

The complaint

Mr E's complaint is about buy-to-let mortgages he and a relative (who has now been declared bankrupt) had with Bank of Scotland plc trading as Birmingham Midshires. He has said he did not sign key documents necessary for the mortgages to be set up and is a victim of fraud. He has also questioned the amounts advanced, as he thinks Birmingham Midshires lent more than it should have, given the value of the properties, and that the mortgages were advanced on an interest-only basis. Mr E was also unhappy with the responses he received to a Data Subject Access Request (DSAR) he made in relation to each of the mortgages.

In settlement of the complaint, Mr E wants Birmingham Midshires not to hold him responsible for the mortgages.

What happened

Mr E complained to Birmingham Midshires in January 2023 about having been the victim of fraud in relation to the mortgages held jointly in his name and taken out prior to the 2008 financial crash. In addition, he believed that mortgages had been lent recklessly as he understood the borrowing was higher than Birmingham Midshires' maximum lending limit, which meant that if the properties were sold, the outstanding mortgages could not be repaid.

Birmingham Midshires responded to the complaint on 24 January 2023. It rejected the complaint. Referral rights were given to this Service and it was confirmed that any referral had to be made within six months of the date of that letter.

Mr E went back to Birmingham Midshires about this complaint toward the end of 2023. He said that he had not received the final response letter of 24 January 2023. Birmingham Midshires issued another final response letter dated 12 December 2023, which reiterated its previous decision and covered some additional points. Birmingham Midshires issued new referral rights to Mr E – telling him that he needed to refer the complaint to this Service within six months of the date of the letter.

Mr E raised a DSAR and made complaints about the DSAR at the end of 2023 and into 2024. These complaints were responded to in letters of 12 December 2023, 24 February 2024, 1 May 2024 and 29 May 2024. Birmingham Midshires acknowledged that the response to the DSAR had not been provided on time and it had not provided call recordings requested when it should have. Overall, it paid Mr E £450 compensation for the distress and inconvenience its errors had caused him.

Mr E contacted our Service about his complaint on 8 May 2024. He asked us to consider his complaint about the sales of the mortgages, and also about the DSAR he had made about the accounts. Initially, we informed Mr E that if he had concerns about the DSAR the more appropriate body to consider them was the Information Commissioners Office (ICO).

One of our Investigators then looked into whether we could consider the complaint. He explained that the complaint about Birmingham Midshires' decision to lend and the alleged fraud had been referred to us too late as it was more than six months after the final response letter of 23 January 2023. He was not persuaded that the further correspondence with

Birmingham Midshires about the matter extended the time in which Mr E had to refer the complaint.

The Investigator was satisfied the complaint about the DSAR had been raised with us in time. However, he reiterated that the appropriate body to consider Mr E's complaints about how his DSAR had been processed was the ICO. That said, the Investigator went on to consider the service Birmingham Midshires provided surrounding the DSAR. He concluded that it had failed in some respects. However, he thought that the £450 that had been offered as compensation was in line with what we would expect to have been offered for the mistakes made. The Investigator also confirmed that complaint handling is not something that would fall within our jurisdiction to comment on in this case.

Mr E didn't agree with the Investigator's findings. He said that he had not received the final response of January 2023 and even if he had received that letter, he was unable to refer his complaint to this Service until he received the response to his DSAR. Mr E also said that he had been told in July 2023 that Birmingham Midshires' complaint was still open and he believes that the six-month window would be based on the date it closed his complaint, rather than the date of the final response letter. Mr E also highlighted that he had referred the complaint to us within six months of the final response letter of December 2023. As such, he said he feels that the complaint was not made out of time. In addition, Mr E said that he believed Birmingham Midshires complaint handling must be ancillary to something, as he believed that providing information was a requirement.

I issued a provisional decision on 28 November 2024, in which I set out our jurisdiction to consider the different aspects of the complaint. I confirmed that we could not consider the aspects of the complaint relating to Birmingham Midshires lending irresponsibly in relation to the amounts lent and the mortgages being on an interest-only basis, and the complaint that fraud was committed because he did not sign the necessary documentation for the mortgages to go ahead. I was, however, satisfied that the issues Mr E raised in relation to the DSAR fell within our jurisdiction.

Both parties accepted my conclusions in respect to what parts of the complaint we could consider.

I went on to consider the merits of the complaint relating to the DSAR Mr E made. Below are excerpt of my findings.

'This complaint is about BTL mortgages, taken out for investment purposes, and so unregulated. While I have noted Mr E's comments about Consumer Duty, I would confirm that Consumer Duty does not apply as he is complaining about unregulated, commercial mortgages. I will, therefore, not comment on this issue further. However, where I am able to consider the merits of any part of the complaint, I would assure Mr E in reaching my decision, I will have regard for relevant regulation, the law and good industry practice, but my overarching responsibility is to decide what is fair and reasonable in the circumstances. Whilst the mortgages aren't subject to the regulatory protections available to residential mortgage customers, Birmingham Midshires was and is still required to treat Mr E fairly and reasonably.

...

I now turn to the matter of Mr E's concerns about Birmingham Midshires' handling of his DSAR. I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

As our Investigator confirmed, if Mr E wants a detailed assessment of whether

Birmingham Midshires has complied with every relevant data-handling rule, the appropriate body to refer his concerns to is the Information Commissioners Office (ICO). However, we can consider the matter in general and especially the service Birmingham Midshires provided.

I would initially confirm that when a DSAR is made, a person is only entitled to their own data, and not anything relating to another. So there will be information that Birmingham Midshires was required to redact from documents, where it would be considered to be another person's personal data, for example the name of the individual surveyor who completed a valuation.

That said, I don't need to consider whether Birmingham Midshires did anything wrong, as it has already accepted that the timescales it took to respond were not what they should have been and that it did not provide all of the information it should have initially. It upheld Mr E's complaints and paid him £450 compensation for the distress its poor service and errors caused him.

Having reviewed the exchanges about the issue it appears that Mr E has now received all of the information he wanted and is entitled to. As such, I don't consider there is anything further for Birmingham Midshires to do in relation to fulfilling the DSAR. I have considered the errors it made – not initially providing call recordings requested and then not formatting them in its usual manner, thereby causing Mr E inconvenience – and the delays in fulfilling the request for information. It is clear that the errors caused Mr E inconvenience and frustration and so Birmingham Midshires should compensate him accordingly. However, I think the amount already paid - £450 – is an appropriate amount in the circumstances.'

Both parties initially confirmed they accepted my provisional decision. Mr E later said that he would be providing before the deadline for response some further information for me to consider. He didn't do so. However, he did highlight some wording in Birmingham Midshires' final response letter and asked if it meant that if he handed the properties back, it would mean that Birmingham Midshires would be prevented from pursuing him for any shortfall.

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.

As neither party has provided any further information or documentation for me to consider, I see no reason to change my conclusions.

I would confirm to Mr E that it will be for Birmingham Midshires to decide if it pursues him for any shortfalls when the properties are sold, whether by him or it. However, its comments in the final response letter do not mean that it would not have the option to do so.

My final decision

My final decision is that I do not uphold this complaint as I am satisfied that Bank of Scotland plc trading as Birmingham Midshires has already compensated Mr E appropriately.

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

Derry Baxter
Ombudsman