

The complaint

Mrs H, as the administrator of the estate of the late Ms I, complains about action Bank of Scotland plc trading as Birmingham Midshires (BM) took to repossess a property subject to a buy to let mortgage in Ms I's name after Ms I passed away.

What happened

The late Ms I owned a number of properties, one of which was the subject of a buy to let mortgage with BM. Sadly, Ms I died in February 2022.

Ms I's sister, Mrs H, notified BM that she had passed away. BM agreed to apply a one year hold on the mortgage pending the resolution of Ms I's estate. This means that the mortgage remained outstanding, interest continued to be charged and the monthly payments were still due. But BM would not take any action to recover the balance, even if the monthly payments were not paid in the meantime, for a period of one year.

Mrs H says that although Ms I had substantial assets the estate was unable to pay the mortgage because Ms I's bank account had been frozen following her death. And the property was left vacant when the tenant left. Only one monthly payment was made following Ms I's passing, so the mortgage fell into arrears.

Ms I died intestate. It seems there was a family dispute, and also difficulties paying inheritance tax that was due. So it was some time before Mrs H could apply for letters of administration to deal with Ms I's estate. Mrs H instructed a firm of solicitors I'll call A to act on behalf of the estate.

In April 2023, A told BM that letters of administration had still not been granted. Another of Ms I's properties was in the process of being sold, and the proceeds of sale would be used to repay the mortgage with BM. In June 2023, Mrs H cleared the arrears. But as no further payments were made, the arrears began to mount up again.

By 2024, as the mortgage had still not been redeemed and letters of administration had still not been granted, BM decided to instruct solicitors to begin the process of repossessing the property.

In April 2024, A sent BM a copy of the letters of administration and told it that Ms I's property had been entered into an auction.

In May 2024, as the property hadn't sold, the court issued a possession order. Unfortunately the possession order was issued to Mrs H rather than to Ms I's estate, so it had to be corrected.

Meanwhile, the property had been put back into auction. BM said it wouldn't enforce the possession order until after the end of the auction, or if it sold. The property failed to sell at auction so Mrs H instructed an estate agent to sell it on the open market.

A sale of another of Ms I's properties progressed, completing around the end of September

2024. BM provided Mrs H with a redemption statement for this mortgage, but Mrs H was unwilling to pay anything other than the capital and interest – she didn't think the estate should be liable for any legal or other fees BM had added to the balance. However, when this property was also sold, the full mortgage balance had to be paid off – Mrs H seeks a refund of those fees.

Mrs H complained. She said BM hadn't acted fairly. The estate couldn't do anything with the property until the grant of letters of administration in February 2024. And BM hadn't allowed a reasonable time after that for things to be progressed before taking legal action – it knew that the mortgage would be repaid as soon as one of Ms I's properties was sold. The result of BM's actions has not speeded up the repayment of the mortgage – it has just caused much upset and extra expense.

BM didn't initially uphold the complaint. But when it came to us, it said it should have agreed a further hold after the possession order to allow a sale of the property. It said it would refund legal fees applied in connection with work done after obtaining the possession order. It also said it would refund the estate's legal fees incurred due to the incorrect details being included on the possession order, and due to action taken by its own solicitors after the possession order. It also offered to pay Mrs H £500 compensation.

Our investigator said that BM's offer to refund the legal costs was a fair one. He said he couldn't comment on the offer of compensation for Mrs H's upset because she wasn't an eligible complainant. Mrs H didn't accept that and asked for an ombudsman to review the complaint.

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'm very sorry to hear of the passing of Ms I and I hope Mrs H will accept my condolences on her loss. I'm sorry too to hear of all the difficulties she's had since in settling her sister's estate. I'm sure this was a very stressful and upsetting time.

I've very carefully considered everything that's happened. Having done so, I think BM has made a fair offer to put things right. I'll explain why.

I understand Mrs H's point that, until the grant of letters of administration in early 2024, her hands were tied and there was nothing that could be done with the property. It couldn't be sold, and there were insufficient liquid funds in the estate to continue paying the mortgage. I agree with her that this was the position.

However, it was two years since Ms I had passed away. From BM's point of view, the mortgage remained outstanding, and – because no payments were being made – the balance was increasing. Significant time had passed and there seemed to be no progress being made, and no clear indication of when the estate would be settled and the mortgage repaid.

I think that, in allowing over two years for things to be settled, BM had acted reasonably. It was fair and reasonable for it to be concerned that there was no firm indication of when the mortgage would be repaid. And the longer it went on, and the more the balance increased, the more the debt owed to BM increased – which also meant that the equity in the property, and its value to the estate, was being eroded. It's not in the best interests of the estate for that to happen.

I'm therefore satisfied that in allowing two years for the estate to be settled before taking legal action to protect both its own interests and those of the estate, BM acted fairly and reasonably in all the circumstances. By the time the estate's solicitors sent it the letters of administration in April 2024, proceedings had already been issued and a hearing date set.

I don't think it was unreasonable that BM proceeded with the hearing. Obtaining a possession order doesn't give BM the right to take the property immediately – it still has to go back to court to enforce the order and obtain a warrant. But by that time legal costs had already been incurred and having a possession order in place, even if not immediately enforced, gave BM additional security that it would be able to recover its debt if the estate wasn't able to redeem the mortgage soon.

However, I do think that once the possession order had been obtained and BM had that reassurance, it ought to have allowed the estate a reasonable time to progress the sale of either this property or Ms I's other properties, which would have allowed the mortgage to be repaid. It was clear Mrs H was doing everything she could to progress a sale, so BM enforcing the possession order and taking over the sale itself wouldn't – at that stage – have sped matters up. But if no sale resulted in a reasonable time, it would still have the option of enforcing the possession order.

Therefore, BM ought to have agreed to pause further action and allow time for the estate to complete a sale once the possession order was granted.

Putting things right

For those reasons, I'm satisfied that the legal costs in obtaining the possession order were fairly and reasonably incurred, and the mortgage terms and conditions allow those costs to be added to the balance. But I'm not persuaded that costs incurred after the possession order were reasonable or necessary, and so those costs should be refunded to the estate – as BM has now offered to do.

I think it's also fair and reasonable that BM refunds the costs the estate incurred in instructing its own solicitor to deal with matters after – but not before – the issuing of the possession order, including resolving the problem of the incorrect information being included in the order.

Finally, BM has offered to compensate Mrs H for the upset she experienced by paying her £500. I know Mrs H feels this sum to be completely inadequate. But I'm afraid this is not a matter I have the power to deal with. The rules of the Financial Ombudsman Service only allow me to award compensation to what's known as an eligible complainant – that is, (in respect of this case) BM's customer. Mrs H was not BM's customer, Ms I was. I could require BM to pay compensation to Ms I's estate, but there are no grounds for me to do so because Ms I herself could not have been distressed by its actions. The distress Mrs H felt, even in her capacity as the administrator of Ms I's estate, falls outside my powers because it is the estate, not Mrs H, that is the eligible complainant here. I realise that conclusion will be upsetting to Mrs H, and I hope she will understand that it is simply not possible for me to act outside my statutory powers as an ombudsman.

My final decision

My final decision is that I uphold this complaint. Bank of Scotland plc trading as Birmingham Midshires must:

- Refund to Ms I's estate any legal fees added to the mortgage balance and included in the redemption figure in respect of legal work done following the issue of the

possession order, together with any interest charged on those fees between when they were added and when the mortgage was redeemed. It should then add simple annual interest of 8% to the refund, running from the date of redemption to the date the refund is paid. If BM considers it should deduct income tax from the 8% interest element of the award, it should tell the estate what it has deducted so that the estate can reclaim the tax if entitled to do so.

- Reimburse Ms I's estate for any legal fees incurred in connection with the incorrect information included on the possession order, and in connection with discussions about whether the possession order should be enforced after it was issued. BM should add simple annual interest of 8% running from the date the estate paid the fees to the date they are reimbursed. Again, if BM considers it should deduct income tax from the 8% interest element of the award, it should tell the estate what it has deducted so that the estate can reclaim the tax if entitled to do so.

I make no order or award in respect of the offer of compensation to Mrs H in her personal capacity. I simply leave it to Mrs H to decide whether or not she wishes to accept BM's offer of £500.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Ms I to accept or reject my decision before 3 June 2025.

Simon Pugh
Ombudsman