

## **The complaint**

This complaint is about an unregulated mortgage that Mrs and Mr B hold with Bank of Scotland plc trading as Birmingham Midshires Mortgages (BM). Represented here by Mr JB, they're unhappy with BM's actions in granting the mortgage in 2004, and converting it fully to an interest-only basis in 2008.

## **What happened**

The mortgage started in 2004; it was part capital repayment and part interest-only, and taken out on the advice and recommendation of a third-party intermediary I'll call W. The mortgage replaced an existing part repayment/part interest-only mortgage Mr and Mrs B already had with another lender, and increased the overall borrowing. The mortgage was "self-certified"; that is, where the lender accepts on face value what the applicants say about their income, rather than verify it independently. Such arrangements are not available now, but were quite common at the time this mortgage started, which was before the introduction of mortgage regulation.

In 2008, due to financial pressures, Mrs and Mr B asked BM to convert the whole of the mortgage to interest-only. BM agreed and Mrs and Mr B signed a declaration confirming they would use investments and endowments as the repayment vehicle, and that they had taken independent advice on their responsibility to ensure they could repay the mortgage when due. That was meant to be in 2018, but BM has allowed Mrs and Mr B more time. We dealt with a complaint in 2020 about how that was handled.

The current complaint arose in 2025 after BM started legal action for recovery of the debt. Mr JB brought two complaints on their behalf; one against BM, the other against what he considered to be the successor business to W saying that the mortgage had been mis-sold. In a decision issued in December 2025, an Ombudsman colleague concluded that we had no jurisdiction to consider a mis-selling complaint.

The case against BM proceeded and one of our Investigators considered it. The case is with me now because our Investigator didn't recommend the complaint be upheld. Mr JB asked that it be reviewed by an Ombudsman. He believes that to remedy the situation, BM should be ordered to rescind the mortgage altogether by cancelling the debt, refunding - with interest - all payments made since 2004, and pay Mrs and Mr B £5,000 compensation.

## **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.

The first point to make is that the provision of a mortgage (i.e. lending) and the provision of advice and a recommendation on the suitability of a mortgage and ensuring consumers understand the nature of what they are taking on (i.e. selling) are two separate and discrete activities.

Sometimes, a lender will conduct both activities, but it's more common for the sale to be conducted by a third party, typically an independent financial adviser (IFA). Where that's the case, as it was in respect of the mortgage at the heart of this complaint, there is a clear demarcation between the roles and responsibilities of the lender and the IFA, and neither is responsible for the acts or omissions of the other.

BM's role here was solely that of lender. BM played no part in the advice to take out the mortgage, or any recommendation as to its suitability for Mrs and Mr B's needs and circumstances as they stood in 2004.

We revisit jurisdiction at every stage of our complaint-handling process. I've carefully considered everything Mr JB has said in response to the Investigator's view, and indeed what he said prior to that. The lending relationship between Mrs and Mr B and BM is ongoing. As such, I can consider whether the lending decision in 2004 and/or the switch to interest-only in 2008 it resulted in a relationship between Mrs and Mr B and BM that's currently unfair or not.

On balance, however, and having considered all of the available evidence from the relevant times, I'm not persuaded that either event created an unfair relationship. I'll explain why.

In a case such as this, where I'm assessing events that took place many years ago, I have to do so in terms of the regulatory framework (if applicable) and what was considered good industry practice *at the time the decision was made*, not as they are now.

#### The 2004 lending decision

There was no regulatory framework in place when the lending decision was made; that came later in 2004. But at the time, BM was party to the voluntary Mortgage Code. BM wasn't required to revisit or second guess the advice and recommendation W had given Mrs and Mr B about the suitability or otherwise of the proposed mortgage. Essentially, the underwriting decision for BM to make in 2004 was predominantly around the suitability of the property as proposed security for the mortgage, and whether the mortgage applied for met its lending criteria generally, as well as assessing affordability. It was also required to explain what an interest only (or part and part) mortgage was, and remind Mr and Mrs B that they needed to have a way of repaying the capital at the end of the term.

I've explained earlier in this decision that this was a self-certified mortgage. Whilst the assessment BM made would not meet current regulatory standards on affordability and verification, it was not in any way inconsistent or out-of-step with what was considered standard industry practice at the time.

#### The 2008 change to interest-only.

This change was carried out entirely at Mrs and Mr B's behest. For context, it's important to keep in mind that a significant portion of the mortgage was already on interest-only from the outset in 2004, as indeed had been the case with the mortgage that preceded it. Also, Mrs and Mr B had already received (or certainly should have) advice in 2004 (from W) about the nature of interest-only borrowing and the need for separate provisions to repay the capital. So it's reasonable for BM to have concluded in 2008 that Mrs and Mr B had some understanding of the nature of the request they were making.

The formal documentation BM issued to confirm the switch required Mrs and Mr B to specify the provisions they had in place for repaying the capital. They did that, and much as it had in 2004 regarding income, BM took what they said on face value. That was still permissible for a lender in 2008; the stricter requirement to verify borrowers' strategies and provisions for

repaying interest-only borrowing only came along in 2014. Meanwhile, the documentation from 2008 also required Mrs and Mr B to confirm they'd taken independent advice on switching to interest-only entirely. Mrs and Mr B said they had, and again BM accepted what they told it. I'm therefore satisfied it was reasonable for BM to agree to the request at the time.

Putting all of the above together, I can't find that BM's decision to grant the mortgage in 2004 or its agreement to switch fully to interest-only in 2008 led to a relationship which is currently unfair between Mrs and Mr B and BM.

### **My final decision**

My final decision is that I do not uphold this complaint or make any order or award against Bank of Scotland plc trading as Birmingham Midshires Mortgages.

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 and Mr B to accept or reject my decision before 19 May 2026.

Jeff Parrington  
**Ombudsman**