

The complaint

Mrs K complains that she was not aware she was on a mortgage with Bank of Scotland plc trading as Birmingham Midshires that is in joint names with her brother.

What happened

In 2006, Mrs K took out an interest only mortgage with Birmingham Midshires. The mortgage was in joint names with her brother.

Mrs K said she was not aware that she remained on the mortgage until she was contacted by Birmingham Midshires in November 2024 when it told her the mortgage was in arrears of over £60,000. The property has been repossessed.

Mrs K complains that Birmingham Midshires:

- Allowed the arrears to increase to this extent without taking action earlier.
- Did not attempt to contact her regarding the debt.
- Unfairly recorded a default against her.

During the course of the complaint, Mrs K said she believed that she never took out the mortgage with Birmingham Midshires and that she'd never heard of it until she received a letter in 2021.

I issued a decision that said we could only consider events after 13 December 2018.

The investigator thought the complaint should be upheld in part. He said that Birmingham Midshires had not done enough to contact Mrs K – and if it had done so it was likely the property would have been repossessed by February 2023 and sold by July 2023. So the default recorded against Mrs K should be backdated to February 2023 and shown as satisfied from July 2023.

Birmingham Midshires did not accept what the investigator said. It responded to make a number of points, including:

- It is required to report accurate information to credit reference agencies. While it was possible it could have commenced action to repossess the property at an earlier date, it has not accepted full liability for the position the account is currently in. It agreed to share liability for the interest charged to the account and covered liability for half of the charges that were applied.
- Although action may have commenced earlier, the true position of the account is that it did not default the property was taken into possession. It would not be accurate to state the debt had defaulted two years before it was actually taken into possession in 2025.
- While it has accepted liability for the interest applied between September 2022 and August 2024, It maintains Mrs K is partially liable for the interest charged during that period. She was also jointly and severally liable for the full capital balance until the property was repossessed and sold.

Mrs K responded to make a number of points, including:

- She had no knowledge of the mortgage with Birmingham Midshires.
- She took a mortgage with another lender in around 2001. In around 2008 when she checked her credit file that mortgage had been repaid. There was no evidence of the mortgage on her credit file in 2017.
- Birmingham Midshires should have done much more to contact her.
- Birmingham Midshires made no attempt to contact her from at least 2010 when the mortgage was in arrears.
- The letter Birmingham Midshires sent in 2021 had the wrong address on it. She had not heard of Birmingham Midshires before then.
- Birmingham Midshires should have done more to stop her brother increasing the debt.
- In 2019, a new contract was formed solely between her brother and Birmingham Midshires – that shouldn't have been agreed because of the arrears.
- She should have been given time to sell the property to avoid a default.

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.

Jurisdiction

As I explained in my jurisdiction decision, the only way I can consider this complaint is if she is actually a customer of Birmingham Midshires. If Mrs K did not take out this mortgage then I would not have the power to look at this complaint.

So the only way I can consider this complaint is if I am satisfied that Mrs K was actually Birmingham Midshires' customer. As I set out in my jurisdiction decision, I thought it was more likely than not that she was. I don't consider any of the information Mrs K has put forward since I issued my jurisdiction would lead me to reach a different decision.

After looking at everything again, I consider I can only look at events from 13 December 2019.

Delay in repossession

Birmingham Midshires has accepted that it delayed taking possession of the property. It has accepted that it did not take any action when it should have between September 2022 and August 2024.

I agree that Birmingham Midshires did not treat Mrs K fairly. This was a joint mortgage. Up until September 2022, Mrs K's brother was engaging with Birmingham Midshires. I agree there is more Birmingham Midshires could have done to contact Mrs K. For example, it sent a field agent to the property address when it knew she didn't live there – it had traced her address.

But, even if Birmingham Midshires had done more to contact Mrs K, it is not clear that she would have been able to take any action to avoid repossession. I found in my jurisdiction decision that Mrs K ought reasonably to have been aware of the debt – so it was always

open to her to obtain details about it or make payments towards it. I note Mrs K has disputed the debt and I am not aware she has made any payments towards it. Bearing in mind the dispute with her brother, it is not clear that she could or would have done anything else.

Birmingham Midshires was expecting the property to be sold in August 2022. When that didn't happen Birmingham Midshires should have contacted Mrs K. If it had done so I am not persuaded that she would have been able to conduct a sale of the property. I say that as she has disputed liability for the debt. I think it is unlikely that she would have accepted responsibility and been able to arrange a sale in a timescale that was acceptable to Birmingham Midshires – and bearing in mind the earlier sale did not complete.

I consider Birmingham Midshires ought reasonably to have started legal action after it did not receive information about the sale in August 2022. Looking at what actually happened, it took five months to take possession of the property and a further six months to sell the property. It seems likely that similar timescale would have applied if the repossession action had started in August 2022.

Where a business has not acted fairly, our approach is to put the affected party back in the position they would have been in had the mistake not occurred. For the reasons I have set out I consider Birmingham Midshires ought reasonably to have started possession proceedings in August 2022. So the property would have been repossessed in January 2023 and sold in July 2023. Therefore, a default would have been recorded in January 2023 and it would show as satisfied in July 2023. Birmingham Midshires should amend Mrs K's credit file to reflect that.

It is correct that Birmingham Midshires is required to reflect true and accurate information on Mrs K's credit file. But bearing in mind it has accepted it delayed taking action, the correct position if it had acted fairly is that it would have recorded the default earlier.

Because of the delay Mrs K has paid additional interest. But in the circumstances, I consider the amount credited by Birmingham Midshires – 50% of the interest it applied between August 2022 and September 2024 fairly compensates Mrs K for the delay, bearing in mind this was a joint mortgage.

Other points

I am only looking at events from December 2018. During that time Birmingham Midshires was dealing with Mrs K's brother. As I have said that is not necessarily unusual for a joint mortgage.

Birmingham Midshires could only repossess the property as a last resort. Looking at everything that happened, I can't see that it ought reasonably to have taken that action between December 2019 and August 2022. I note that there were restrictions on repossessions during that time due to Covid.

Mrs K said she believes that Birmingham Midshires entered into a new contract with her brother in 2019. While I can see that the arrears were capitalised in 2019, that would not be a new contract. Rather, it was a concession that lenders are required to consider.

I don't consider Birmingham Midshires delayed the sale of the property. There was a delay in obtaining the keys due to an issue that was outside its control. And six months is not an unreasonable timescale for a property to be sold in these circumstances.

My final decision

My final decision is that, in addition to the interest already credited, Bank of Scotland plc trading as Birmingham Midshires should amend the date of the default it recorded on Mrs K's credit file to 1 January 2023 and record that it was satisfied on 1 July 2023.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 19 March 2026.

Ken Rose
Ombudsman