

## **The complaint**

Mr and Mrs I complain that Bank of Scotland plc trading as Birmingham Midshires failed to tell them their monthly direct debit was insufficient to pay the interest due on their mortgage each month. As a result, the mortgage account has been underfunded and the balance has grown.

## **What happened**

Mr and Mrs I have a residential interest only mortgage with Birmingham Midshires. The mortgage term ended in June 2022. The mortgage is on a variable interest rate. Since the mortgage term ended, the interest rate has increased several times, but the direct debit amount Birmingham Midshires has collected since June 2022 has stayed the same.

In September 2022 Mr I called Birmingham Midshires and asked for a term extension. He said he and Mrs I were no longer living in the property on a permanent basis although they were there from time to time. Birmingham Midshires said they wouldn't be able to extend the mortgage term if Mr and Mrs I weren't living in the property as it was a residential mortgage. It encouraged Mr and Mrs I to seek independent financial advice about their situation as Mr I had said he didn't want to sell the property.

In October 2022 Mr I called again and asked again for a term extension as he was struggling to get a re-mortgage. Birmingham Midshires said it could hold the account for three more months whilst Mr and Mrs I explored their options, but they would need to update it in January with their plans.

There was no further telephone contact until March 2024, when Mr I called Birmingham Midshires to discuss re-mortgaging. It explained it wouldn't offer a re-mortgage and he would need to speak to a broker. It also told him that the mortgage balance was increasing as the monthly payments weren't covering the monthly interest being charged. Mr I complained. He said he had never been made aware that he wasn't paying enough each month to cover the interest. He didn't think it was fair that Birmingham Midshires could add interest onto the balance without making him aware.

Birmingham Midshires said as the mortgage was out of term, it was unable to increase Mr and Mrs I's monthly payments in line with the changes to the interest rate. It said the end of term team had sent Mr and Mrs I multiple letters both before and after the mortgage term ended explaining their options. It said each time the interest rate changed it wrote to Mr and Mrs I to notify them of the change. The letters said that Birmingham Midshires hadn't worked out a new payment amount following the interest rate change and so the monthly payment wouldn't be enough to cover the interest. It also said the mortgage statements showed how the balance was changing. It said that whilst Mr I had said the letters hadn't been received, it relies on the postal service to deliver mail and it can't be held accountable for failures in the delivery service.

One of our Investigators looked into things and explained that he didn't think Birmingham Midshires had acted unfairly. Mr I said that he hadn't received any of the letters Birmingham Midshires had claimed to have sent, and he'd never seen any proof they had been sent. He

said it was common for systems to fail, and he's had other problems receiving letters from Birmingham Midshires since this complaint was made which shows it's unreliable.

The Investigator wasn't persuaded to change his opinion, so the complaint's been passed to me to issue a decision.

### **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.

Birmingham Midshires has said that since the mortgage term ended in June 2022, it hasn't been able to amend Mr and Mrs I's monthly direct debit to change the payment in line with increases to the interest rate. If that's the case, in line with its obligations to provide its borrowers with information that is clear, fair and not misleading, I'd expect Birmingham Midshires to have made it clear to Mr and Mrs I that the amounts they were paying towards the mortgage each month were not sufficient to cover the interest that was being charged.

Birmingham Midshires has sent us copies of the letter template that it says was sent to Mr and Mrs I's address on the nine occasions the interest rate changed after June 2022. That letter said the following:

"From [date] the interest rate on your account is going up by X%. We're making this change because some, or all, of your account is on a variable rate....

We haven't worked out a new payment for you because some or all of your term has ended. So, your existing total monthly payment will stay the same but it won't be enough to cover the change in the interest rate. If you pay by direct debit, we'll continue to collect your existing payments using the usual reference."

Whilst this letter does state that the monthly payments would not be covering the interest payments after the change in interest rate, it doesn't state what Mr and Mrs I would have to manually pay if they didn't want their mortgage balance to grow, and incur additional interest on any unpaid amounts. It seems a borrower would have to contact Birmingham Midshires upon receipt of the letter to find out how much they would need to pay each month. Whilst it alerts the borrower to a potential problem, I think it could have gone further and made clear how much more Mr and Mrs I would need to have paid to cover the higher interest rate. However, in this particular case, I'm not persuaded it makes a difference as Mr and Mrs I say they never received any of these letters and so didn't know they weren't paying enough at all.

Birmingham Midshires has sent our service its internal log which it says shows the letters that were sent on the account. Mr and Mrs I say that doesn't prove the letters were actually sent. And none of them were received. Where there is a dispute of the facts, I have to consider what I think is most likely to have happened based on the balance of probabilities. I accept that the internal information Birmingham Midshires has provided doesn't prove the letters actually left the building. But I don't think it's unreasonable to assume that it is likely they were sent. It may be the case that the odd letter may not get dispatched as intended, but I find it very unlikely that all nine letters would have been marked as sent but had not been.

I think it's relevant that Mr and Mrs I were not living in the property address that these letters were sent to. In the conversation Mr I had with Birmingham Midshires in September 2022, he told it the house was empty, but they were there from time to time. He didn't provide an alternative correspondence address for Birmingham Midshires to write to him and Mrs I. But

then in March 2024, Mr I told Birmingham Midshires there had been tenants in the property for five years, which would have been from 2019 – three years before he told Birmingham Midshires that the property wasn't being used as Mr and Mrs I's permanent residence.

It also seems that since Mr and Mrs I bought this property and the mortgage was agreed, the property has been turned into flats, rather than a single dwelling. Mr and Mrs I have said that they visit the property to collect post, and have an agent working for them that does the same. So any letters Birmingham Midshires sent them should have reached them. But taking all of the above into account, I'm persuaded that Mr and Mrs I not receiving the letters Birmingham Midshires says it sent was more likely a result of delivery issues, rather than because Birmingham Midshires mistakenly failed to send all nine letters.

I've also considered the other contact Birmingham Midshires had with Mr and Mrs I during the relevant period. As the lower mortgage payments weren't being recorded as arrears, I wouldn't have expected Birmingham Midshires to pro-actively try and phone Mr and Mrs I about the issue as well as sending letters. But I have thought about whether there were other opportunities it had to bring the matter to their attention.

There were two phone calls that took place after the interest rate had gone up and before Birmingham Midshires made Mr I aware of the payment shortfalls in 2024 – both in 2022 shortly after the term had expired. I've listened to those calls, and having considered the circumstances, I'm not persuaded Birmingham Midshires acted unfairly by not bringing this issue to Mr I's attention during those interactions. Both calls were focused on Mr I asking for a term extension or a re-mortgage with Birmingham Midshires. There had been one interest rate increase in August 2022, and another in September 2022 so only very recently before the calls took place. As I've said, the underpayments on the account wouldn't have been showing as arrears, and given that it was only one or two payments at the point that hadn't covered the interest rate increases, I don't think it would have been obvious to the call handlers that the mortgage was being underfunded.

It's my role to consider what's fair and reasonable in all the circumstances. In this case, Mr and Mrs I's mortgage term had expired, and they'd told Birmingham Midshires they were exploring their options and would call them back in January 2023 but didn't. Birmingham Midshires was entitled to expect the full balance to be repaid, and was writing to the address it held for Mr and Mrs I to keep them informed of the account position. Whilst I appreciate it will come as a disappointment to Mr and Mrs I, I'm not upholding this complaint.

### **My final decision**

I don't uphold this complaint.

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

Kathryn Billings  
**Ombudsman**