. When doing that, we don't just consider individual pieces of evidence in isolation. We consider everything together to form a broader opinion on the whole picture. It's also for us to decide when we have enough evidence to reach a fair conclusion.

In reaching my decision, I will have regard for the law and good industry practice where relevant, but my overarching responsibility is to decide what is fair and reasonable in the circumstances. That can sometime mean reaching a different outcome from what might prevail in court.

My starting point here is that this mortgage was originally due for repayment in 2014; BM granted Mr P a further five years to pay the money back; it didn't have to do that.. Mr P put a strategy in motion in 2018 which, if it had to run to plan, might have enabled him to pay the mortgage off by the extended deadline, but there was no guarantee of that. It's now known that the strategy didn't run to plan; Mr P firmly believes that was BM's fault, so I consider that point next.

With a new mortgage, a lender has a contemporaneous valuation from a suitably-qualified valuer to rely on. The valuation is usually paid for by the applicant, but is solely for the lender's benefit; a lender may disclose the valuation to the applicant, but isn't obliged to. Although Mr P already had the mortgage when he applied for the title split, what he asking for amounted to a material variation in BM's security for the money on loan.

BM, reasonably and prudently, concluded that a new valuation was required, which it commissioned from a valuer who is a member of the Royal Institution of Chartered Surveyors (RICS). Having done so, BM was fairly and reasonably entitled to rely on the expert opinion of the surveyor, and based on what the surveyor told it, BM's initial decision to decline the request to split the tile was similarly fair and reasonable. It's not in my remit to assess whether the surveyor made a mistake; independent firms of chartered surveyors are not covered by our scheme.

BM wasn't under any obligation to provide a copy of the updated valuation to Mr P. However, once Mr P appealed to BM saying *he* believed the surveyor had made a mistake, BM did what I'd expect a reasonable lender to do, which is to review its decision in the light of new information, and ultimately, agree to what Mr P wanted.

It's regrettable that by the time the appeal had been concluded in Mr P's favour, the planning permission had expired, but I can't fairly hold BM to blame for that. It didn't, in my view, delay or otherwise mishandle its approval of the title split.

It was Mr P's decision not to renew the planning permission and continue with his project of building the flats. He had his reasons for not doing so; I imply no criticism and none should be inferred. But it was, nonetheless, Mr P's choice, and he must accept the consequences of the decision he made.

The main consequence of Mr P abandoning the build project is that he didn't raise the funds he needed to repay the mortgage when it fell due in 2019. In the years since then. Mr P has contemplated a variety of alternative strategies for repaying the mortgage, and I have to say that BM has shown remarkable patience towards him. It's not obliged to remain patient indefinitely.

I said at the outset that I wouldn't be commenting on every single point, and I haven't. I have, as I said I would, confined myself to those matters that I consider have a material effect on the outcome. I can see how strongly Mr P feels. That's a natural, subjective reaction, and entirely understandable in the circumstances.

Be that as it may, I have to take a different approach. I'm impartial and I have to look at things objectively, ignore Mr P's concerns about other businesses institutions, and focus solely on the dispute between him and BM, That's what I've done.

That begs the question of what happens next. I don't know what BM's intentions are regarding enforcement of its security over 31B. But clearly that is something it can consider as a next step. It's important to explain here that lenders will generally agree not to pursue recovery action whilst we look at a complaint, but they don't have to and we can't force them to.

If the Financial Ombudsman Service had that power it would undermine our impartiality between the parties to a complaint. It would also create the potential for consumers to use our service to bring complaints with the intention of having any legal action put on hold, thereby obstructing businesses that were trying to take action through the courts to recover money legitimately owed by the consumers.

I do not wish to alarm Mr P but I would not want him to be under any misunderstanding that we would tell BM that it must delay recovery action in the event of any new complaint being raised about the mortgage. It is a matter for a court to decide whether it is appropriate to adjourn or suspend any legal action, not this service.

I know this isn't the outcome Mr P wanted. He is now faced with the prospect of having to find a significant sum of money to repay his mortgage, or else sell his home. If he does neither, BM could potentially enforce its security. It might help Mr P to have some advice from an independent financial adviser to discuss his options, for example, an equity release mortgage. Mr P can find details of advisers on the Financial Conduct Authority's website at [www.fca.org.uk](http://www.fca.org.uk).

### **My final decision**

My final decision is that I don't uphold this complaint, or make any order or award against Bank of Scotland plc trading as Birmingham Midshires.

My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 4 November 2024.

Jeff Parrington

**Ombudsman**