

## **The complaint**

The estate of Ms I has complained about the service provided by Bank of Scotland plc trading as Birmingham Midshires following the death of Ms I.

The estate is being represented in bringing this complaint by Mrs H in her capacity as Administrator. Any reference to Mrs H in this decision should be taken to mean her acting in that capacity where appropriate.

## **What happened**

Ms I took out this buy to let ("BTL") mortgage with Birmingham Midshires in 2018. The mortgage offer issued in June 2018 set out that Ms I was borrowing £115,000 (plus fees) over a 10-year term on an interest only basis. The interest rate was to be fixed at 1.90% until 30 September 2020, after which it would move to a variable rate which was 4.34% above Bank of England base rate.

When that preferential rate came to an end Ms I agreed a new preferential interest rate for the mortgage. That rate was fixed at 1.79%, and then on 1 November 2022 it moved to the reversionary variable rate, which was 6.59% at that time. This meant the mortgage payment increased from around £190 a month to around £660 a month. The rate increased over the next year, as did interest rates more generally in the market, and Mrs H has said that led to the monthly mortgage payment being more than the monthly rental income.

Ms I sadly died in February 2022 and at the time the balance was around £118,280. She owned one other BTL property along with this one, and Mrs H has said that the payments had been made from a bank account that was frozen a few weeks after Ms I died. The last payment was collected by direct debit in February 2022.

Ms I died intestate, and Mrs H has said that the firm of solicitors that had been instructed to deal with the estate took nearly a year ensuring there was no valid will. I understand from the contact notes there was a family dispute over whether or not there was a will. Once it had been established that there was no will, Mrs H has said that HMRC worked incredibly slowly which then took up more time. I understand the Letters of Administration were obtained at the start of February 2024.

In the meantime, as no payments had been made to the mortgage account and no notable updates had been provided since April 2022 (when the solicitor had said there were no funds available to make the mortgage payments), in April 2023 Birmingham Midshires instructed a field agent to visit the property.

On 5 May 2023 an agent provided a report which said they'd spoken to the tenant, and the tenant was paying £600 a month in rent to a managing agent. The tenant had said they were looking to extend their tenancy.

As rent was being paid by the tenant, but it wasn't being paid to the mortgage account, Birmingham Midshires instructed a Law of Property Act 1925 Receiver ("Receiver") in May 2023. Upon receiving notification that a Receiver was to be instructed, the solicitor acting for

the estate asked what had to be done to cancel the instruction. Following that a payment of around £8,070 was made to the mortgage account in mid-June 2023 to clear the arrears so the Receiver was stood down.

In August 2023 the solicitor told Birmingham Midshires that matters were progressing and HMRC had passed matters to probate, but no further progress was made and the arrears balance was building again.

In December 2023 the solicitor wrote to Birmingham Midshires to say they were looking at what options were available to get the rental income paid to the mortgage account, and then in January 2024 the solicitor said the rent was being held by the property management company and it wasn't sufficient to cover the arrears on the mortgage due to inheritance tax requirements.

As no further payments had been made or were likely to be forthcoming in the near future, Birmingham Midshires instructed a Receiver again in March 2024.

Between March and May 2024 the rent was paid to the mortgage account by the Receiver, but the Receiver deemed the property wasn't financially viable to continue as a BTL as the rental income being received was less than the interest due on the mortgage account. Notice was given to the tenant that they needed to vacate the property by July 2024, and I understand the tenant left the property in May 2024.

I understand the sale of another of the properties that formed part of the estate completed at the start of August 2024, but the money wasn't paid to redeem this mortgage until January 2025 as the estate wasn't happy about some additional costs that had been incurred on this account. In August 2024 the solicitor requested a redemption statement for the mortgage account, and they then queried the various charges that had been incurred.

In October 2024 Birmingham Midshires sent a duplicate copy of the 2024 annual mortgage statement (that had previously been sent to the solicitor in July 2024) and an interim statement to show the transactions since then.

At the start of January 2025 Birmingham Midshires said it was going to arrange for a field agent to visit the property as the arrears stood at around £12,800.

The mortgage was repaid at the end of January 2025.

We've looked at two previous complaints from the estate – one relating to this property and the second relating to the other BTL property – and our Investigator explained we can't look at those issues again. For that reason I won't be making reference to those issues here.

In respect of this complaint our Investigator said that due to the arrears on the account it wasn't unreasonable for Birmingham Midshires to have instructed the Receiver in 2023, and when the arrears were cleared the Receiver was stood down. But when the arrears built up again it wasn't unreasonable for the Receiver to be instructed again. He said that the terms and conditions of the mortgage allowed for the costs of that to be added to the mortgage account, and if the estate was unhappy with the level of fees charged by the Receiver then that is a matter they would need to take up with them. He said that whilst there was a delay in Birmingham Midshires sending the breakdown of the charges to the solicitor, he didn't think it had any material impact on the estate's ability to redeem the mortgage. And in respect of letters sent to the property address he said that was normal as Birmingham Midshires had an obligation to write to all addresses held on file.

Mrs H didn't agree and so the case was passed to me to decide.

## **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 the right outcome.

I hope Mrs H will accept my condolences for her loss. I've a great deal of sympathy for the position she was in, with the passing of Mrs I and then her difficulties in dealing with the estate. Things can't have been easy for her.

What I have to consider is whether Birmingham Midshires acted fairly and reasonably in the circumstances. And if not, consider whether the estate has suffered a loss as a result.

Under our rules, we can consider a complaint from a consumer. Ms I was the consumer and when she died the right to complain passed to her estate. But I must explain that, although Mrs H is representing the estate, she's not Birmingham Midshires's customer here. Mrs H's role is to bring the complaint on behalf of the estate, in the same way that a person might instruct a solicitor or other professional to represent them in a complaint.

I don't have the power to look at a complaint from Mrs H in her personal capacity or look at how this matter has affected her personally. This also means I can't make an award for any distress caused to Mrs H.

BTL mortgages aren't regulated by the Financial Conduct Authority ("FCA"). So, the rules set out in the FCA handbook don't apply to them. But I can consider whether Birmingham Midshires treated the estate of Ms I fairly and reasonably, whilst bearing in mind the commercial nature of a BTL mortgage.

Whilst it's unwelcome, the death of a sole borrower means the mortgage debt is immediately due. Birmingham Midshires had been told of Ms I's passing in February 2022 and, other than the lump sum payment made in June 2023 to stand the Receiver down, there'd been no mortgage payments made since February 2022 (despite the property being tenanted and rent being paid). There was also no clear indication of when the mortgage would be repaid, and seemingly no progress being made.

Mrs H has said a year isn't long enough where there needs to be a search for a will, but this situation isn't unusual, and having considered the contact notes, it seems the delay was partly due to a dispute between family members. Either way, a mortgage lender doesn't have to wait an indefinite length of time for an estate to be settled, and a year is generally considered to be sufficient for progress to be made, even when a person has died intestate.

I understand Mrs H feels our service doesn't understand the process that needs to be followed when a person dies intestate. But that's not the case. For example, Mrs H has said that the Letters of Administration couldn't be applied for until the inheritance tax bill had been paid, but that's not the case. Normally some of the inheritance tax has to be paid before the Letters of Administration would be granted, but not all of it. It isn't at all unusual for an estate to not have the funds available to pay all the inheritance tax due before a grant of representation (that is either a Grant of Probate, or Letters of Administration) is obtained. That is why there is a process to apply for inheritance tax to be postponed.

Birmingham Midshires was entitled to expect the outstanding debt to be repaid when the mortgage fell due for repayment under the terms and conditions underpinning the mortgage

contract. Instead, it took two years for the Letters of Administration to be obtained, and then a further eleven months after that before the mortgage was repaid, and that is the context in which I've considered what is fair and reasonable.

In addition, up until the Receiver took control of the property in March 2024, the estate was receiving the monthly rental income but wasn't paying that to the mortgage (other than the lump sum that was paid in June 2023 to stand down the first Receiver). Had the rental income been paid to the mortgage account, as was always intended as this was a BTL mortgage agreement, then I see no reason to believe Birmingham Midshires would not have shown more forbearance as the mortgage debt wouldn't have been increasing by so much. The estate has given various reasons for that, but those were choices that the estate made, and the consequences of those decisions are that Birmingham Midshires appointed a Receiver to collect the rent to ensure that money was paid to the mortgage and to look at the viability of the property as an ongoing BTL venture.

I've thought about whether Birmingham Midshires's decisions to appoint a Receiver in May 2023 and then again in March 2024 were reasonable. Birmingham Midshires's internal criteria were met. In May 2023, no payments had been made towards the mortgage since February 2022 despite the property being tenanted. And in March 2024, no payments had been made towards the mortgage since June 2023 despite the property remaining tenanted.

Appointing the Receivers gave Birmingham Midshires the opportunity, amongst other things, to attempt to secure payment of the rent towards the mortgage and assess the condition of the property and its potential for sale. Allowing the arrears to continue to accrue meant more interest would be charged and the equity was being eroded. Bearing everything in mind, I think it was reasonable for Birmingham Midshires to appoint the Receivers on both occasions given the circumstances at the time.

Mrs H has said our Investigator was wrong to say the Receivers were acting for the estate, rather than for Birmingham Midshires. But our Investigator was correct. The Law of Property Act 1925 section 109(2) explains

"A receiver appointed under the powers conferred by this Act, or any enactment replaced by this Act, shall be deemed to be the agent of the mortgagor; and the mortgagor shall be solely responsible for the receiver's acts or defaults unless the mortgage deed otherwise provides."

With 'mortgagor' taking its normal meaning of 'borrower'.

Under the mortgage terms and conditions, and under the Law of Property Act 1925, Birmingham Midshires could appoint receivers to manage the property. And, as I've explained, although appointed by the lender, the Receiver acts as the borrower's agent, managing the property to see whether rent can be collected to pay the mortgage and (if not) considering other options such as selling it to repay the debt.

Birmingham Midshires stood the first Receiver down when the arrears were cleared in June 2023, but because no further payments were made a second instruction was made in March 2024. That doesn't seem unreasonable as by then it had been two years since Ms I had died, with the mortgage remaining unpaid and the monthly payments not being made.

I acknowledge Mrs H is unhappy that the tenants left the property after being given notice following the appointment of the second Receiver, but that isn't something I can consider in a complaint against Birmingham Midshires. As our Investigator explained, this service doesn't have the power to consider complaints about the activities of the Receiver. Birmingham Midshires was entitled to appoint them under the terms and conditions of the

mortgage, and Birmingham Midshires could pay associated fees, provided they were reasonably incurred and reasonable in amount, and charge interest on them whether or not the estate had seen or approved them. I'm satisfied it was fair to appoint the Receivers and they were carrying out relevant work to manage the property and reach a decision on whether the ongoing letting of the property was viable. I think it was fair for Birmingham Midshires to pay the Receiver's fees and to add the costs of that to the mortgage account in line with the mortgage terms.

Having considered everything very carefully, I don't think Birmingham Midshires acted unreasonably in appointing the Receiver on either occasion, or in adding the costs of the Receiver onto the mortgage account. And any acts or omissions by the Receiver – and the level of fees they charged – aren't something I can consider in a complaint against Birmingham Midshires as, once appointed, the Receiver was the agent of the estate, not of Birmingham Midshires.

Mrs H has said that Birmingham Midshires didn't appoint one person to manage the account, but that isn't how Birmingham Midshires works and I can't see any different way of working was needed here. Birmingham Midshires was waiting for the estate to provide a copy of the Letters of Administration and pay off the mortgage. Single person ownership by Birmingham Midshires wouldn't have changed that, nor would it have changed the actions Birmingham Midshires took on the account. This mortgage was owed to Birmingham Midshires and no payments were being made, despite the tenant still paying their full rent each month. Even if the property(s) couldn't be marketed for sale before February 2024 (when the Letters of Administration were granted), there were then a further 11 months before this mortgage was repaid.

I understand for around two months the estate's solicitor was asking for a breakdown of the additional costs added to the mortgage, but the majority of those included in the redemption figure given in August 2024 were incurred in the period up to and including 30 June 2024, so were shown on the annual mortgage statement that was issued to the estate's solicitor on 2 July 2024. After that date there were only five "receivership costs" totalling around £1,500 that had been added to the account. And in any event, that information was provided to the estate's solicitor in October 2024, yet it was a further three months before the mortgage was repaid. Taking all that into account, I can't find that Birmingham Midshires's delay in responding to the solicitor caused any financial loss or additional inconvenience above that which would normally be expected when settling an estate.

Finally, I understand that Mrs H is unhappy with some of the letters issued, including that a letter was sent to the property address after the tenants had left saying Birmingham Midshires needed to establish who was living there. I can understand why that would be confusing to Mrs H, but Birmingham Midshires has an obligation to send some letters to all addresses it holds, including the empty property. And some of those letters may have some standard wording. Whilst I understand why it would feel more appropriate for all letters to be bespoke to the individual mortgage account, that simply isn't feasible when considering how many mortgage accounts Birmingham Midshires has. Birmingham Midshires has apologised for any inconvenience caused to Mrs H, and I'm satisfied that is enough.

Having considered everything very carefully, whilst I've a great deal of sympathy for the situation, I can't uphold this complaint made by the estate of Mrs I.

### **My final decision**

For the reasons I've explained, I don't uphold the estate of Ms I's complaint.

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 19 November 2025.

Julia Meadows  
**Ombudsman**