

The complaint

Mr G complains that Bank of Scotland plc, trading as Birmingham Midshires (BM), wrongly obtained an order for possession of his property. The arrears on his mortgage had been repaid before the court hearing and Mr G says the possession order resulted in the loss of a sale of the property.

What happened

Mr G took out his interest-only mortgage with BM in 2007, over a term of 18 years. The term ended in May 2025.

In 2022 Mr G told BM that he had a buyer lined up to buy his property and the purchase would repay the BM mortgage. The plan was to divide the property into two, sell one half of it to repay the buyer, and Mr G would keep the remaining half mortgage-free.

By March 2023 the mortgage was four months in arrears. No payments had been made since November 2022. BM decided to take legal action to recover the debt and a hearing date was set for early May 2023. In mid-April 2023 Mr G made a payment of just over £4,000 to clear the arrears and stop the court action. The hearing was adjourned.

No more payments were made to the mortgage so arrears built up again. In July 2023 BM re-instructed solicitors and a court hearing date was set for 16 August 2023.

On 14 August 2023 Mr G asked for the hearing to be cancelled, because he said he had agreed a sale of the mortgaged property and he would clear the arrears in full. On the morning of 16 August 2023 Mr G's prospective buyer paid just under £11,000 to the mortgage. This cleared the arrears, and BM and the solicitors acting for it agreed to apply for an adjournment.

However, the message to adjourn the claim didn't get through to the advocate at court in time. The court made an order for possession giving Mr G 28 days to vacate the property. Mr G found out about this two days later and he made a complaint. He says the buyer for his property and the investor who was going to fund and oversee the building works withdrew from the deal because of the order for possession.

The solicitors acting for BM applied to the court to have the possession order set aside. A fresh court order was issued on 25 August 2023 setting aside the order for possession and adjourning the claim with liberty to restore by 25 August 2024.

BM referred Mr G's complaint to the solicitors who had dealt with the legal proceedings. The solicitors accepted that the possession order shouldn't have been obtained. They apologised and offered Mr G £50, and confirmed that the possession order had been set aside and the claim adjourned.

Mr G wasn't happy with that response. BM told him to contact the Legal Ombudsman, and Mr G also referred his complaint to the Financial Ombudsman Service. The Legal Ombudsman said they couldn't help. One of our Investigators then looked into the complaint.

The Investigator didn't think the losses Mr G is claiming had arisen as a result of the mistake which led to the issue of the possession order. But she thought things had gone wrong and the £50 offered by the solicitors who were acting for BM wasn't enough to reflect the distress and upset Mr G was caused. She recommended that BM pay him a further £300.

BM accepted that recommendation, but Mr G did not. He thought that causation and fairness hadn't been properly considered, he should be compensated for his losses, and £350 for non-financial loss isn't good enough.

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've also considered relevant law, the various case law Mr G has referred to, regulatory rules and guidance including the Consumer Duty, good practice, and Mr G's recent submissions up to the end of October 2025 and including his correspondence with a manager at the Financial Ombudsman Service in October 2025.

There's now no dispute that the solicitors who dealt with the legal proceedings in 2023 were acting for BM and BM is therefore responsible for this complaint. There's also no dispute that the solicitors made a mistake. The arrears on Mr G's mortgage were cleared on the morning of the court hearing on 16 August 2023. That information didn't reach the advocate at court, who mistakenly understood that the mortgage arrears were still outstanding. As a result the court issued an order for possession.

The order was set aside just over a week later, on 25 August 2023. But Mr G says that in the interim the property deal he had arranged with a buyer and investor collapsed. He says this was a direct result of the order for possession having been issued. He has provided witness statements from the buyer and investor and WhatsApp messages to confirm this. He has also provided a "heads of terms" agreement between him, the buyer and the investor, which was signed in June 2025 but which says the agreement was reached orally on 10 August 2023.

Mr G says that the collapse of the deal had significant repercussions; the other two parties to the deal have lost out and so has he. Mortgage interest and charges have also continued to accrue. As at July 2025 the mortgage was in arrears of almost £40,000 because no payments had been made since 16 August 2023. BM again instructed solicitors to take possession proceedings. It hasn't enforced a new possession order which was granted in 2025 while we consider this complaint.

I've thought very carefully about everything Mr G has said and provided about why he believes BM should be held accountable for the losses he is claiming. But having done so I don't agree with him, for the reasons I'll explain.

I see no real reason why the existence of the order for possession should have resulted in the collapse of Mr G's planned property sale, particularly given that it was set aside after just a short time. I've listened to recordings of relevant phone calls as part of my review of this complaint, and I note that on 14 August 2023, when Mr G called the solicitors to ask for the hearing to be cancelled, they told him that if he couldn't provide proof of the pending sale of the property before the hearing then a possession order would be obtained – but it could be set aside if he provided proof of sale within 28 days. So I think Mr G knew – or ought reasonably to have known – before the hearing date that there were circumstances in which an order for possession could be set aside later.

Besides that, the solicitors assured Mr G when he called to complain about the order on the day he found out about it, 18 August 2023, that they would apply to the court to have the order set aside and the claim adjourned. That's what I'd expect them to have done, and that's what happened a few days later.

The order for possession was in place for nine days. But it didn't mean that Mr G or his associates were prevented from repaying the mortgage. It's very unfortunate that Mr G's investor and buyer appear to have understood that it did, but I don't consider that I can fairly hold BM responsible for that. BM's agents, the solicitors, had made clear to Mr G that the order could and would be set aside. There was no legal or contractual reason that the mortgage couldn't be repaid. In the circumstances I don't think it was reasonably foreseeable to BM that Mr G's investor and buyer would decide to withdraw from the deal in the mistaken belief that the order prevented them from going ahead.

In any event, the "heads of terms" Mr G has provided of his agreement with his buyer and investor was not a binding contract and was unsigned until 2025. It does not say when the buyer would repay Mr G's mortgage, and Mr G didn't have planning permission for the planned works. In the circumstances, I think it would be difficult to be certain that the sale would have completed in the short term or even at all.

I'm satisfied that by the time BM received evidence of the payment made to clear the mortgage arrears – which was after 11am on 16 August 2023 – it was too late to cancel the hearing scheduled for 2pm the same day. I'm also satisfied that had things gone as they should and had the advocate at court known that Mr G's mortgage arrears had been repaid, the solicitors would have asked for the claim to be adjourned and no order for possession would have been issued. This would still have incurred legal costs, which BM was entitled to add to Mr G's mortgage in line with the mortgage terms.

This would also still have meant the claim was adjourned with liberty to restore and not, as Mr G has argued, dismissed or cancelled. Adjournment is usual practice in possession claims. Mr G's mortgage had been in arrears for some time, and it was reasonable for BM to want to see that he would continue to pay the mortgage and if not to apply for a new court date. So I don't think the solicitors on BM's behalf did anything wrong in applying for the possession order to be set aside and in applying for its claim to be adjourned with liberty to restore within 12 months. That's what I'd expect them to have done to put things right as far as possible, and it was the court's decision then to make the adjournment order. Unlike the decision to issue the order for possession, I haven't seen anything to indicate that the court made the decision to adjourn with liberty to restore based on the wrong facts.

For these reasons, I don't require BM to compensate Mr G for the losses he is claiming. I think it should compensate him for non-financial loss, and that finding out that an order for possession had been made after having been assured that this wouldn't happen caused Mr G significant upset and distress. He wasn't expecting it and the mortgage arrears had been repaid. Mr G was then put to avoidable inconvenience after BM mistakenly referred him to the Legal Ombudsman instead of to us. I think that he should fairly receive some compensation to reflect the impact all of this had on him.

I know Mr G considers that the award our Investigator recommended doesn't go far enough, but in all the circumstances I've reached the same conclusion as the Investigator. In taking that view I've kept in mind that BM, through its solicitors, reassured Mr G very quickly that an application would be made to set aside the court order and that is what happened. What went wrong had a serious short-term impact and a longer term impact for Mr G's complaint, and I think £350 is fair and reasonable in recognition of that. There is more information on

the Financial Ombudsman Service's website about our approach to awards for non-financial loss¹.

Finally, Mr G has made other complaints including about recent charges added to his mortgage, BM's handling of subject access requests and what forbearance it has given. Those matters weren't included in the complaint I've considered here so I haven't made a decision about them. As our Investigator explained, Mr G can make separate complaints to BM if he hasn't already done so, which he may be able to refer to us later if he wishes.

I recognise that Mr G is in a very difficult position with significant mortgage arrears and I hope he is able to find a way forward – he should keep BM up-to-date with any plans he has for repayment if he isn't doing so already.

My final decision

My final decision is that Bank of Scotland plc, trading as Birmingham Midshires, must pay Mr G £350 if it or the solicitors acting on its behalf haven't already done so and if Mr G accepts this final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 1 December 2025.

Janet Millington
Ombudsman

¹ <https://www.financial-ombudsman.org.uk/consumers/expect/compensation-for-distress-or-inconvenience>