

## The complaint

Mr O complains that Bank of Scotland plc trading as Birmingham Midshires (BM) unfairly repossessed and sold his property without communicating with him, and it hasn't accounted for the proceeds of sale.

## What happened

Mr O had a buy to let mortgage with BM. Following a period of arrears, BM appointed receivers to manage the property in 2019. The property was sold in 2021 and there was a surplus after sale of around £110,000. BM's solicitors paid the surplus into the Court Funds Office in 2022.

Mr O has been unwell for some years and is represented in this complaint by his daughter Ms O. Mr O complains that BM repossessed and sold the property, even though the arrears were originally small and caused by non-payment of the rent by the tenant, and even though he offered to clear the arrears. He complains that BM didn't communicate with him, in particular not letting him know when the property was sold, and that it didn't tell him what happened to the proceeds of sale.

There have been several earlier complaints to BM before Mr O and Ms O brought this one to us. Mr O complained in 2019, and BM sent a final response on 10 July 2019. This was a complaint about the appointment of receivers, the costs of the receivers, and that Mr O had not received correspondence from BM. BM said it had appointed receivers because the mortgage was in arrears and had been for some time. It sent copies of all recent correspondence to Mr O again.

Mr O complained in early 2020, and BM replied on 19 February 2020. This was a complaint about its rejection of a proposal to repay the arrears, charges and actions of the receiver, and its decision to sell rather than re-let the property. BM didn't uphold the complaint. It said the property wasn't in good enough condition to let. It wasn't responsible for the actions of the receivers. It said that to hand the property back it would require the mortgage to be repaid in full, not just the arrears to be cleared.

Mr O complained again in August 2020. He complained about the rejection of a proposal to bring the account up to date and that BM's receivers wrongly said the property was in poor condition and not suitable for letting. He also asked for information about sums added to the mortgage, and for confirmation that BM had dealt with outstanding council tax and service charges.

BM responded to that complaint on 28 August 2020. It sent the response to Mr O by post addressed to his home address. It said that the receivers had recommended handing the property over to BM for it to sell. It said complaints about the actions and decisions of the receivers would need to be addressed to the receivers. It said it had considered their proposal in February 2020 – had it considered the proposal sooner, the outcome would have been the same. It would not hand the property back unless the mortgage was repaid in full.

Mr O brought that complaint to us, but outside the six month time limit after the final

response. An ombudsman issued a decision in July 2023 explaining that we couldn't consider that complaint because it was out of time.

Ms O complained to BM on 30 December 2023. She said that she had previously complained in August 2020 but had received no response. She said that they had now learned that the property had been sold. But they had not been told that at the time – even though they had made it clear that BM should communicate with Ms O because of Mr O's health concerns. She said that Mr O had made proposals to clear the arrears but BM rejected that. She asked for full details of when the property was sold, how much for, what happened to the proceeds of sale, and other information about the sale. BM did not respond to that complaint.

Ms O complained again in 2025. BM responded to the complaint on 6 June 2025. She complained about the lack of a response to her December 2023 letter. BM said the December 2023 letter had been treated at the time as a duplicate of previous complaints and not responded to. BM said it should have responded at the time and offered £150 compensation. It said that it had acted fairly in appointing receivers, and that a court hearing to repossess the property was not required. It said it had already responded to complaints about the fairness of appointing receivers. BM said that the property was sold in March 2021 for £395,000. After deducting the costs of sale, there was a surplus of £110,983.67. BM said its solicitors had paid the surplus to the Court Funds Office.

Our investigator said that because of the previous complaints that hadn't been referred to us, and the decision which said the earlier complaint made to us was out of time, we could only consider things that had happened since July 2023 or that were responded to in the June 2025 final response. He said that BM had explained in the 2025 final response what had happened at the time of sale and where the proceeds of sale had been paid. He said that BM could have communicated better with Mr O, and said its offer of compensation should be increased to £375.

BM accepted that, but Mr O and Ms O didn't. They said it wasn't fair that BM sold the property given the level of arrears at the time and the payments and proposals Mr O made to BM. They said they were concerned the sale price may have been below market value and they were concerned whether it was independently valued. They also said the charges added to the balance were excessive. And Mr O was not given the surplus after sale or told how to claim it until 2025. They said that BM should have corresponded with Ms O by email because she was supporting Mr O but they don't live together and she couldn't visit him to check his post during lockdown.

### **My provisional decision**

Although I largely agreed with the investigator's outcome, my reasoning was somewhat different, and I relied in part on evidence that had become available since his assessment. So I issued a provisional decision to allow the parties a further chance to make any submissions for me to consider in making a final decision. I said:

“Before I consider the merits of the complaint, I have to decide what parts of the complaint I can consider. The rules of the Financial Ombudsman Service say that there are strict time limits for bringing a complaint – one of which is that a complaint must be referred to us within six months of the date BM sent its final response. If that time limit isn't met we can't look at the complaint – unless BM consents to us considering it even though it's out of time, or unless there are exceptional circumstances which explain the delay.

In addition, where we've looked at a complaint before we won't generally do so again

– our rules allow us to decline to do so, because considering repeat complaints is not an effective use of our resources, unless there is material new evidence which has now become available which is likely to affect the previous outcome.

I've set out above that Mr O, or Ms O on his behalf, has made several complaints to BM over the years. They didn't refer those complaints to us within the six month time limit, and so another ombudsman decided in July 2023 that they were out of time and that we couldn't consider them.

I agree with that decision, and I've not seen any material new evidence to suggest it was wrong, and that the complaints were in fact referred in time. I'm not therefore going to consider anything which was covered by the final responses before 2023 and was excluded by the ombudsman in 2023.

That means I won't be considering anything about the circumstances in which the property came to be sold or whether BM acted fairly in appointing receivers and agreeing to the sale. In this complaint I'll be focussing on what happened after the property was sold – in particular, what happened to the proceeds of sale and what Mr O was told about that – and on how BM has handled things since then.

The property was sold, with the sale completing on 19 March 2021. The sale price was £395,000.

BM wrote to Mr O on 23 March 2021 notifying him of the sale, saying that there was a surplus after sale of £110,983.67 and telling him that its solicitors would contact him about paying out the surplus.

The solicitors wrote to Mr O on 30 April 2021, 27 May 2021 and 9 June 2021 asking for information about where the surplus should be paid.

The solicitors didn't receive a reply to those letters. The solicitors were also dealing with claims for part of the funds from Mr O's local authority, which it seems was the freeholder of the block which included the property. The local authority had two charging orders over the property for judgment debts in respect of previous repair work, and was claiming other sums it said was due under the lease, including for work done to neighbouring flats to repair damage caused by an escape of water it said Mr O was responsible for.

The solicitors paid outstanding ground rent and service charges. But no agreement could be reached with the local authority about the amount due under the judgment debts, or the other sums the local authority claimed. And the solicitors had received no response from Mr O to the letters about claiming the surplus. The solicitors considered that as a result the surplus funds were in dispute, it wasn't clear where they should be paid and they couldn't retain them. So the surplus was paid to the Court Funds Office to be held pending claims from Mr O and the local authority.

The solicitors wrote to Mr O on 17 March 2022 notifying him that the surplus had been paid into the Court Funds Office and giving him the information he needed to contact the Court Funds Office to claim the funds.

I've reviewed the evidence of the amount paid into court. It shows the following:

Sale price	£395,000
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Less mortgage balance	£269,075.50
Less cost of sale	£7,677.60
Net proceeds of sale	£118,246.90
Less:	
Solicitors' costs	£1,198.16
Solicitors' disbursements (funds transfer fees, Land Registry etc)	£37.20
Ground rent and service charge outstanding	£6,793.41
Insurance	£51.52
Plus:	
Refund of ground rent and service charge for period after sale	£593.84
Interest	£144.26
Final surplus paid into court	£110,904.70

This matches the amount the solicitors paid into court in March 2022. I've not seen any evidence to show the deductions were excessive or unreasonable.

Having considered things carefully, I don't think how the surplus was handled was unreasonable. As the mortgagee in possession, and then as the holder of the surplus after the property was sold and the mortgage repaid, BM had an obligation to pay all funds due to Mr O to him. But it also had an obligation to pay any other debts secured by a charge over the property out of the proceeds of sale.

Acting on BM's behalf, the solicitors tried to contact Mr O to discuss repayment of the surplus with him, without success. They were also dealing with a claim for the funds from the local authority – some of which related to charging orders and judgment debts (plus costs and interest) and some of which didn't.

The solicitors couldn't contact Mr O to discuss the local authority's claim with him. And they weren't in a position to decide for themselves how much to pay the local authority. Equally, the solicitors weren't able to hold on to funds that didn't belong to

them indefinitely either. In the absence of definitive confirmation of who owned the disputed funds and where they should be paid, I don't think it was unreasonable for the outstanding surplus to be paid to the Court Funds Office for both Mr O and the local authority to submit claims for payment.

Whatever the outcome of the local authority's claim, however, it's clear that a large part of the surplus was due to Mr O. And regardless of the outcome of the local authority's claim, the whole surplus came from the sale of his property by BM. I'd therefore expect BM – whether itself, or via the solicitors acting on its behalf – to account to Mr O for the proceeds of sale, keep him up to date with what was happening, and either pay the funds to him or make it clear how he could obtain them.

I've said above that the solicitors wrote to Mr O several times during this period. I'm satisfied that was fair. The letters were sent to Mr O's home address (not the property address) – which is the same address he's given us.

Ms O says that Mr O didn't receive the letters. And she says that in any case, she had asked BM to send all correspondence to her too via email – because Mr O is vulnerable and has a visual impairment. She was supporting him, but couldn't visit him to check his post because of pandemic restrictions in force at the time.

The letters were all correctly addressed. I'm satisfied it's more likely than not they were delivered, and that Mr O therefore did receive them. I can't consider whether BM ought also to have sent all correspondence to Ms O via email as a reasonable adjustment, because that was something they complained about previously and which the previous ombudsman said was out of time. But I'm satisfied that BM and its solicitors did send information about the sale and the proceeds of sale to Mr O at his correct address on several occasions – and I note that pandemic restrictions on household contacts were lifted by July 2021.

However, it's clear that by 2023 Mr O and Ms O were unsure about what had happened to the proceeds of sale. They asked for more information about that as part of making a further complaint. BM decided not to respond to this complaint on the basis that it had responded previously. I don't think this was fair. Although this complaint did overlap with the previous complaints, it included new elements. In particular, there was a new complaint about what had happened to the proceeds of sale and why they hadn't been paid to Mr O. I don't think it was fair and reasonable for BM to ignore this part of the complaint and not respond at all.

The result of that was that it was only two years later, in 2025, that Mr O and Ms O were informed by BM of where the proceeds of sale were and how to reclaim them. I don't think BM is fully responsible for the delay in being able to reclaim them – I've said that the solicitors did tell Mr O about this in 2022, having attempted to contact him in 2021 – but I think it should take some responsibility for Mr O and Ms O being unaware until 2025. I understand that the Court Funds Office pays interest on sums it holds, so there is no financial loss. But the failure to provide information about where the funds were in 2023 did cause Mr O distress and inconvenience. I agree with the investigator that £375 is fair compensation in all the circumstances.”

### **The responses to my provisional decision**

BoS accepted my provisional decision. But Ms O on Mr O's behalf didn't. She said:

- BoS had agreed to communicate with Ms O as a reasonable adjustment and had

asked for a letter of authority to be signed, which Mr O did. But BoS failed to keep to the agreement. In particular, it didn't communicate in the agreed way – by email to Ms O on his behalf.

- It's not right to say that I would only consider matters that happened after the 2023 ombudsman's decision. Poor communication around the time of the sale was not part of any previous complaint and should be considered, as should anything after the August 2020 final response. And even the 2020 final response was only referred to us two days after the time limit expired.
- The reasons for communication to be sent to Ms O rather than Mr O were not just related to lockdown, though that was part of it. It was also because they don't live together and Ms O has other responsibilities, so this would enable her to pick up and deal with correspondence in a timely way.
- It wasn't until 2025 that BM responded to complaints about the sale and the proceeds of sale, having ignored the 2023 complaint. And that only happened when it was prompted to do so because Ms O escalated the complaint to the Financial Ombudsman Service.
- Ms O can't confirm whether the solicitors did write to Mr O in 2021, as I'd said. But the complaint is that this was not done in line with agreed reasonable adjustments. Had they been emailed to Ms O as agreed, she would have replied. Instead the letters were sent by post to Mr O, when BoS was aware Mr O couldn't read them and when it had agreed to send correspondence to Ms O as a reasonable adjustment. Even if failures to keep to the agreement were part of earlier complaints, these specific failures were later events not covered by the previous complaint.

### **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 everything I said in my provisional decision, and Ms O's response to it, very carefully. But I haven't changed my mind, and I still think, for the same reasons, that my provisional decision represents a fair outcome to this complaint.

I'm sorry if Ms O misunderstood my provisional decision. I didn't say that anything that happened before the 2023 decision was issued was out of time. That was the investigator's conclusion, but it wasn't mine. I said I wouldn't be considering anything that was *covered by* the 2023 decision, which excluded complaints covered in the final responses up to and including August 2020. In my provisional decision I did consider what BM and its solicitors did at the time of the sale of the property and how they communicated with Mr O about the proceeds of sale. As to whether the August 2020 complaint was out of time, that was a matter decided by the previous ombudsman and not something for me to revisit.

I've reviewed again whether there was an agreement to send all correspondence to Ms O via email as a reasonable adjustment. But I've not seen any evidence that BoS did agree to that. The letter of authority Mr O signed on 12 February 2020 merely authorises BoS to speak to Ms O on his behalf as he required her support. It didn't request that all correspondence be emailed to her. And even after that Mr O was able to send detailed letters himself to BoS, for example on 18 August 2020.

In response to my provisional decision, Ms O clarified that the substance of the complaint was not that Mr O hadn't received correspondence from BoS or its solicitors, but that in

sending it direct to Mr O they hadn't complied with the agreement. But as I say, I haven't seen any evidence that such an agreement actually was in place.

I'm satisfied that during the period in question in this case, around the time of the sale and then the dealing with the proceeds, BoS sent enough information to keep Mr O updated with what was happening. And I note that in both her correspondence with BoS and with us, Ms O has given us the same postal address for her as for Mr O. In all the circumstances, I'm satisfied that BoS and its solicitors did enough to keep Mr O updated with what was happening with the sale and the proceeds of sale in 2021 and 2022. It did fail to respond to the complaint in 2023, or to set out again what had happened to the proceeds of sale until the complaint was escalated in 2025. I'm satisfied that £375 is fair compensation for the impact of that.

### **My final decision**

My final decision is that Bank of Scotland plc trading as Birmingham Midshires should pay Mr O £375 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 5 March 2026.

Simon Pugh  
**Ombudsman**