

The complaint

Mrs E's complaint is about a mortgage she holds with Bank of Scotland plc trading as Birmingham Midshires (BM). In July 2025, BM indicated its intention to go back to court to enforce a possession order from February 2025. The essence of the complaint is that Mrs E believes she had reached a payment agreement in a phone call to with BM earlier in July 2025.

What happened

In what follows, I have set out events in rather less detail than they have been presented. No discourtesy's intended by that. It's a reflection of the informal service we provide, and if I don't mention something, it won't be because I've ignored it. It'll be because I didn't think it was material to the outcome of the complaint. This approach is consistent with what our enabling legislation requires of me.

It allows me to focus on the issues on which I consider a fair outcome will turn, and not be side-tracked by matters which, although presented as material, are, in my opinion peripheral or, in some instances, have little or no impact on the broader outcome.

Our decisions are published and it's important that I don't include any information that might result in Mrs E being identified. Instead I'll give a brief summary in my own words and then focus on giving the reasons for my decision.

On 17 February 2025, a court handed down an order requiring Mrs E to give possession of the mortgaged property to BM within three months, unless she could clear the arrears in the meantime. That didn't happen, but BM didn't immediately seek to enforce the order. In June 2025, Mrs E had a dialogue with BM's solicitors, hoping to set up a payment arrangement. The solicitors told Mrs E a pre-condition of setting up a payment arrangement was that she needed to have made a payment within the last 30 days (at this point, no payment had been made since September 2024).

To facilitate a possible payment arrangement, Mrs E made a payment on 30 June 2025; BM wrote to her on 4 July 2025 to say it could see a discussion about a payment arrangement had been initiated, but Mrs E needed to contact the solicitors again to formalise matters. It told Mrs E in the same letter that action to seek a possession date was on hold until 18 July 2025. What happened next is at the heart of the dispute, and where the parties' testimony becomes contradictory.

Mrs E says she spoke to the solicitors on 9 July 2025 and secured a payment arrangement. Then, on 30 July 2025, she made another payment, for the same amount she'd paid in June 2025, and emailed the solicitors asking to set up the payment arrangement. The solicitors said this wouldn't be possible because BM had already decided to proceed with action to enforce the possession order.

Our Investigator wasn't persuaded a payment arrangement had been reached before the deadline of 18 July 2025, and so didn't recommend upholding the complaint. Mrs E has

asked for an Ombudsman to review the Investigator's findings. She's sent us a screenshot from her smartphone depicting a call to the solicitors on 9 July 2025.

What I've decided – and why

I'll start with some general observations. We're not the regulator of financial businesses, and we don't "police" their internal processes or how they operate generally. That's the job of the FCA. We deal with individual disputes between businesses and their customers.

We're impartial, and we don't take either side's instructions on how we investigate a complaint. We conduct our investigations and reach our conclusions without interference from anyone else. But in doing so, we have to work within the rules of the ombudsman service, and the remit those rules give us.

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

Where there's a dispute about what happened, and the available evidence is contradictory and/or incomplete, we reach our conclusions on what is most likely to have happened on the balance of probabilities. That's broadly consistent with the test used by the courts in civil cases.

The sole issue for me to decide here is whether a payment arrangement was formalised on 9 July 2025, so before the deadline of 18 July 2025 BM had given for releasing the hold on enforcement action. This is a horrible situation for Mrs E to have to deal with, but having read and considered everything both parties have said and provided, I'm not persuaded that happened. I'll explain why.

It's for us, rather than the parties to the dispute, to decide what evidence we need to reach a fair outcome. It's also for us to assess the reliability of evidence, from both sides, and decide how much weight should be attached to it. When doing that, we don't just consider individual pieces of evidence in isolation. We consider everything together to form a broader opinion on the whole picture.

Mrs E's case is reliant on the screenshot she has sent us showing a call having been made to the solicitors on 9 July 2025. It would help if there was some corroboration of a call having taken place on that date in the solicitors' contact records. There isn't, and so I have to consider the screenshot in isolation. When I do that, I'm afraid I can't be sufficiently sure of its authenticity and evidential value to conclude the call took place. I say this not least because when our Investigator asked her several weeks earlier if she had any evidence of the call, Mrs E said she didn't due to her phone having been damaged in the meantime.

Even if a call was made, there's nothing to corroborate what might have been said and/or agreed. On the balance of probabilities, however, I'm not persuaded a call did take place. There's more to consider; the content and context of the emails Mrs E exchanged with the solicitors aren't indicative of an arrangement already having been formalised. The messaging is more akin to someone still seeking to formalise an arrangement. By then, however, BM's hold on enforcement action had already expired, and the decision had been taken to proceed.

Mrs E has said she didn't receive the letter of 4 July 2025 informing her of the deadline of 18 July 2025. That may or may not be true; I have no way of corroborating whether the letter was delivered, but it was correctly addressed. In any event, nothing turns on that; the deadline imposed by the court in February 2025 had already expired almost two months before the events under scrutiny here. Putting everything together, I can't find that BM's

action in seeking to enforce the court order rather than agree a payment arrangement amounted to unfair treatment.

More recently, Mrs E has disputed the figures BM is using in its accounting, in particular the amount of the monthly payment. Under our rules, the subject matter of a complaint needs to have been referred to the business first, and the business given the opportunity to deal with it in a final response, before we can look into it. Once that happens, we can only look into the subject matter covered in the final response. We can't investigate complaints 'on the fly' so to speak, with consumers adding new points along the way whilst our consideration is ongoing. Otherwise, there's a risk that a complaint becomes a moving target that can never be concluded.

That begs the question of what happens next. I don't know BM's intentions are regarding the mortgaged property. But clearly enforcement of the possession order is something to consider as a next step. It's important to explain here that lenders will generally agree not to pursue recovery action whilst we look at a complaint, but they don't have to and we can't force them to.

If the Financial Ombudsman Service had that power it would undermine our impartiality between the parties to a complaint. It would also create the potential for complainants to use our service to bring complaints with the intention of having any legal action put on hold, thereby obstructing businesses that were trying to take action through the courts to recover money legitimately owed by the complainants.

I do not wish to alarm Mrs E but I would not want her to be under any misunderstanding that we would tell BM that it must delay recovery action in the event of any new complaint being raised about the mortgage. It is a matter for a court to decide whether it is appropriate to adjourn or suspend any legal action, not this service.

I know this will come as a disappointment to Mrs E, but for all the reasons I've set out above, I cannot find in her favour and uphold this complaint.

My final decision

My final decision is that I don't uphold this complaint.

My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs E to accept or reject my decision before 12 May 2026.

Jeff Parrington
Ombudsman