

## **The complaint**

Mrs M complains that Bank of Scotland plc trading as Birmingham Midshires Mortgages has unfairly started legal action to take possession of her mortgaged property. She is unhappy because she says she was misled into thinking she could set up a payment arrangement to stop eviction from going ahead.

## **What happened**

In late 2007 Mrs M took a residential mortgage with Birmingham Midshires. She borrowed £151,699 to be repaid over 24 years on capital and interest repayment terms.

Not long after, in late 2008, the account entered arrears. Over the years Mrs M has been unable to maintain her mortgage payments and the account has been in and out of arrears since.

A court hearing took place in January 2020 whereby a 28-day possession order was granted. Meaning Birmingham Midshires was able to enforce possession thereafter to recover the amount due on the mortgage.

During the COVID-19 pandemic, the Government implemented emergency measures to protect homeowners during the economic disruption. One of those measures prevented home repossessions taking place from March 2020 to April 2021. Birmingham Midshires says that it had started the eviction process, but all further action was halted as a result.

Some years later, with no plan in place to get the mortgage back on track, Birmingham Midshires reinstated the enforcement process. The court ordered that Birmingham Midshires could enforce possession from 30 September 2023.

Around that time, Mrs M told Birmingham Midshires that she'd been suffering with her mental health. Several steps were taken to help Mrs M get her account back on track and eviction was paused. Birmingham Midshires agreed to extend the term of Mrs M's mortgage, and several payment arrangements were agreed – but the agreed payments weren't maintained by Mrs M and so these arrangements were broken.

By January 2025 Mrs M's mortgage account was in arrears of around £86,662 and she owed Birmingham Midshires more than she had borrowed in 2007. Birmingham Midshires took steps to enforce possession. A pre-enforcement notice was sent to Mrs M on 4 January 2025 and on 23 January 2025 Birmingham Midshires wrote to Mrs M to say that it had started legal action to take possession of the property. The eviction date was to be confirmed.

Mrs M complained to Birmingham Midshires. She said that she received a letter shortly after dated 1 February 2025 asking her to get in touch to set up a payment arrangement. She said this caused her confusion as this contradicted the letter she received about legal action for possession. Mrs M also complained that she was told by Birmingham Midshires that she could be transferred through to its solicitors to set up an arrangement but that turned out not to be the case – the solicitor couldn't help her. They said they weren't dealing with her

account. Mrs M wanted Birmingham Midshires to agree to an arrangement and cancel the eviction.

Birmingham Midshires didn't uphold the complaint. It said that it couldn't locate the letter from 1 February 2025 that Mrs M was referring to. It also didn't agree that it told Mrs M that the solicitors could agree an arrangement with her.

Birmingham Midshires later agreed that the information provided in its quarterly statement sent on 1 February 2025 was misleading. It explained that these letters are automated and not bespoke to the account. It apologised for any confusion caused. Birmingham Midshires paid Mrs M £80 compensation by way of an apology. It didn't however agree that it was acting unfairly or unreasonably by moving forward with the eviction.

Unhappy with Birmingham Midshires response, Mrs M came to the Financial Ombudsman Service. Birmingham Midshires agreed to pause the eviction whilst our service looked into things.

An investigator considered the complaint and thought Birmingham Midshires needed to do more to put things right. Whilst he didn't think that Birmingham Midshires had acted unfairly by enforcing possession when it did, he did think it should pay Mrs M more compensation for its confusing communication. The investigator thought an award amount of £150 was fair in the circumstances.

Birmingham Midshires accepted the investigator's opinion. Mrs M didn't. In summary she said that it's been a difficult year for her, but her circumstances have now improved and she's able to maintain her mortgage payments moving forward and clear the arrears. She wants Birmingham Midshires to consider a proposal for a payment arrangement as opposed to eviction – as supported by her MP.

Our investigator considered Mrs M's further comments, but he explained why his opinion remained unchanged. Mrs M remained unhappy and asked for her 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.

Although I've read and considered the whole file, I'll keep my comments to what I think is relevant. If I don't comment on any specific point, it's not because I've not considered it but because I don't think I need to comment on it in order to reach a fair outcome.

Having considered everything, I agree this complaint should be upheld in the way described by the investigator. I realise this will be disappointing for Mrs M – as the outcome she is looking for is a cancellation of the eviction. But I hope the reasons I have set out below will help her to understand why I have come to this conclusion.

Firstly, I'd like to say how sorry I am to hear about Mrs M's circumstances. It's clear from what she's told us that she's been through a difficult time. I empathise with her circumstances.

Birmingham Midshires has a duty to treat customers who are in financial difficulty fairly and sympathetically.

In order to uphold this complaint and make a legally binding decision that orders Birmingham Midshires to do something to put things right, I'd need to find that it has acted unfairly when taking into account the relevant law, regulations, and good industry practice.

I must start by explaining to Mrs M that I won't be making a finding on Birmingham Midshires' decision to start legal action to take possession of the property. A court hearing has taken place whereby a 28-day possession order was granted. So, the court has already made a decision on this matter, and I can't interfere with the decision of the court. In any event it appears that Mrs M is solely complaining about events that followed the court hearing.

In line with the Court Order, Birmingham Midshires was able to enforce possession from 30 September 2023. It wasn't until January 2025 That Birmingham Midshires started the enforcement process – around 14 months later. During this time it agreed to pause eviction and work with Mrs M instead, to help her get the account back on track. Several options were agreed including an extension of the mortgage term, several payment arrangements and a change to the payment date – all to make the mortgage more affordable for Mrs M.

So having considered everything, I think Birmingham Midshires has treated Mrs M fairly and sympathetically in the circumstances. It has shown reasonable forbearance, and it allowed a reasonable amount of time for Mrs M's circumstances to improve before starting legal action when it did. Possession should be the last resort which in this case I'm persuaded it was.

By January 2025 Mrs M's mortgage account was in arrears of around £86,662 and she owed Birmingham Midshires more than she had borrowed in 2007. Unfortunately, despite everything, there did not appear to be a sustainable and realistic way to get the mortgage back on track. The several arrangements entered into were broken as the mortgage still remained unaffordable for Mrs M.

So, I can't reasonably say that Birmingham Midshires acted unfairly when it enforced legal action when it did. Birmingham Midshires instructed their solicitor on 23 January 2024 and a letter was sent to Mrs M to confirm this.

Mrs M called Birmingham Midshires on 31 January 2024 to discuss her account. Because the account was under legal review, Birmingham Midshires transferred the call through to their solicitor. At that point it was confirmed that possession was going ahead.

I appreciate it would have been confusing for Mrs M when she received the letter dated 1 February 2025 suggesting that she could enter a payment arrangement at this stage. Birmingham Midshires accepts it got things wrong by sending Mrs M misleading information. Having considered everything I agree that the £150 recommended by our investigator fairly compensates Mrs M in the circumstances, I'll explain why.

Compensation awards aren't designed to punish organisations for the mistake made. It's necessary to consider the overall impact the mistake has had on the customer when deciding what's a fair award amount. I appreciate Mrs M has experienced a loss of expectation here. She says she got her hopes up thinking she had other options to prevent eviction from going ahead.

I've seen call records that show Mrs M spoke to Birmingham Midshires' solicitors again on 6 February 2025 – a few days after receiving the letter dated 1 February 2025. Mrs M was told that the only thing that would prevent eviction from going ahead would be full repayment of the arrears – which Mrs M wasn't in a position to do.

I can see that Mrs M had trouble getting through to the solicitors at times but as I've mentioned she had spoken to them twice since they'd been instructed. I've not seen any evidence to suggest that Birmingham Midshires' solicitors told Mrs M that they weren't dealing with the account – as Mrs M suggests.

So, having considered everything I think Mrs M was given the right information when she spoke to the solicitors and so it only took a matter of a few days before the misunderstanding was cleared up. Overall, I consider an award of £150 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.

I can appreciate how worrying it must be for Mrs M to know eviction may go ahead soon and she's disappointed because she feels Birmingham Midshires isn't doing more to help her. But for the reasons I've explained, I can't say that Birmingham Midshires has acted unfairly or unsympathetically towards Mrs M's circumstances. I think Birmingham Midshires has shown reasonable forbearance over the years, and for the reasons I've explained I don't think it acted unfairly or unreasonably by starting the enforcement process when it did.

I understand that Mrs M says that her circumstances have now changed, and she feels that her case for a payment arrangement is supported by her MP. I would encourage the parties to engage to discuss Mrs M's current circumstances, but I must manage Mrs M's expectations by explaining that it's Birmingham Midshires' discretion whether to consider a payment arrangement at this stage – once possession has been enforced.

### **My final decision**

My final decision is that I uphold Mrs M's complaint against Bank of Scotland plc trading as Birmingham Midshires Mortgages.

I direct Bank of Scotland plc trading as Birmingham Midshires Mortgages to pay Mrs M a total of £150 compensation. It appears Birmingham Midshires has already paid Mrs M £80 compensation. If so, it needs to pay her a further £70 to settle this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 13 June 2025.

Arazu Eid  
**Ombudsman**