

The complaint

Mr M and Mrs E complain that they have been unable to sell their home to repay an interest only mortgage they took out with Bank of Scotland Plc trading as Birmingham Midshires. They say that is because the valuation report carried out when they took the mortgage did not identify structural defects with the property. They do not believe that Birmingham Midshires has treated them fairly.

What happened

In 2006, Mr M and Mrs E took out an interest only mortgage with Birmingham Midshires. The term ended in 2018. They agreed to sell the property to repay the mortgage and found a buyer for their home. But the sale fell through. Mr E and Mrs M instructed a level 2 HomePlus survey to be carried out on their home. It identified structural issue including that part of the building was single skin construction.

Mr M and Mrs E said that the valuation report carried out when they took out the mortgage should have identified the issues that were discovered in the new HomePlus survey. If it had done so they would not have bought the property in 2006. They consider that Birmingham Midshires should either write off the mortgage or compensate them for the diminished value of their home because of the structural defects. They said that the value of the property is around £60-90,000 lower because of the defects.

Mr M and Mrs E also said that Birmingham Midshires has started legal action to repossess their home. They don't think that is fair because they have co-operated with Birmingham Midshires and are unable to sell at market value. They consider Birmingham Midshires should give them more time or accept an offer of £70,000 in settlement of the debt. They point out that they have made all of the payments due to the mortgage and the stress and anxiety caused because of what happened – particularly in view of their personal circumstances.

I issued a provisional decision setting out the reasons why I did not intend to uphold this complaint. My provisional findings, which form part of this decision, were:

I was sorry to hear about the impact of this matter on Mr M and Mrs E. I understand why they found it so difficult when their sale collapsed and the threat of legal action by Birmingham Midshires. But after carefully considering what both parties have said and provided, I don't consider that Birmingham Midshires has treated them unfairly or unreasonably.

Jurisdiction

We have time limits as part of our rules. Because the valuation took place more than six years before Mr M and Mrs E complained, we can only consider the complaint if they only became aware they had cause for complaint within three years of complaining. That is why we need to make findings about when Mr M and Mrs E should have known there was a problem.

I have not seen any evidence that Mr M and Mrs E had any reason to believe there was a problem with the valuation until their house sale fell through because of the survey in 2024. So I am satisfied they only became aware of the cause for complaint within three years of making this complaint.

Valuation

The valuation was carried out by Colleys, who until 2018 was a part of Bank of Scotland. So when Colleys carried out the valuation it was carrying out an activity that was ancillary to the activity of lending money secured by a charge on land. So we can consider it the valuation was carried out fairly and reasonably.

I would note that the survey that was carried out was a basic valuation for mortgage purposes. There is no evidence that Mr M and Mrs E instructed Birmingham Midshires to carry out a more in-depth survey.

The valuation report said:

You have chosen a valuation report which is a limited inspection of the property highlighting only those items which we consider will materially affect value. It is prepared on instructions from Birmingham Midshires in accordance with the RICS Mortgage Valuation Specification a copy of which is available on request.

Valuers cannot see through solids or see things that are hidden by wall and floor coverings. They will not move furniture or obstructions inside or outside, lift carpets, crawl under floors, climb ladders outside or go on roofs or fully enter roof spaces. Valuers will look at the outside of the property from the garden and adjacent public areas.

Services including the central heating system have not been tested.

You still have the option to request a more detailed report and we would be pleased to help you with this.

I consider that Birmingham Midshires took reasonable steps to tell Mr M and Mrs E the limitations of the survey they had carried out and what they needed to do if they wanted a more detailed report.

The purpose of the valuation report was solely for Birmingham Midshires to identify if the property offered suitable security for it to lend against. It was never intended to be as detailed or comprehensive as a level 2 survey. The fact that defects were picked up in the level 2 survey would not necessarily mean there had been an error in the basic valuation.

I have asked Birmingham Midshires for its comments on whether it would have expected a surveyor to pick up the single skin construction as part of the valuation and if it would have affected the valuation and/or mortgageability of the property.

Birmingham Midshires has pointed out that we are considering matters from more than 18 years ago, so there is little evidence remaining to support what the surveyor did such as site notes. But it made a number of points, including:

- *It would not necessarily expect a surveyor to identify single skin construction. It depends on a number of factors and in this case the area of single skin construction was small in relation to the size of the property – it might not have been evident bearing in mind the affected area and the limitations of a valuation report.*
- *The surveyor would follow two main pieces of guidance – the RICS “red book” and its own notes for valuers. Neither had any specific guidance on the treatment of single skin construction in either document, other than including standard wording if there was single skin construction, where the surveyor thought it was appropriate. But in view of the size of the affected area, a surveyor might not have thought it was necessary in this case.*
- *Even if it had identified the single skin construction it would not have prevented Birmingham Midshires lending against the property.*

Based on the available evidence, I consider what Birmingham Midshires has said is reasonable in the circumstances.

The difficulty I have is that Mr M and Mrs E have not put forward any persuasive evidence to show that the original valuation was carried out negligently, that a basic valuation ought to have picked up the defects the level 2 survey did some years later or that the valuation of the property was wrong. The level 2 survey does not set out what the value of the property is. And even if the valuation had picked up the defects, there is no evidence that it would have altered the stated value at the time in question.

I also note that there were 16 items identified by the surveyor that were serious and/or required urgent attention. It is likely that those defects would also affect the value of the property.

Mr M and Mrs E have highlighted that there were two valuations carried out. But the mortgage offer sets out the value used was £320,000.

Overall I do not have sufficient evidence to show that the valuation was carried out negligently in 2006 or that the valuer was negligent in failing to identify the single skin construction of the property. I am happy to consider any evidence that Mr M and Mrs E would like to consider to support their case. But as things stand, I do not have enough evidence to show that the initial valuation was carried out incorrectly, bearing in mind the limitations and intentions of that valuation – or that the property was over-valued.

Term end

The term of the mortgage ended in 2018. It is reasonable for Birmingham Midshires to look for the mortgage to be repaid. It has exercised a great deal of forbearance in not taking action to recover the debt for as long as it has.

Nevertheless, Birmingham Midshires is required to treat Mr M and Mrs E fairly. I can see that when Mr M and Mrs E told Birmingham Midshires about the collapse of the sale and need for remedial work on the property, it asked for timescales for them to contact a builder and have the work carried out. But Mr M and Mrs E were reluctant to discuss their plans.

It was reasonable for Birmingham Midshires to need details of the work that is required to the property, what steps Mr M and Mrs E were taking to get that work done and how long it would take. If Mr M and Mrs E now have quotes and a firm timeline for the work to be completed then Birmingham Midshires should give careful consideration to allowing the work

to be completed and another sale to proceed. But it would not be fair to say that Birmingham Midshires would be required to agree an unlimited amount of time for that to happen. Without any clear proposals from Mr M and Mrs E as to how they will repay the mortgage or what time they need to get the property ready for sale I don't consider that Birmingham Midshires has treated them unfairly.

There was no obligation for Birmingham Midshires to accept Mr M and Mrs E's offer in full and final settlement of the debt. It was significantly lower than the balance outstanding. So I don't consider it was unfair or unreasonable for Birmingham Midshires not to accept it.

Birmingham Midshires responded to say that it agreed with my provisional decision and that it had placed a hold on any further action for 60 days. It said Mr M and Mrs E should contact it at the end of that hold period they needed more time, so it could consider their circumstances.

Mr M and Mrs E did not accept my provisional findings. They made a number of points, including:

- I had incorrectly said the buyer had instructed the HomePlus survey. It was Mr M and Mrs E that instructed the survey when their sale fell through.
- Their buyers only had a basic valuation report carried out. Yet that identified the defect.
- They believe there was a shared responsibility for the valuation between the surveyors, Colleys, and the lenders, Birmingham Midshires. They had tried to complain to Colleys but they discovered its address was no longer valid. They want Birmingham Midshires to assist them in finding the correct contact details for Colleys.
- They had concerns about the quality and validity of the valuation as there were two reports – one valued the property at £300,00 the other at £320,000. The fact there were two reports with different valuations is enough on its own to question the quality of the report regardless of the time that had passed and the lack of supporting evidence.
- While Birmingham Midshires might not expect a surveyor to identify the single skin construction because it made up a small area of the property – that did not prevent their buyer's surveyor identifying the issue in the report that caused their sale to fall through.
- It was speculative to say that the RICS Red Book did not specify how single skin construction should be treated. That was "speculative" and not based on factual information. The surveyor should have identified and mentioned the issue without any speculative guidance.
- They disagreed that the single skin construction would not have prevented Birmingham Midshires lending against the property. It should provide evidence of that to support its claim.
- They needed approval of their local council's building control department to have the defective single skin construction put right. That shows that single skin construction does not meet building regulations.
- While the Home Plus survey identified 16 serious items requiring urgent attention, the surveyor said that while those items should be addressed, they were not the cause of the sale falling through.

- They did not want unlimited time to sell the property only a reasonable period to address this issue.
- If neither Birmingham Midshires nor Colleys are responsible, then who is to blame? It was not fair that they had to bear the cost of rectifying this issue.
- This matter has caused them a significant financial loss – either in paying for the building work or in the diminished value of their home. They'd also suffered a considerable amount of mental and emotional stress because of what happened.
- Their surveyor said that lenders are unlikely to lend on a property with single skin construction, which makes selling the property impossible.
- The offer to pay a reduced amount to repay the mortgage was made for Birmingham Midshires to accept, decline or negotiate. But Birmingham Midshires abruptly refused the offer without leaving room for negotiation.

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.

My provisional decision incorrectly stated that it was the potential buyers of Mr M and Mrs E's home who had the HomePlus survey carried out. I accept it was Mr M and Mrs E. That doesn't make any difference to my decision. And after reviewing everything again, I am not going to uphold this complaint. I will explain why.

As I explained in my provisional decision, the valuation report in dispute was carried out over 18 years ago. That means that not all of the evidence is available that might have been had we investigated this matter earlier. That reflects the passage of time and that there was no requirement for Birmingham Midshires to retain all of the relevant paperwork for this length of time.

The evidence we do have, however, shows that the valuation report set out clearly and prominently that it was a limited inspection purely for the Birmingham Midshires to determine the value of the property.

There are two valuation reports with different values. We have evidence that the higher of those valuations was used. But I don't think that we are going to be able to find out any more about why there were two valuations. I don't consider it follows that would mean I could reasonably conclude the valuation reports were negligent or invalid. For example, it isn't unusual for a valuation to be challenged and a surveyor to amend a valuation. So I don't think the different valuations would be a reason to uphold this complaint.

Birmingham Midshires has provided copies of the RICS Red Book from 2011 and its "notes for valuers" from 2008. Those are the earliest versions of those documents it had. It said that those documents were unlikely to be substantially different from whatever was in place in 2006. It pointed out that such documents tend to get more, not less detailed over time. I think that is a reasonable assumption to make and is in line with my own experience.

Birmingham Midshires said the RICS Red Book has no specific guidance for the treatment of single skin properties. I have searched that document myself and I can see no guidance relating to that.

The notes for valuers sets out Birmingham Midshires' instructions for surveyors carrying out valuation reports. It sets out that particular care should be taken to identify the form of construction and sets out what types of construction are acceptable or not. I have searched the document and can't see that single skin construction or anything contiguous to that is specifically highlighted or that there were any special requirements relating to it.

I am prepared to accept Birmingham Midshires submissions that the lack of any reference to the single skin construction in the valuation report would not by itself make the report out of line with the RICS Red Book or its own notes for valuers.

Birmingham Midshires has said that if it had been identified by the surveyor, single skin construction would not have prevented it lending – particularly as it was only on a small area of the property. I accept that there may be other lenders that do not accept properties that have any form of single skin construction – every lender will have its own policy. But I see no reason to doubt what Birmingham Midshires has said. It aligns with my own experience that it is acceptable to some lenders.

Many properties will have features that do not comply with current building regulations. The fact that the single skin construction was not compliant with current regulations does not in itself mean that the valuation report was negligent in not identifying that.

From the evidence available to me, I do not have enough evidence to say that Birmingham Midshires acted unfairly or unreasonably in carrying out the valuation report. While a surveyor was able to identify the single skin construction during a basic valuation more recently, it doesn't mean that the surveyor made an error in 2006. We do not know how the property was presented in 2006. It is not clear what a competent surveyor would have seen or if the single skin construction was readily identifiable bearing in mind the limitations of the report that was carried out.

Further, the purpose of the report was primarily to determine its value so Birmingham Midshires could decide if the property offered it suitable security for the amount it was lending. Mr M and Mrs E have not given us sufficient evidence to show the specific impact of the single skin construction on the value of the property

I was sorry to hear of the impact of this matter on Mr M and Mrs E. I don't doubt anything they've said. But the valuation report was clear that it was purely for lending purposes and that Mr M and Mrs E could request a more detailed report if they wished. Ultimately it was for them to decide whether to buy the property without such a report or not. But based on the evidence available to me I do not have enough evidence to show that the initial valuation was carried out incorrectly, bearing in mind the limitations and intentions of that valuation – or that the property was over-valued. While the other serious defects identified by the new valuer might not have led to the sale falling through, it is not clear what impact they had on the value of the property.

My understanding is that Bank of Scotland closed Colleys in 2018. Mr M and Mrs E would need to contact Bank of Scotland directly if they wanted details of how to pursue a complaint against Colleys.

There was no requirement for Birmingham Midshires to enter into negotiations with Mr M and Mrs E when they made a reduced offer to repay the mortgage. They entered into a contract to repay the money they borrowed and it is reasonable for Birmingham Midshires to hold them to that. It is up to Birmingham Midshires whether to negotiate or not. I can't see any reason why it would be required to do so in the circumstances here.

Birmingham Midshires made its offer to put recovery action on hold for 60 days on 16 December 2024. I assume that means that Mr M and Mrs E would need to contact it by 14 February 2025. If that is not correct, then Birmingham Midshires should tell Mr M and Mrs E as soon as possible.

If Mr M and Mrs E have firm plans in place to rectify the defects with the property within a reasonable timescale, then Birmingham Midshires should consider granting an extension to allow the plans to proceed and the property to be sold once the work is complete.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs E and Mr M to accept or reject my decision before 3 February 2025.

Ken Rose
Ombudsman