

The complaint

Mr T complains that Bank of Scotland Plc (trading as Birmingham Midshires) has unfairly increased the balance of his buy-to-let mortgages. He also alleges that it took steps to hide fraudulent activity relating to these accounts.

What happened

Mr T took out two buy-to-let mortgages with Birmingham Midshires in around September 2007. He borrowed around £171,499 secured on the first property, which I'll refer to as 'Property A', on an interest only basis over a term of 20 years. For the second property, which I'll refer to as 'Property B', he borrowed around £205,999 on an interest only basis over a term of 25 years.

Over the years Birmingham Midshires has added ground rent and other linked costs to Mr T's buy-to-let mortgage accounts. On most occasions Birmingham Midshires paid these costs following notice of potential litigation action being served on behalf of the freeholders of Property A and Property B. On one occasion, Birmingham Midshires paid costs that had been set out in a court order following a claim made by the freeholder against Mr T.

Mr T complained to Birmingham Midshires about the costs applied to his buy-to-let mortgage accounts, including ground rent payments that had been made. Birmingham Midshires responded to Mr T's complaint about this, and his concerns that a third party might be trying to take over his credit file, in February 2021. It provided details of the costs applied to Mr T's accounts and said it had acted in line with the mortgage terms and conditions. It also said that no unauthorised applications for further funds had been made.

Birmingham Midshires wrote to Mr T in around July 2021 to let him know it was moving his buy-to-let mortgages to a different system. Following this, he complained that these changes were linked to an attempt at fraud against him. Birmingham Midshires responded to Mr T on 20 and 28 July 2021 and explained it had made a business decision to migrate mortgages onto one database to be more streamlined, and in line with its wider banking group. It said this was a genuine change and not an attempt to defraud Mr T.

Mr T also had concerns about the balance of his buy-to-let mortgages following payment holidays that had been applied. He felt this was an attempt at fraud against him and that the balances had been inflated by around £40,000. Birmingham Midshires responded to his concerns on 29 July 2021. It said the balance of both mortgages are in keeping with Mr T having taken payment holidays and that neither account balance had been inflated.

Mr T asked the Financial Ombudsman Service to look into his complaint. The Investigator felt Birmingham Midshires had acted fairly and didn't think Mr T's complaint should be upheld.

Because Mr T didn't agree, the Investigator arranged for the case to be referred to an Ombudsman to make a decision. So, the case has been passed to me to decide. I reached the same overall outcome as the Investigator but for different reasons, so I issued a provisional decision.

My provisional decision

I didn't think Birmingham Midshires had acted unfairly overall. I said:

Birmingham Midshires has said that Mr T's complaints that it responded to in February 2021 shouldn't be considered, as those complaints weren't referred to this Service within six months of its final response. But these buy-to-let mortgages are ongoing, so I can consider whether the costs applied to these accounts resulted in an unfair relationship which Birmingham Midshires would be responsible for putting right. However, I am not persuaded this, or the other parts of Mr T's complaint, should be upheld. I'll explain why.

It's clear that Mr T is concerned that fraudulent activity might have taken place in relation to his mortgages. And I can appreciate why such concerns would cause him worry. Part of these concerns are that Birmingham Midshires has unfairly increased his buy-to-let mortgage balances in several ways. But I'm not persuaded Birmingham Midshires has done that.

Both of Mr T's buy-to-let mortgages are interest only, meaning he is only contractually required to pay the interest each month, instead of reducing the capital (the amount he borrowed). The capital is due to be repaid at the end of the agreed term, as set out in the mortgage contract. In other words, Mr T's mortgage balances should remain the same – if he makes his contractual monthly payments in full and on time and where no other costs are incurred – until the end of the term.

By September 2021, Mr T's mortgage balance for Property A had increased by around £5,000 compared to when it first began. And the mortgage balance for Property B had increased by around £3,000. Looking at the history of both accounts, I am satisfied the reasons for the balance increases – up to September 2021 – were due in part to ground rent, service charges, and costs associated to those being paid by Birmingham Midshires and therefore added to the mortgaged balance. The other reason for the balance increases is because Mr T has taken payment holidays on both accounts. During those periods, interest continued to be charged but as no monthly payment was being made, the interest amount was added to the balance thus increasing it. This is in line with how payment holidays work and I haven't seen anything that leads me to conclude Birmingham Midshires applied them unfairly.

I can see Birmingham Midshires has received correspondence from the freeholder's solicitors regarding the ground rent, service charges, and associated costs several times over the years. I haven't seen anything to suggest these payment demands were not genuine, or that Birmingham Midshires ought to have thought so. In much of this correspondence, the solicitors explained that it intended to take steps to forfeit the lease on behalf of the freeholder – in other words, take possession of the property – unless the outstanding costs were paid. Following this correspondence, Birmingham Midshires decided to pay these costs.

I can appreciate why Birmingham Midshires paid these costs, because if a lease is forfeited the secured debt will become unsecured, posing a significantly higher risk to it. On one occasion, the freeholder had taken the matter to court and a court order was issued requiring Mr T to pay the amount due at the time. As a court order had been obtained, I think there was a possibility that forfeiture of the lease could have taken place if the judgement wasn't settled. So, I'm satisfied it was reasonable for Birmingham Midshires to pay the amount set out in the court order and add it to the mortgage balance, to protect its security.

But I don't think Birmingham Midshires should have paid all the costs that it did over the years, where demands for these costs were made and the freeholder hadn't yet taken the matter to court or to a tribunal. This doesn't mean it should refund these costs now though. If Birmingham Midshires hadn't paid the costs at the time, I'm persuaded the matter would likely have gone to court or a tribunal and it's possible it would have ended up paying the costs anyway. I consider this is supported by the fact that the freeholder had taken those steps on at least one occasion and Mr T had been ordered to pay the outstanding costs by a court.

If Mr T considers the ground rent and associated costs paid by Birmingham Midshires should be refunded, he would need to provide Birmingham Midshires with clear evidence that money was not due. Mr T may wish to seek independent advice about that. If, for example, Mr T were to pursue the matter through a tribunal which determined that some or all the money paid by Birmingham Midshires wasn't due to the freeholder, then it would need to refund those amounts and any associated interest. To be clear though, I am not persuaded Birmingham Midshires should refund any amount at this time, because I have not seen any compelling evidence to show these costs wouldn't have otherwise been incurred.

I know Mr T feels that Birmingham Midshires has also increased his buy-to-let mortgage balances by providing further advances to a third party. And I'm sorry to hear of the worry this matter has caused him. But, as I have explained above, I'm satisfied the reasons for his mortgage balances increasing are due to his payment holidays and the ground rent and associated costs being added – including the additional interest charged as a result. Overall, I'm satisfied Birmingham Midshires hasn't unfairly or unreasonably increased Mr T's buy-to-let mortgage balances.

Birmingham Midshires has explained it migrated some accounts to a system used by its wider banking group in 2021. This was so it could be more streamlined, holding information on one database instead of using multiple ones. I don't consider there's anything inherently wrong with a lender taking these steps and I'm satisfied Birmingham Midshires is entitled to do so as part of its administration of the mortgage accounts. In Mr T's case, it has led to some changes, such as new account numbers being issued. But I am not persuaded the migration of accounts has led to Mr T's mortgage balance increasing unfairly, or that Birmingham Midshires did this to hide any wrongdoing by it or a third party.

I know Mr T also believes Birmingham Midshires has taken steps such as selling the mortgage debts to another party and moving his accounts to an offshore trust without his consent. But I have not seen any compelling evidence to show that this is the case.

Mr T has referred to taking these mortgages out with Birmingham Midshires and not Bank of Scotland plc. But Birmingham Midshires became a division of Bank of Scotland plc many years ago – meaning that Bank of Scotland plc is the ultimate legal entity, with Birmingham Midshires as one of its trading names. It is not unusual for businesses to acquire/take over others or for them to merge into and become a trading name of another legal entity. Even if Birmingham Midshires had transferred Mr T's mortgages to another lender as he suggests – and for avoidance of doubt, I'm not persuaded it has – this is something it would be entitled to do in line with the terms and conditions of Mr T's buy-to-let mortgages. It does not need to seek his consent before doing so.

In conclusion, I am not persuaded Birmingham Midshires has acted unfairly in this individual case, for the reasons I have explained. And I'm not persuaded that Mr T's

continuing relationship with Birmingham Midshires is unfair because of anything relating to the matters I have considered in this decision.

I note that Mr T has raised several further complaints with Birmingham Midshires since referring these matters to this Service. I can't see that he's asked for us to investigate those issues. But, for completeness, if he would like us to consider those complaints he would need to raise those issues with us under a separate reference.

I invited Mr T and Birmingham Midshires to let me have any further comments or evidence they wanted me to consider before I make my final decision.

Birmingham Midshires didn't reply.

Mr T didn't agree. He re-iterated his concerns that fraudulent activity has taken place in relation to his mortgages, including that many parties are part of a "fraud gang". And he has said that much of the content of my provisional decision is untrue or incorrect.

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 have carefully considered the points Mr T has made in response to my provisional decision. Having done so, I have not seen any compelling evidence or reasons that lead me to depart from what I have said.

At the heart of Mr T's complaint are his concerns that Birmingham Midshires has unfairly increased the balance of his buy-to-let mortgage accounts. But, for the same reasons I explained within my provisional decision, I am not persuaded Birmingham Midshires has unfairly or incorrectly increased the balance of his buy-to-let mortgages.

I'd like to reassure Mr T that it is not uncommon for lenders to issue new mortgage account numbers when migrating mortgages to a different system. I am aware from my knowledge of the mortgage market that each system may store and generate account numbers in a different format. And, I do not consider migrating accounts to a different system, or issuing new accounts numbers, is unusual practice where a lender wishes to streamline its processes. Nor do I consider it is "nonsense" as Mr T suggests. Ultimately, I'm not persuaded Birmingham Midshires has acted unfairly in migrating Mr T's buy-to-let mortgage accounts to a different system, or that this was done by Birmingham Midshires to hide fraudulent activity.

In conclusion, I am not persuaded Birmingham Midshires has acted unfairly in this individual case, for the reasons I have explained. And I'm not persuaded that Mr T's continuing relationship with Birmingham Midshires is unfair because of anything relating to the matters I have considered in this decision – incorporating my provisional decision.

I do appreciate this outcome will likely come as a disappointment to Mr T, but my final decision marks the end of our process in relation to this complaint. If he remains concerned about being a victim of fraud, he may wish to contact Action Fraud if he hasn't already done so. The Investigator can provide Mr T with contact details for Action Fraud if this is something he would like to pursue. He may also wish to seek independent advice if, for example, he wishes to dispute service charges and ground rent that has been charged (he may incur a cost for that).

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 Mr T to accept or reject my decision before 27 March 2025.

Keith Barnes
Ombudsman