

The complaint

Mr P is unhappy with valuations carried out on three of his buy-to-let (BTL) properties by surveyors appointed by Bank of Scotland plc trading as Birmingham Midshires (referred to here as BM). Mr P is also unhappy about the way BM's solicitors dealt with two of his mortgage applications, resulting in delay.

What happened

I don't need to set out the full background to the complaint. This is because the history of the matter is set out in the correspondence between the parties and our service, so there is no need for me to repeat the details here.

In addition, BM has put forward an offer to put things right. What I have to decide, therefore, is whether this is sufficient to resolve the complaint, or if there is anything further BM needs to do.

Finally, our decisions are published, so it's important I don't include any information that might lead to Mr P being identified. So for these reasons, I will instead concentrate on giving a brief summary of the complaint, followed by the reasons for my decision.

For reasons that I will explain later in this decision, this complaint is rather less complicated than has been presented. Mr P, a BTL landlord, applied to BM for three mortgages on adjoining properties I will refer to as 41, 43 and 45. Mr P wanted to borrow approximately £180,000 against each property.

Valuations were carried out by surveyors appointed by BM. The valuations for 41 and 43 were lower than he anticipated, which meant BM wouldn't lend Mr B the amount he wanted. Mortgage offers were issued by BM as follows:

41	£153,750 plus £1,499 fees
43	£161,250 plus £1,499 fees
45	£180,000 plus £1,499 fees

Mr P disputed the valuations on 41 and 43, saying they were based on inaccurate information about the properties, which were identical in all respects to 45. In its final response, BM didn't uphold the complaint so Mr P referred it to our service.

An Investigator looked at what had happened. Having done so, he noted discrepancies in the valuations and thought BM should have queried these with its surveyors, given the properties were, on the face of it, identical. He asked BM to reconsider the valuations. In relation to delays with the solicitors, the Investigator asked BM to pay Mr P £400.

BM agreed to look at the matter again and said it would do the following:

- Arrange for 41 and 43 to be revalued, highlighting that a previous valuation of

£240,000 was provided for 45 on the basis that this was a 4-bedroomed student let. BM would cover the cost of these revaluations.

- If the valuations were higher for 41 and 43, Mr P would have the option to apply for additional funds to increase the original borrowing up to £180,000 (the amount BM understood Mr P originally wanted to borrow based on a 75% loan to value (LTV) against a £240,000 valuation). BM would ensure that any application would be based on the additional borrowing operating on the same rate/term/repayment type as the original mortgage. No fees would be charged for the additional borrowing.
- If the additional borrowing was considered affordable and the applications completed, BM will pay 8.00% simple interest (deducting tax to be sent to HMRC) for the period Mr P did not have the use of his own funds, as BM understands Mr P had to use his own funds to complete the remortgages due to the shortfall of new lending.
- Because Mr P's previous mortgages reverted to Standard Variable Rate (SVR), BM agreed to cover the difference in interest between the BM rates taken out by Mr P and the higher SVR until the remortgages completed, a period of 31 days. BM required details of the balances and SVRs with the previous lender to calculate this redress.

BM also agreed to pay the £400 compensation recommended by the Investigator.

Mr P accepted this outcome. However, he has since raised additional queries about the valuations, saying that he wants the valuations of 41 and 43 to be updated to reflect the valuation of 45 that was carried out in December 2023.

The surveyors were instructed to reconsider and re-value the properties. However, the surveyors said that the valuations for 41 and 43 were correct, based on market conditions at the time. This meant that BM had already lent the maximum amount possible based on the valuations provided.

The surveyors confirmed that all three properties have the same layout – three bedrooms and two living rooms, with one living room used as a bedroom. The surveyors were therefore aware that all three properties were used as student lets for four inhabitants.

The valuation carried out in 2023 on 45 was initially a desktop valuation, where Mr P had estimated the property value at £280,000. The desktop valuation, carried out on the assumption this was a three-bedroomed owner-occupied property, returned a valuation of £240,000. As this was close to LTV limits, a physical valuation was carried out, and came back at the same value. The surveyors said that if the property had been assessed on the basis of it being a student let, it would have returned a lower value for lending purposes. The surveyors confirmed that the valuations on 41 and 43 were carried out on the basis of the properties being used as student lets.

In the circumstances, BM wasn't able to increase its lending. Mr P was unhappy at this, saying that the applications had been submitted for the properties as Houses in Multiple Occupation (HMOs). BM confirmed to the Investigator that the applications had been submitted for all three properties as owner-occupier mortgages with the boxes checked on the application to say that Mr P lived at the properties, notwithstanding they were for BTL products.

BM confirmed that its offer to cover the difference between interest rates on the previous mortgages compared to the BM mortgages remained open, along with the £400 compensation.

The Investigator explained to Mr P that he was satisfied BM had done enough by going back to its surveyors asking them to reassess the valuations, and clarified that BM was still willing to reimburse the additional mortgage interest for the 31 days that Mr P had been on SVR with his other lenders. He also explained that BM would pay the £400 compensation.

Mr P disagreed with the Investigator. He said that HMOs are likely to have a higher valuation compared with residential properties. Mr P also said that the applications showed his current address and that it was “*bizarre*” to suggest he was living in all three properties. Mr P also disputed that 45 was a four-bedroomed property. Mr P provided copies of his mortgage applications to support his contention that BM's surveyors had made errors when valuing the properties and that BM had incorrectly categorised the properties as if he was living in them.

Because the matter is unresolved it has been referred to me for a 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 will begin by explaining that the Financial Ombudsman Service is independent of both consumers and the businesses they are complaining about. This means that we don't act for consumers, nor do we take instructions either from consumers or businesses, or allow either party to direct the course of our investigations; were we to do so, it would compromise our independence and impartiality. It's up to us to determine what evidence is relevant and the enquiries we need to make in order to investigate a complaint. So although I've noted the questions which Mr P would like answered to his satisfaction, it's not part of my role to put those questions to BM or act as a representative for either of the parties in this complaint.

When reaching my decision I have to take into consideration the evidence, as well as good industry practice and relevant law.

As I said at the outset, this complaint is simpler than it first appears. The reason for this is that Mr P is complaining about valuations carried out on BTL properties. BTL mortgages are unregulated, as they are considered to be for commercial investment purposes. Mr P is a commercial landlord with a large portfolio of rental properties and so I am satisfied that the three mortgage applications to BM were for commercial purposes. The significance of this is explained below.

I will deal first of all with the information contained on the application forms. Mr P believes BM falsely recorded information that was incorrect, in order to justify its position.

I've looked at the mortgage applications Mr P sent us (which his broker provided to him). The applications for 41 and 43 say that Mr P will be living in the properties and that no business will be carried out at the properties. I can see that 45 is described in the application as a 4-bedroomed property. The application also says that Mr P lives at the property and that no more than 60% of the property will be used for business purposes.

I'm therefore satisfied that BM didn't record incorrect information about the properties, as it was information Mr P's broker provided to BM.

In relation to the valuations, I will make the following comments. The valuations for these unregulated BTL mortgages were carried out for BM's purposes only, in order for BM to decide if the properties were suitable for mortgage purposes, and, if so, how much BM would be prepared to lend. While BM chose the surveyor, the firm used was independent of BM.

That said, BM is required to instruct a competent surveyor. That is the extent of what it is required to do. The surveyors were Members of the Royal Institution of Chartered Surveyors. I'm therefore satisfied that BM instructed suitably-qualified surveyors to carry out the valuations.

As I said above, I am required to take into account relevant law, so I've noted what the courts have said about this. There is case law that specifically addresses the issue of mortgage valuations on BTL properties.

In the case of *Scullion v Bank of Scotland* [2011] EWCA Civ 693 the Court of Appeal provided a clear demarcation between residential and investment purchases. The issue in question in *Scullion* was whether a surveyor providing a valuation report to a mortgage lender for a BTL mortgage owed any duty of care to the borrower.

The Court of Appeal was unanimous in deciding that a surveyor who provides a valuation report for a BTL lender does not owe the borrower a duty of care. This is because the courts consider the purchase of a BTL property to be a commercial venture. The valuations carried out on 41, 43 and 45 were solely for BM's purposes, in order for the bank to decide whether or not to lend and if so, how much.

Although I can depart from the approach followed by the courts if I think it's fair and reasonable, I don't intend to do so here. BM was entitled to rely on the expertise of the surveyors in relation to the valuations carried out prior to the mortgage offers being issued.

I'm satisfied it was reasonable – and beyond what BM was required to do in relation to unregulated BTL mortgages – for BM to ask the surveyors to revisit the valuations after Mr P raised his complaint. BM said its resolution to the complaint would be contingent on any change in valuations.

However, the surveyors didn't change the valuations, and provided justification for this, which I'm satisfied BM was entitled to rely on. I am therefore not persuaded there is any basis on which it would be fair or reasonable for BM to be ordered to increase its lending to Mr P.

I appreciate that this isn't the outcome Mr P wanted, and I can see how strongly he feels about this matter. But I'm not going to order BM to do anything further in relation to Mr P's dissatisfaction with the valuations and the fact that he wasn't able to borrow as much as he wanted to. This is because I'm satisfied BM gave fair consideration to Mr P's concerns, and having done so, the bank was entitled to accept the opinion of its surveyors in relation to the valuations of the properties.

This is a reasonable exercise of BM's commercial judgement, a decision with which I will not interfere as it has been taken fairly after BM reconsidered the matter. It is also in line with the legal position, as set out in the *Scullion* case.

Putting things right

BM has acknowledged that, due to delays, Mr P's previous mortgages reverted to SVR for a period of 31 days. BM has offered to reimburse Mr P for the additional interest he paid for

those 31 days, upon him providing evidence of this. BM has also offered to pay £400 for distress and inconvenience caused by the delays.

I'm satisfied this is fair and reasonable in all the circumstances.

My final decision

My final decision is that I partly uphold the complaint. I direct Bank of Scotland plc trading as Birmingham Midshires to settle the complaint as detailed above. I make no other order or award.

This final decision concludes the Financial Ombudsman Service's review of this complaint. This means that we are unable to consider the complaint any further, nor enter into any discussion about it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 16 April 2025.

Jan O'Leary
Ombudsman