

The complaint

Mr F and Miss F's complaint relates to a mortgage they have with Bank of Scotland plc trading as Birmingham Midshires. They are unhappy that following the end of the mortgage term despite the mortgage being on a variable interest rate, Birmingham Midshires didn't alter the amount it collected each month to reflect the amount of interest accruing. As such, the amount they owe on the mortgage has increased. They are also unhappy that Birmingham Midshires didn't tell them what it had done.

To settle the complaint, Mr F and Miss F want Birmingham Midshires to reduce the mortgage balance back to what it was at the end of the term and, once a way forward with the mortgage has been reached, allow them to reduce the balance by the amount of the underpayments over the last three years.

What happened

Mr F and Miss F took out a buy-to-let (BTL) mortgage with Birmingham Midshires in 2006. It was arranged over a term of 15 years on an interest-only basis. At the end of the term, Mr F and Miss F needed to repay the capital sum borrowed.

The mortgage term ended in April 2021, but Mr F and Miss F didn't repay the capital balance. At this point the mortgage tracked Bank of England base rate and interest continued to be charged. However, as the mortgage term had ended, Birmingham Midshires systems no longer reviewed the monthly payment when the interest rate increased. Mr F and Miss F were told about the increase in interest rate each time it changed and it was confirmed what the monthly payment would be – and that this would not automatically change. The shortfall between the interest accruing and the monthly payment was added to the mortgage balance. Birmingham Midshires has confirmed this amount is not recorded as arrears and no negative information has been recorded on Mr F or Miss F's credit files.

In September 2021 Birmingham Midshires wrote to Mr F and Miss F to confirm that it had moved their mortgage to a new system and that this meant the mortgage number had changed. It confirmed what the new number was and that there had been no other changes to the mortgage.

The rate change letters sent to Mr F and Miss F told them about the increase in the interest rate and included the following standard text:

Some or all of your term has ended

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.

The annual statements issued in 2022, 2023 and 2024 showed the balance of the mortgage increasing. The part of the document that set out the transactions, showed that more interest was being charged than Mr F and Miss F were paying each month.

Until 2021 Birmingham Midshires sent the correspondence about the mortgage to the residential address Mr F had given when the mortgage had been taken out. However, in 2021 it was informed that the property had been sold in 2016. As neither Mr F nor Miss F had provided Birmingham Midshires with a new address to correspond with them at, it changed the correspondence address to that of the mortgaged property. Both Mr F and Miss F live overseas, but Mr F explained to us early in the complaint that his tenant forwarded the correspondence, so while he received letters, there was a delay in him receiving them.

In February 2022 Mr F contacted Birmingham Midshires end of term team and during the conversation, he gave it a UK correspondence address for himself. He was told that the individual he was speaking to could not alter his address and a transfer to the team that could do so was offered, but as the waiting time to speak to a member of staff was 20 minutes, Mr F declined and was given the telephone number instead. He's told us that he tried several times after that to get through to the relevant team, but his calls were not picked up. It was not until November 2022, when Mr F wrote to Birmingham Midshires with some information about the property and the options available, that Mr F's correspondence address was changed. Miss F's correspondence address was not updated, as Birmingham Midshires wasn't told to do so. This meant that two copies of correspondence was sent thereafter – one to Mr F's new address and a second to the mortgaged property.

In that conversation Mr F raised the subject of the monthly payments, as he'd received a letter telling him that the interest rate was going up. He wanted to know if the monthly payment would go up over the following twelve months. He was incorrectly told that if this was necessary, Birmingham Midshires would send him a letter telling him how much he needed to pay, and that he didn't need to make any additional monthly payments unless that happened.

Birmingham Midshires provided several response letters to the complaint between February and June 2024. It accepted that Mr F had been given incorrect information by telephone in February 2022 and it paid £150 for any distress or inconvenience this caused to Mr F or Miss F. However, Birmingham Midshires was satisfied that they would have been aware that the amount of interest being charged since 2022 was higher than the monthly payments being collected. This was due to the information contained in the interest rate rise letters and the annual statements they had been sent. As such, Birmingham Midshires declined to reduce the mortgage balance in the manner Mr F and Miss F wanted.

In relation to the field agent visit to the property, Birmingham Midshires was satisfied that the visit was necessary. However, it acknowledged that the agents had only written to the property address, rather than to Mr F's correspondence address. Furthermore, Birmingham Midshires said that it should have given more information about the proposed visit when Mr D called on 30 January 2024. It paid a further £50 compensation for these errors.

Birmingham Midshires also confirmed that it would not provide Mr F and Miss F any further grace periods in relation to the repayment of the mortgage. It highlighted that it had given them twelve months to extend the least and either sell or refinance the property thereafter. However, it was three years since the mortgage term had ended and the situation had not changed, and so Birmingham Midshires was not willing to give any further time.

Mr F and Miss F were not happy with the responses and referred their complaint to this Service. When they did, they confirmed that they had returned the £150 compensation

initially paid to them for the error relating to the February 2022 telephone call. One of our Investigators considered the complaint, but he didn't recommend that it be upheld as Birmingham Midshires had already offered suitable compensation. Mr F and Miss F didn't agree with the Investigator's findings. They reiterated many of their previous comments about the situation and set out comprehensively why they considered the Investigator's conclusions were wrong. They asked that the complaint be referred to an Ombudsman for consideration.

Mr F and Miss F also told us about their plans to repay the mortgage. They explained that as the lease on the property only has 50 years on it, it's not possible to refinance the mortgage. However, once the provisions of the Leasehold and Freehold Reform Act 2024 come into force, at an unknown date, they will extend the lease and refinance the property, or possibly sell it to the family of the current tenant.

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.

I would firstly confirm that we can only consider matters that have first been complained about to the responsible financial business. So while I note that Mr F and Miss F are unhappy about Birmingham Midshires not having altered the direct debit when initially asked in March 2024, Mr F and Miss F would need to raise the issue with it in the first instance.

This is a BTL mortgage, taken out for investment purposes and considered to be a commercial mortgage. It is unregulated and it's up to Mr F and Miss F to manage the mortgage, including being aware of the date when the mortgage was due to be repaid, and to ensure that whatever payments needed to be paid to the mortgage are made.

Whilst the mortgage isn't subject to the regulatory protections available to residential mortgage customers, Birmingham Midshires is still required to treat Mr F and Miss F fairly and reasonably. The crux of this complaint is that following the term of the mortgage ending, and the capital not being repaid, Birmingham Midshires didn't alter the amount it was collecting each month and so the mortgage balance increased. This was then compounded by it providing incorrect information about what needed to be done in relation to the increase in the interest rate.

I will initially comment on the matter of correspondence relating to the mortgage. It was Mr F and Miss F's responsibility to ensure that Birmingham Midshires had a valid correspondence address for them. When Mr F sold the correspondence address the mortgage was set up with, Birmingham Midshires was unaware of this fact. It was not until the residents of the property informed Birmingham Midshires several years later that Mr F and Miss F no longer resided, that it became aware of the situation. Birmingham Midshires then changed the correspondence address to that of the mortgaged property. This was not unreasonable and I note that Mr F has confirmed in his earlier comments that he was receiving the correspondence, albeit with a delay caused by his tenant forwarding it.

It was not until early 2022 that Mr F gave Birmingham Midshires a new correspondence address. At that point he was told the person he was speaking to could not change the address, as he was speaking to a specialist team that could not complete basic administrative matters on his account. While that may be the case, I do think that when Mr F was faced with another long wait to be transferred to someone who could complete the administration needed, Birmingham Midshires could have done more, rather than just telling

him to call back. This resulted in the address change not being made until Mr F's letter of November 2022 was received.

At this point I am satisfied, from the system evidence Birmingham Midshires has provided, that Mr F's correspondence address was changed. However, as his letter had asked that *his* address was changed to that given, Miss F's correspondence address was not changed. This has meant that two copies of subsequent system generated letters have been sent: one to Mr F's correspondence address, and another to the mortgaged property. While Mr F has said that letters have only been sent to the mortgaged address, I am satisfied that is not the case.

Mr F has commented that he had difficulties calling Birmingham Midshires as the telephone number it provided was an 0800 number and not accessible from overseas. While I can understand Mr F's frustration, I can't criticise Birmingham Midshires for providing its customers with a freephone number to save them money. I understand that it would have been helpful for Mr F and Miss F to be provided with an alternative to that number, but in order for Birmingham Midshires to know that was needed, it would have needed to be told that Mr F and Miss F were living overseas, which they did not tell it.

I would confirm to Mr F and Miss F that the terms and conditions of the mortgage did not change when their mortgage term ended. Birmingham Midshires has explained that its automated systems are set up to administer mortgages over the term. When the mortgage term expires, certain automated functions cease to work, as the mortgage should no longer exist. I do not consider it reasonable that this functionality ceases, and on a generic basis Birmingham Midshires' customers are left to manually manage their mortgage payments. However, as I have said above, this is a commercial mortgage and there is a greater responsibility on the borrowers in such cases to manage their mortgage. I don't consider that Birmingham Midshires' system limitation negated Mr F and Miss F's responsibility to manage their mortgage.

Mr F and Miss F have highlighted that Mr F was told in the telephone conversation in February 2022 that they didn't need to pay anything more to the mortgage. Birmingham Midshires has confirmed that Mr F was given incorrect information in that call, as he was told Birmingham Midshires would tell them if they needed to pay more. It paid them, although they returned the payment, £150 for any upset or inconvenience that caused them.

The fact that they were given incorrect information in that call does not negate the fact that Mr F and Miss F then continued to receive letters telling them that the interest rate on their mortgage was increasing and that the amount Birmingham Midshires was collecting each month was not enough to cover the interest accruing. This would also have been reinforced by the information provided in the annual statements sent at the beginning of each financial year. These showed the mortgage balance increasing and documented the transactions on the account during the year, clearly showing the amount of interest charged each month and the payment that had been received. So while Mr F and Miss F may have been confused at the mixed messages they had received, I think, overall, they would have known the payments that were being collected were not enough to cover the interest they were being charged on the mortgage. That being the case, Mr F and Miss F could have made additional payments to the mortgage, or at the very least, they could have set aside funds to cover the unpaid interest.

Mr F and Miss F have said that they understand that when a financial business has made a mistake, it's customers should be returned to the financial position they would have been in, had the mistake not happened. They have said that this being the case, the position they would have been in, is that their mortgage balance would not have increased.

It is true that we will attempt to place a consumer in as close as possible to the financial position they would have been in, had the mistake by the financial business not happened. If that had been the case, Mr F would have been told that whenever the interest rate increased, he would need to contact it to have the amount collected manually altered to cover the amount of the interest. As I have said above, while the oral information Birmingham Midshires gave in February 2022 may have caused some confusion for Mr F and Miss F as it contradicted the written information they were receiving, I am satisfied they ought reasonably to have known from the multiple rate change letters they received they were not paying enough to cover the interest being charged. It is difficult to find in light of this, that Mr F and Miss F would have changed the monthly payment earlier than they did. Furthermore, as I have said above, Mr F and Miss F had sufficient information to know they needed to set aside funds to cover the unpaid interest, and so I am not persuaded they suffered a financial loss due to being provided with incorrect information in the telephone call of February 2022.

There is an offer on the table from Birmingham Midshires of £200 compensation for its error in relation to giving Mr F and Miss F incorrect information about what needed to be done in relation to the increases in the interest rate and the poor communications from the field agents it arranged to visit. I am satisfied that a compensation payment is merited given the possible confusion in relation to the first issue and inconvenience in relation to the latter one. I have thought about the matter carefully, and I know that Mr F and Miss F will not agree with me, but I consider the amount Birmingham Midshires paid is an appropriate and proportionate amount in the circumstances.

I have noted Mr F and Miss F's plans for repaying the mortgage. Birmingham Midshires was entitled to have the money owing to it repaid at the end of the mortgage term. While it has given Mr F and Miss F a significant amount of additional time to deal with the situation, it does not have to continually provide them with more time. Birmingham Midshires has confirmed that it is not willing to allow Mr F and Miss F the time for their plans to come to fruition as they don't have a definite timescale and it is also not known whether the changes they are hoping for will happen. I consider that Birmingham Midshires has shown considerable forbearance toward Mr F and Miss F, especially in light of it being a commercial mortgage, and I don't consider its decision is unreasonable.

My final decision

Bank of Scotland plc trading as Birmingham Midshires has already made an offer to pay Mr F and Miss F a total of £200 to settle the complaint and I am satisfied this offer is fair in all the circumstances. Mr F and Miss F have evidenced that the initial payment of £150 was returned. As such, my final decision is that Bank of Scotland plc trading as Birmingham Midshires should pay £150, in addition to the £50 already paid, in full and final settlement of this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Miss F and Mr F to accept or reject my decision before 10 January 2025.

Derry Baxter
Ombudsman