

## The complaint

Mr and Mrs M's complaint relates to a buy-to-let mortgage they have with Bank of Scotland plc trading as Birmingham Midshires Mortgages (BMM). They believe that the mortgage was issued on a fraudulent basis as:

- The valuation report produced in 2006 direct for them was formatted incorrectly for a residential property and contained serious omissions. It failed to warn them of the risks and issues associated with buying a property during a localised property boom and bubble, which then collapsed.
- The valuation produced in 2006 for BMM knowingly inflated the property value for re-mortgage purposes. This breached the Royal Institution of Chartered Surveyors rules.
- BMM ignored its "rental cap calculator" when agreeing the lending.

Overall, Mr and Mrs M have said that they believe that there was collusion between Colleys and BMM to artificially inflate the value of the property, which led to BMM lending more than it should – in other words, BMM lending irresponsibly.

Mr and Mrs M also let us know that they were unhappy about the lack of response to complaints they had raised after the final response of 21 December 2023. However, they said that they wished to pursue those issues in a separate complaint.

## What happened

In 2006 Mr and Mrs M bought a property with the intention of renting it out. Before doing so, they obtained a valuation from Colleys, a surveying business that was owned by Bank of Scotland.

Subsequently, they took out a mortgage with BMM on the property following taking advice from an independent mortgage broker. As part of that process, BMM obtained another valuation from Colleys for the property. This concluded the value of the property had increased. Mr and Mrs M applied for a mortgage of just under £80,000 over 20 years on an interest-only basis.

Mr and Mrs M raised concerns with Colleys and BMM in 2017 and into 2018. The complaints were responded to and, when Mr and Mrs M were dissatisfied with the responses, they referred their complaint to this Service for consideration. One of our Adjudicators considered the complaint, but he concluded that the complaint points about the valuations completed outside the mortgage process weren't within our remit and he dismissed the remainder of the complaint as he concluded that the issues would be better dealt with in court.

In 2021 Mr and Mrs M asked us to consider the complaint again, as they had evidence that they considered was new and relevant to the outcome. One of my Ombudsman colleagues issued a decision on 24 February 2023. She was satisfied that the complaint was the same as that which we considered in 2018. The Ombudsman set out that the complaint relating to the first valuation, which was not linked to a mortgage with BoS, did not fall within our jurisdiction as it was not about an activity that fell within our remit. In respect to the second valuation, this was linked to a mortgage with BoS and so we could consider it. However, the

Ombudsman was satisfied that we had already excluded that complaint, and the additional evidence Mr and Mrs M provided would not fall to be described as new or material, so she dismissed the complaint without consideration of its merits.

Mr and Mrs M raised their concerns with BMM again in 2023. BMM told Mr and Mrs M in its letter of 7 November 2023 that it had already responded to the complaint about its lending decision, and it would not be addressing the complaint again. This was reiterated in BMM's letter of 21 December 2023.

Mr and Mrs M asked this Service to consider their concerns again in June 2024. They said that they were asking us to consider the complaint on a different basis to the previous complaints – it was about fraud. They explained this conclusion was based on material new information that they had discovered, particularly in relation to issues of '*civil fraud and misfeasance*' in relation to BMM ignoring its rental cap calculator.

One of our Investigators looked into the complaint and concluded that it was, essentially, the same complaint as had been raised twice before with this Service. She concluded that no unfair relationship had been created by BMM deciding to lend to Mr and Mrs M. She was also satisfied that as we had already concluded that the complaint would be better considered in court, it should be dismissed without further consideration of its merits.

Mr and Mrs M did not accept the Investigator's conclusions. They said that the complaint was about the issue of BMM lending in breach of its own lending rules, resulting in reckless and excessive lending and causing their business sustained financial damage and loss. That complaint had not been previously referred to this Service. As such, the complaint as set out by the Investigator was '*completely wrong-headed*' and the complaint had been misconstrued.

### **What I've decided – and why**

As we have previously explained on several occasions, the production of a valuation by Colleys outside of a mortgage process is not an activity that falls within our jurisdiction. This is because we can only consider complaints about certain activities and events that are ancillary to them. A property valuation is not one of the activities we can consider and as the initial valuation was not linked to such an activity, it does not fall within our remit.

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Mr and Mrs M have said that the complaint they presented to us in 2024 is different to that which they referred to us in 2018 and 2021. I have carefully considered their comments about this and their explanations of their complaint, including that contained in the complaint form they submitted to us and their email in April 2024, providing clarification of the complaint to the Investigator. At the core of all three complaints that have been made to us is that they think that BMM agreed to lend more money than it should have – it lent irresponsibly. While they have changed how they have phrased and positioned the complaint over time, including most recently adding another reason for believing the lending was irresponsible and alleging fraudulent behaviour, I am satisfied the 2024 complaint is essentially the same as those referred to us previously.

I am satisfied that Mr and Mrs M's complaint is one that we can consider, including on the basis of whether there was an unfair relationship between Mr and Mrs M and BMM – taking into account all matters relevant to the fairness of that relationship, when they occurred. However, as my Ombudsman colleague explained in 2023 and the Investigator explained

earlier in this complaint, there are some complaints that, whilst they fall within our remit, it's not appropriate for this Service to consider. Our rules, known as the DISP rules, allow us to dismiss a complaint without consideration of its merits in certain circumstances. One of those circumstances is where considering it will seriously impair the effective operation of this service. Our rules set out examples of where that would be the case, and that includes where we have already considered or excluded a complaint.

I have considered if Mr and Mrs M have provided any new evidence that would have been material to the outcome the Adjudicator reached in 2018, and I am not persuaded there is. In light of this and, as I am satisfied this is the same complaint as was brought in 2018, I dismiss this complaint without consideration of its merits.

I am also satisfied that BMM's decision to lend to Mr and Mrs M in 2006 did not create an unfair relationship. I say this in the first instance because a BTL borrower cannot place any reliance on valuations produced for the mortgage lender and the lender has no duty of care to the potential borrower in relation to the content of the valuation. It is for the borrower to make their own independent decision about how much to borrow. BMM's only duty to Mr and Mrs M was to ensure a valuation is carried out by a suitably qualified person. As the firm of surveyors in this case was RICS-qualified, I am satisfied that BMM fulfilled its duty in appointing properly qualified persons to value the properties.

Where a complaint is about the exercise by a lender of its commercial judgement, I have to decide if B took into account all relevant factors and gave proper consideration to them before reaching its decision. BMM was entitled to rely on the valuation provided to it, in relation to both the market value of the property and the rent that was likely to be achieved. The former was sufficient to mean that the amount Mr and Mrs M had asked to borrow fell within BMM's lending criteria. In relation to the monthly rent the valuer thought the property would likely achieve, while we don't have the assessment completed in 2006, the rental figure was significantly more than the cost of the mortgage. I also note that the mortgage payments were made on time and in full for a significant period of time, again indicating that the mortgage was not lent irresponsibly.

While most of the property market has recovered after the crash in 2008, not all did. It is unfortunate that the type of property where it was located, that Mr and Mrs M re-mortgaged to BMM, did not recover. However, the fact that the property is in negative equity and the recent changes to interest rates available in the mortgage market means that the rent no longer covers the monthly contractual payment, does not mean that the mortgage was irresponsibly lent or that an unfair relationship was created between the parties.

### **My final decision**

My decision is that I do not uphold this complaint as I do not consider that the circumstances of this complaint created an unfair relationship between Mr and Mrs M.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs M to accept or reject my decision before 18 November 2025.

Derry Baxter  
**Ombudsman**