

## **The complaint**

Mr and Mrs Y complain about the interest rate on their mortgage with Bank of Scotland plc, trading as Birmingham Midshires (BM). They say they have been asking BM for a new interest rate product since 2011, but until late 2023 it always told them they couldn't have one.

## **What happened**

Mr and Mrs Y took out a mortgage with BM, through a broker, in 2010. This was so they could buy the property their daughter was renting at the time. The mortgage was a buy-to-let mortgage for a property which a close family member would live in, and this was set out in the special conditions of the mortgage offer. It was therefore a regulated mortgage.

The initial interest rate applicable to the mortgage was a variable rate which would be 3.85% above Bank of England base rate for the first 12 months. After that, the interest rate was 4.19% above Bank of England base rate for the remaining term.

In December 2023 Mr and Mrs Y made a complaint to BM. They had been trying to arrange a new interest rate on their mortgage, both with BM directly and through a broker. But they had been told this wasn't possible.

BM sent Mr and Mrs Y a final response letter on 11 December 2023. It apologised for not explaining how they could go about applying for a new interest rate product when they had called earlier in December 2023. It also said that because of the type of mortgage Mr and Mrs Y had, their broker couldn't apply online for a new rate with BM. But BM said that it had a specialist team which could arrange for a re-mortgage application to be made to another lender in the Lloyds group.

BM wrote to Mr and Mrs Y again about their complaint on 22 January 2024. It said their mortgage interest rate had operated as set out in the 2010 mortgage offer, and it couldn't find any evidence that they had asked for a new interest rate product until 2023. BM didn't offer Mr and Mrs Y any compensation, but it apologised for a delay in processing their re-mortgage application in late 2023.

Mr and Mrs Y referred their complaint to the Financial Ombudsman Service in June 2024. An Ombudsman colleague decided that this Service can only consider part of Mr and Mrs Y's complaint due to the time limits that apply. The Ombudsman set out that the parts of the complaint we can consider are about the interest rate BM has charged on their mortgage and whether it should have offered them a new deal or treated any requests they made for a new deal differently, but only from December 2017 onwards.

Following this, the Investigator reviewed the parts of this complaint we can consider. She didn't think BM had acted unfairly in not offering Mr and Mrs Y a new interest rate. She also said that BM wasn't required to tell Mr and Mrs Y it was adding a message that would come up on the broker's system, to tell them they would need to contact BM's specialist team if they wanted to make changes to their regulated buy-to-let mortgage.

Mr and Mrs Y disagreed with the Investigator's conclusion and asked for their complaint to be reviewed by an Ombudsman. So, it was passed to me to decide.

### **My provisional decision**

I said:

"A key argument Mr and Mrs Y have made is that they called BM several times over the years to obtain a new interest rate deal. And that, when they did, they couldn't get beyond the first "hurdle" because BM told them they needed to speak to a broker, but when they did that, the brokers were unable to help.

On the other hand, however, BM has said that there aren't any records of Mr and Mrs Y contacting it to change their interest rate until 2023. We have asked Mr and Mrs Y to provide any details they have of approximate dates on which they made the phone calls they have referred to. But unfortunately, Mr and Mrs Y have been unable to provide any further details about that.

BM has told us that due to limitations in its call recording system, it's unable to conduct a search for call recordings spanning several years. It has, however, provided us with contact notes. I've examined the notes carefully and they do not show a record of any calls being made about the interest rate from 2017, other than the calls that took place in 2023. And so, there isn't any other evidence of calls having been made by Mr and Mrs Y other than their testimony.

Where the evidence and arguments are incomplete or contradictory – as is the case here – I need to decide what I think is most likely to have happened, on the balance of probabilities.

I don't doubt that Mr and Mrs Y's recollection of what's happened is genuine. But I must also bear in mind that they are referring to events that happened, at least in part, several years ago. Human memory is fallible and can fade over time – generally, the longer ago an event is the less reliable the recollection of it. Memory isn't fixed like a recording, for example, and it changes over time. What is remembered can fade over time and later events, emotions, and beliefs can influence that. In other words, it's possible that what Mr and Mrs Y remember is what happened, but it's also possible that it is not. I am not suggesting that Mr and Mrs Y's recollection isn't genuine. But I have to bear in mind that no matter how genuine their recollection and however certain they are about it, their memory might not be accurate.

What I have seen is documented evidence from BM's system showing contact in relation to Mr and Mrs Y's mortgage since it began. I can see that communication events such as phone calls and letters have been noted during that time, as were the phone calls Mr and Mrs Y made to BM in October 2023 asking about an interest rate – despite BM telling them it wouldn't be able to help at that point.

On balance, I think it's more likely than not that if Mr and Mrs Y had contacted BM about obtaining a new interest rate on their mortgage, then there would be some documented record of this on BM's system, even if it was unable to help them. I would also expect to see records of Mr and Mrs Y having contacted brokers over the years, if they had repeatedly tried to get a new interest rate with BM and were told no. I haven't seen any documented records of that either, prior to 2023. And so, I am not persuaded that the calls Mr and Mrs Y are referring to did take place between them and BM, from December 2017 onwards. It follows that I don't consider BM has

acted unfairly in relation to this.

I have thought about whether BM ought to have done something else to notify Mr and Mrs Y that it might be possible for them to apply for a new interest rate, by using its “specialist remortgage” process to take out a new mortgage. But there wasn’t any requirement for it to do this. There isn’t any requirement for a lender to offer new interest rates to their existing borrowers either. And I’m satisfied BM didn’t treat Mr and Mrs Y less favourably than its other customers with this type of mortgage – they wouldn’t be able to change their interest rate with BM either. However, I am pleased to see that Mr and Mrs Y were able to use BM’s specialist remortgage process to move their mortgage to another lender in the Lloyds group after they asked about this in 2023, enabling them to get a new mortgage and, in turn, a new interest rate product.

I can see that BM did initially give Mr and Mrs Y incorrect information in October 2023 – that the specialist remortgage team wouldn’t be able to help. And I note it has apologised for this. The application began a few weeks later, on 21 November 2023. So, there is an argument to say that Mr and Mrs Y may have been able to apply for a new interest rate sooner. However, I note that the interest rate products that would have been available to Mr and Mrs Y before 21 November 2023 were higher. Because of this, I’m not persuaded they are financially worse off because of the delay of up to three weeks in the specialist remortgage process starting. And I think BM’s apology was a reasonable way to recognise what’d happened.

Mr and Mrs Y have referred to their broker seeing a message in 2023 advising that they would need to contact BM’s specialist remortgage team to enquire about a new interest rate product. They question when BM added this message to the broker’s system.

I have not seen a copy of the broker’s system message that Mr and Mrs Y are referring to. However, I have seen some historic versions of BM’s intermediary website – available to and for use by brokers – from January 2018 onwards. This includes a section for existing customers with regulated mortgages, including buy-to-let where it is let to a family member. And it sets out the following (there have been some changes over the years, such as to the telephone number, but the message has remained broadly the same):

“We cannot offer any contractual changes to existing mortgages including Further Advances, Product Transfers, Transfer of Equity or Repayment Term/Type changes. Please note that where the original mortgage was deemed as regulated, the status of the mortgage will never change.

If you have a customer who would like to make a change to their account and their existing regulated mortgage is held with us you have the following options;

- The customer can contact our Specialist Remortgage Team on [telephone number]
- You can review the whole of market for options for the customer to suit their circumstances to Remortgage to another lender”

So, I’m satisfied this information would have been available to any broker that Mr and Mrs Y might have instructed, during the period I can consider – since December 2017. There isn’t anything further I would have expected BM to do in relation to this.

Overall, while I appreciate Mr and Mrs Y's strength of feeling about what's happened, I'm not persuaded BM has acted unfairly or unreasonably. And so, I don't intend to direct it to do anything further in relation to this complaint."

I invited Mr and Mrs Y and BM to let me have any further comments or evidence they wanted me to consider before I make my final decision.

BM said it didn't have anything to add. Mr and Mrs Y were disappointed with my decision but didn't provide any new arguments or evidence.

### **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 also considered again the conclusions I reached in my provisional decision. And, as neither party has made any new arguments or provided any new evidence, I see no reason to depart from them.

### **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 Mrs Y and Mr Y to accept or reject my decision before 24 June 2025.

Keith Barnes  
**Ombudsman**