

The complaint

Mr and Mrs M are unhappy that Bank of Scotland plc trading as Birmingham Midshires won't agree to extend the term of their mortgage.

What happened

In 2007 Mr and Mrs M took a residential mortgage with Birmingham Midshires. They borrowed £425,499 to be repaid on interest only terms over 10 years. Over the years Mr and Mrs M borrowed a further £70,000. The total amount borrowed was repayable in 2017.

The property Mr and Mrs M own is adjacent to land that was owned by Mrs M's mother. The land contains outbuildings and is largely being used to run a family business.

At the time the loans were sold, Mr and Mrs M told Birmingham Midshires that they'd be using inheritance money to repay the mortgage at the end of its term – as they expected to inherit the land owned by Mrs M's mother and use any sale proceeds to repay the loan.

In 2011 Birmingham Midshires wrote to Mr and Mrs M to ask for an update on their circumstances and their intention to repay the loan at the end of its term. Mr and Mrs M told Birmingham Midshires that they would be selling the family business to repay the mortgage at the end of its term.

In 2016, as the end of their term was approaching, Mr and Mrs M told Birmingham Midshires that they were now relying on selling the mortgaged property to repay the loan – but they didn't want to do so yet. Instead, Mr and Mrs M were applying for planning permission to convert two outbuildings on the adjacent land owned by Mrs M's mother – to turn these into residential premises. Their intention being to move into one of those properties and to sell the mortgaged property to repay the outstanding loan.

Following an informal grace period, in 2019 a formal extension of the mortgage term was agreed until May 2024.

Nearing the end of the term Mr and Mrs M asked for a further extension. They said that they'd obtained planning permission to convert one of the outbuildings but not the other and were in the process of appealing the decision. They said they needed more time for their plans to come to fruition and asked for a further extension of around three years.

Birmingham Midshires said that it would take into account the sale of an unencumbered second property when considering a term extension on interest only terms. But that property would need to be owned by Mr and Mrs M – which wasn't the case here as the land they were looking to build on was owned by Mrs M's mother.

In August 2024 Mr and Mrs M completed a transfer of ownership to transfer the land owned by Mrs M's mother into their names. And they provided all the necessary information relating to the land and premises to Birmingham Midshires for its consideration.

Birmingham Midshires subsequently declined the application for a term extension. It said

that a sale of a second property, business or land can be considered to agree a grace period for the transaction to take place - but not for an official term extension.

Unhappy with this, Mr and Mrs M complained. They said that they were led to believe from previous calls that once the transfer of ownership had taken place the three-year term extension would be agreed to allow them to fulfil their plans. And in reliance of this, they used £100,000 to invest into their business – which they say they wouldn't have done if they'd known the term of their mortgage wasn't being extended. As a result, they say they now have less funds to use to reduce the capital owed so that they qualify for equity release.

Birmingham Midshires upheld the complaint in part. It said that it accepts it told Mr and Mrs M that it would consider extending the mortgage if they had an investment such as an unincumbered second property, that they could sell to repay the outstanding loan at the end of the term. However, Birmingham Midshires said that because the acquired land and property are being used for commercial purposes with no intention to sell, this form of repayment vehicle was not considered acceptable. So, it could not agree to extend the term for the mortgage.

Birmingham Midshires accepts that it should've given clearer information about the acceptability of the acquired land as a repayment vehicle. In the absence of doing so it paid Mr and Mrs M £2,217.60 to cover the solicitors costs incurred during the transfer of title process. It also paid Mr and Mrs M £250 compensation (later increased to £750) for any distress and inconvenience caused. No award was made to compensate Mr and Mrs M for the investment made into their business as Birmingham Midshires said the investment was not required to facilitate the transfer of title.

Mr and Mrs M remained unhappy so they brought their complaint to the Financial Ombudsman Service. Ultimately, they want Birmingham Midshires to agree an extension for their mortgage term. They say that they are carers for Mrs M's elderly mother who lives with them. It would not be in their best interest for her to move home and they don't feel that Birmingham Midshires has fairly considered their circumstances. They're also concerned that being paid the settlement amount from Birmingham Midshires would compromise the outcome of their complaint with our Service.

Birmingham Midshires agreed to pause legal action whilst the complaint is being investigated by our Service. Despite the agreed hold, it sent Mr and Mrs M a letter in error saying that legal action was going ahead. Mr and Mrs M raised their concerns. Birmingham Midshires paid Mr and Mrs M a further £50 compensation.

An investigator considered Mr and Mrs M's complaint and didn't recommend that it be upheld. In summary he said that he didn't think that Birmingham Midshires had acted unfairly when deciding not to extend the term of Mr and Mrs M's mortgage. He also thought that Birmingham Midshires had fairly compensated Mr and Mrs M for any miscommunication during their enquiries about the term extension and for the error regarding the notice of legal action.

Mr and Mrs M remained unhappy and asked for their case to be decided by an Ombudsman.

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.

The key facts about this complaint aren't in dispute. Birmingham Midshires has accepted it got things wrong. So, the only issue I have to decide is whether the things it has done to put things right, including the amount of compensation awarded to date, is fair and reasonable.

I've carefully considered everything Mr and Mrs M have said about how they've been impacted as a result, and how they should be fairly compensated in the circumstances.

When making an award for compensation, I must decide what's fair and reasonable to both sides involved, giving careful consideration to all the circumstances of this case. I also think it's important to explain that, as a service, our awards are designed to compensate consumers - not punish organisations.

Having done so I don't think this complaint should be upheld. I realise this will be disappointing for Mr and Mrs M. But I hope the reasons I have set out below will help them to understand why I have come to this conclusion.

The starting point here is that when Mr and Mrs M borrowed money from Birmingham Midshires, they agreed to repay the outstanding capital at the end of the initial term in 2017 – and then later by the end of the extended term in 2024. So, it's not unreasonable for Birmingham Midshires to expect the loan to be repaid as agreed. But Birmingham Midshires is required to give fair and reasonable consideration to Mr and Mrs M's request for a term extension.

Following the global financial crisis, the Financial Conduct Authority ("FCA") carried out a comprehensive investigation of the mortgage market – referred to as the Mortgage Market Review (MMR). There are regulations that have flowed from MMR. This has led to a series of major changes in the way residential mortgages are regulated, effective since 26 April 2014. MMR regulations have brought about requirements for stricter lending assessments – in particular around affordability, and around repayment strategies for interest only mortgages – aimed to protect consumers and encourage mortgage lenders to act more responsibly.

The FCA recognised though that existing borrowers who wanted to make changes to their mortgages might have difficulties with this if they had passed tests under the old rules but wouldn't under the new ones. So, it introduced certain rules to address this. The rules are contained in the Mortgages and Home Finance: Conduct of Business Sourcebook (MCOB).

Rules on mortgage regulation (the transitional provisions in MCOB 11.7) say the lender doesn't need to carry out an affordability assessment in certain circumstances, if the proposed variation would be in the best interests of the customers.

That exception applies here. That doesn't mean Birmingham Midshires has to offer a term extension, or that it can't assess affordability or the credibility of Mr and Mrs M's repayment proposal. It's unlikely to be in Mr and Mrs M's best interests to extend the mortgage term if they can't afford it or they'd be in a worse position at the end of the extension without a guaranteed way of repaying the capital when due.

The interpretation of what is considered to be in the best interest of the borrower will inevitably vary between the perspective of the borrower and the lender. In Mr and Mrs M's view it's understandable that they perceive a term extension to be in their best interest because they believe it will allow them to achieve their financial goals and repay the mortgage at the end of the term whilst retaining residence on the land which they own and run a family business from.

From Birmingham Midshires' perspective an extension of a mortgage on its existing terms is

usually considered when the customer is unable to repay the capital, and they need more time to meet their repayment strategy. The key thing to consider here is that the repayment strategy in place must be guaranteed. Otherwise, a further extension is likely to leave the borrower in the same position as they're in now at the end of the extended term – still with an interest only mortgage they can't repay.

Birmingham Midshires is concerned that Mr and Mrs M's proposed repayment strategy is speculative. And I'm inclined to agree.

Mr and Mrs M have told Birmingham Midshires that they've been trying to obtain planning permission for eight years. To date they still don't have the planning permission they need to complete the intended work.

Within three years Mr and Mrs M expect to obtain the further planning permission, complete the building works and then sell the mortgaged property to repay the loan. Currently it's unclear if the further planning permission will be granted and if it is, how long that will take. There is no set completion date for the work they intend to complete. And it's unclear how long it will take for them to sell the mortgaged property to repay the loan.

So, I don't think I can fairly say that a further extension on interest only would clearly be in Mr and Mrs M's best interests as they don't currently have a guaranteed repayment strategy to repay their mortgage at the end of the proposed term.

I must also bear in mind that Birmingham Midshires originally agreed to lend on the basis that the mortgage would be repaid in 2017 – around eight years ago now. I think it's shown considerable forbearance in offering a term extension already. But it's not unreasonable that it wants to be repaid the money it has lent.

I don't think Mr and Mrs M are without options here. Even if they don't want to sell the property, they've got equity across their land and properties that appears to exceed the amount owed to Birmingham Midshires. They may want to seek independent financial advice about the options open to them, including selling their commercial land/property, re-financing with another lender or obtaining an equity release loan.

But in all the circumstances I don't think it's unfair that Birmingham Midshires won't agree to a further extension, on interest only terms, and I don't think it's unfair that Birmingham Midshires now expects Mr and Mrs M to repay the mortgage. But Birmingham Midshires will need to give careful consideration to any proposals for repayment Mr and Mrs M might make before it takes further action to recover the outstanding amount.

Having said all that, Birmingham Midshires accepts that it could have given Mr and Mrs M clearer information about what is considered an acceptable repayment vehicle. Birmingham Midshires has refunded Mr and Mrs M the legal costs incurred to complete the transfer of ownership. It has also paid Mr and Mrs M £750 compensation for any distress and inconvenience caused. In addition, it has paid a further £50 to compensate Mr and Mrs M for incorrectly writing to them about commencing legal action whilst the account was on hold.

I think Birmingham Midshires has settled this complaint fairly. Mr and Mrs M are no longer out of pocket as a result of completing the transfer of ownership. And overall, I consider a award of £800 to recognise the distress and inconvenience caused by Birmingham Midshires' actions to be reasonable and in line with this service's guidelines on such compensation.

Whilst Birmingham Midshires accepts its mistake this does not automatically mean it must agree to a term extension. At most it must ensure it's put Mr and Mrs M back in the position they would have been in had the error not occurred – which I'm satisfied its done.

I note that Mr and Mrs M say that on reliance of the conversation with Birmingham Midshires they have invested £100,000 into their family business. I've not seen anything to suggest that Mr and Mrs M were told that doing so was a prerequisite of the term extension being granted. The decision to invest in the family business was a choice Mr and Mrs M made without being influenced by Birmingham Midshires and before they received any confirmation that a term extension had been granted. I'm not persuaded that any loss described here flows as a direct consequence of Birmingham Midshires' actions – so I won't be asking it to do anything further to settle this complaint. I'm satisfied that Birmingham Midshires has settled this complaint fairly and in the way I'd expect.

My final decision

My final decision is that I don't uphold Mr and Mrs M's complaint against Bank of Scotland plc trading as Birmingham Midshires.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and Mrs M to accept or reject my decision before 17 June 2025.

Arazu Eid
Ombudsman