

The complaint

Mr S' complaint about Bank of Scotland plc trading as Birmingham Midshires (BOS) relates to arrears which arose on his mortgage account, the reporting of those arrears to credit reference agencies (CRAs) and his attempts, from October 2022, to get BOS to allow him to clear those arrears and amend his credit file.

What happened

In 2021 arrears accrued on Mr S' buy to let (BTL) mortgage account as he had missed a payment in August of that year. Later, in November 2021 there was an issue with his direct debit (DD) and then some missed payments in early 2022. All of this had an impact on Mr S' credit file, leading him to make a complaint, which BOS then looked into.

On 13 April 2022 BOS told Mr S that if he was able to confirm he had had the funds available, and brought his account up to date, it could look into amending his credit file. In investigating the complaint BOS accepted it had overlooked Mr S' DD instruction from November 2021 and as recompense offered him £50. BOS did not however accept that the initial missed payment was due to their error, and it was established that Mr S had also given incorrect DD instructions from around February 2022.

Mr S brought that complaint to this service and an Ombudsman issued a final decision on 4 October 2022. In summary the Ombudsman thought Mr S had been responsible for missing the payments due in August 2021, and February, March and April 2022. He also thought that BOS hadn't prevented Mr S from making his mortgage payments. BOS argues that as Mr S couldn't clear the arrears, nor was he able to show he had the funds to make the missed payments, it didn't need to remove any adverse information previously reported to the CRAs, since that information was factually correct.

Mr S called BOS in November 2022 after he had received the Ombudsman's decision asking for his credit file to be amended by removal of the historic reporting. He was told that if he cleared the arrears it would stop the continued reporting of the missed/late payments, and he was also asked to complete an Income and Expenditure assessment form (I&E). Mr S declined to complete the I&E form saying he would call BOS back on 1 December 2022 and arrange to clear the arrears over a period of two months.

Since May 2022 Mr S maintained his mortgage payments but did not clear the arrears on the account until October 2024. In that intervening period, BOS wrote to Mr S on multiple occasions confirming the arrears on the account, who he should contact for help and/or to set up a payment plan, and that his credit score could be adversely affected which might impact his ability to borrow.

Mr S rang and spoke to BOS in May 2023, once again about the arrears and requesting the missed payments be removed from his credit file. He was reminded about the Ombudsman's decision and that the arrears had not been cleared. The following month Mr S rang BOS as he wanted to apply for a new mortgage rate, but he was told that he couldn't because there

existed arrears on the account. He did at this time complete and I&E form but said he didn't want to pay the arrears until his credit file was amended.

In October 2024, Mr S was in contact again with BOS about the arrears and this time he raised another complaint as he felt that BOS had prevented him from repaying the arrears over the preceding two years. He felt the arrears had been caused due an error on the part of BOS. Later that month, BOS gave Mr S the option of capitalising the arrears, but he chose instead to clear the arrears in full.

Part of Mr S' complaint was that he had instructed a barrister to assist him, but says that BOS wouldn't engage with her.

Mr S was unhappy with BOS' final response and so approached this service to see if we could assist in resolving the dispute. Our investigator thought that BOS hadn't done anything wrong and had dealt with the complaint fairly. Mr S didn't agree and asked for the complaint to be passed to an Ombudsman for 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.

I know the parties provided more detail than that set out in the above summary, but I have focussed on what I see as the key issues, because it reflects the nature of our service, that being an informal dispute resolution service and an alternative to taking Court action. If I've not mentioned something in my summary then this isn't because I've ignored it, it's simply because I don't need to comment on every individual argument to be able to reach what I think is the right outcome. Naturally, I have considered the views of both Mr S and BOS together with the available evidence.

I know the investigator has already explained this to Mr S, but I am unable to reconsider the views of my colleague Ombudsman. He issued his decision on 4 October 2022 and the issues covered in that decision now cannot be looked into further. In so far as Mr S' remaining complaint points are concerned, these concern events which took place after my colleague's decision, and naturally as these have not been considered by an Ombudsman, I am free to do so.

It is clear from the evidence above, that on 13 April 2022 Mr S knew, since he was told, that if he provided confirmation he had the funds available for those months when payments had been missed, and in addition he brought his account up to date, BOS could look to amend his credit file. It is implicit, that he would know that his credit file was being adversely affected by the information BOS had reported to the CRAs, since of course that was his very reason for requesting it be removed. Mr S was also aware of my colleague Ombudsman's October decision and the findings he had made.

Since that time Mr S has spoken directly with BOS on the telephone (24 November 2022, 4 May 2023, 3 and 4 October 2024). In each of those calls he knew about the arrears on his account, and he knew that BOS required those arrears to be repaid, and until they were, there would be further reporting of the arrears to the CRAs.

In addition to that BOS sent letters to Mr S which also explained the level of arrears and the impact that would have on his credit score. I understand Mr S says he did not receive those letters by virtue of them not containing the house name of his property. The letters do however contain all other relevant information including the house number and postcode so on the balance of probabilities, they were probably delivered. However, even if I am wrong

about that and Mr S didn't receive those letters, as I have explained above, he spoke to BOS about the same issues, had read the Ombudsman's decision, and so knew what was required of him in order to have BOS consider amending his credit file.

Mr S believes that BOS have prevented him from paying the arrears on his mortgage account, but I am afraid I cannot agree. I can see that Mr S made his own proposals for settling the matter, but these were in effect conditional proposals entirely different to that which BOS had initially stated. The fact that BOS did not accept these proposals, does not mean they acted unfairly or unreasonably. BOS' offer to consider the removal of the adverse entries upon the terms it advanced, was in my view reasonable.

Mr S has said that the primary matter of contention is *'the timing of the payment and the lack of clear and effective communication'*. The evidence shows that BOS repeatedly explained to him what was required before it would consider amending the credit file entries. I find BOS were very clear in explaining what was required of Mr S.

Mr S has also raised the point that he instructed a barrister to assist him and her efforts on his behalf have been largely ignored or rebuffed. I haven't seen any evidence of that. It is of course a matter entirely for Mr S whether he wishes to obtain professional legal advice, but the fact that he has does not alter the underlying crucial issues which go to the core of this complaint. Those crucial issues I have addressed above.

I've not seen anything within Mr S' complaint correspondence or associated documentation, which could lead me to say BOS has acted unfairly towards Mr S following the issue of my colleague Ombudsman's decision and so I won't be asking them to do anything further about this complaint. As I have said above, I have not considered the first complaint he made and which of course has already been dealt with. So, I can't say BOS has acted unfairly or unreasonably here and I'm not upholding this complaint. This concludes my consideration of the complaint, and I shall not be engaging in any further consideration or discussion of its merits.

My final decision

For the reasons set out above I do not uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 10 April 2025.

Jonathan Willis
Ombudsman