

The complaint

Mr K complains about how Bank of Scotland plc trading as Birmingham Midshires (BM) dealt with him when he tried to make a payment to prevent his property being taken into possession.

What happened

Mr K has held a buy to let (BTL) mortgage with BM since 2008. He has lived in the property with his family for a number of years.

Over the last three years, Mr K has been in significant arrears due to health problems. In September 2023, BM wrote to Mr K explaining it hadn't heard from him for some time or received any payments towards the mortgage. BM said it was considering taking legal action to take possession of the property. It asked Mr K to get in touch. At this point the arrears were around £13,000.

Mr K made payments for the following three months. But then didn't make any further payments until March 2024. The arrears at this point stood at nearly £17,000.

Mr K contacted BM in late May 2024 following receipt of a letter from BM's solicitors. Mr K spoke with BM and completed an income and expenditure assessment to try to come to a payment arrangement. During this call, Mr K also made a payment towards the mortgage.

Later that same day, Mr K was told that as enforcement action had already begun, a payment arrangement was no longer available to him. Mr K complained, and said if he'd known this, he wouldn't have made a payment towards the mortgage. The payment was refunded to Mr K the following day.

BM responded to the complaint. It agreed that Mr K shouldn't have been taken through the income and expenditure assessment by its agent. And it said he should've been told that the enforcement process had started. Because of this, BM told Mr K it would put the enforcement action on hold and ask its Evictions team to reset the payment arrangement. BM also said that if Mr K didn't keep to the arrangement, then further action would be taken by its solicitors and his property may be taken into possession.

Mr K referred his complaint to our Service. An Investigator looked into the complaint. In the meantime, BM told us that it felt it should've recognised the upset this matter had caused Mr K. It offered £250 compensation for this. Our Investigator thought this offer was fair, and explained this to Mr K.

Mr K didn't accept this. So, the complaint has been passed to me to review and make a final 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.

Mr K's mortgage is a BTL. This means, the mortgage was granted for the purpose of buying a property to rent out. Mr K has since chosen to live there, which is against the mortgage terms and conditions. BM is aware of this and is allowing him to do so for now.

A BTL mortgage is generally taken for commercial reasons. This means, it doesn't attract the same regulatory protections that a mortgage for a borrower's home might. That said, BM still has an obligation to treat Mr K fairly and reasonably. So, I've gone on to consider whether it has.

Mr K has been in a significant level of arrears for a number of years now. He's told us about his health problems. And I'm very sorry to hear about what he's been through. But this doesn't mean that payments aren't still due on the mortgage. It appears to me that BM has been understanding to Mr K. It could've taken legal action sooner but didn't. And, as I've noted above, it's been allowing Mr K to live in this property, despite this breaching the mortgage terms. I can also see it's made a number of concessions and arrangements over the years when Mr K has got in touch to tell it about his health problems.

I can see that in 2023, Mr K didn't make any payments for many months, and didn't contact BM during this time, despite BM asking him to. And, he had previously broken payment arrangements he'd made with BM. And it's this that triggered the letter of possible eviction to be sent.

It's not disputed that when Mr K called in May 2024, BM's agent made a mistake. Rather than taking payment from Mr K and going through an income and expenditure assessment, BM should've explained to him that it was looking to enforce a possession order. However, to put matters right, BM refunded this payment and gave Mr K the chance to start and maintain the payment arrangement again. I think this was fair and reasonable in the circumstances.

Whilst BM would've been entitled to take further legal action at this time, this incorrect information would've caused some upset to Mr K. But, as I've said, BM put matters right, and quickly. And it refunded the payment Mr K says he wouldn't have made. Because of this, I think the £250 it's offered in compensation is fair and reasonable in the circumstances. I'm not going to increase this further.

It doesn't appear that Mr K has engaged as much as he should've with BM since. I'd encourage Mr K to get in touch with BM as soon as possible so that he can see what can be done, if anything, to avoid further action. As I've said, I am aware of his health problems, but the arrears have been building for some time now, and if payments aren't maintained, things will only get worse. So, Mr K really does need to address this if he can. I've noted that at times Mr K's wife (who is not a party to the mortgage) has contacted BM. Mr K may wish to consider giving BM the authority to talk to his wife in the event that he can't engage due to his health.

I can see that Mr K told BM earlier this year he had a tenant ready to move in. It's unclear whether this did happen or not. However, BM has told us that payments are still not being consistently made. Again, Mr K should engage with BM urgently if he is able to in order to try to resolve this matter.

Mr K has also raised with our Investigator the fact that BM has applied legal fees to his mortgage balance and then cancelled legal action. BM hasn't had the chance to respond to this complaint point yet. So, Mr K would first need to raise this complaint with BM. If, once he receives a response, he remains unhappy, he can then refer this to our Service as a new complaint.

Putting things right

BM should pay Mr K £250 for the distress and inconvenience this matter has caused.

My final decision

I uphold this complaint and require Bank of Scotland plc trading as Birmingham Midshires to put matters right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 31 December 2024.

Rob Deadman
Ombudsman