

complaint

Miss J and Mr K complain that Bank of Scotland plc (t/a Birmingham Midshires – ‘BM’) is trying to pursue them for mortgage arrears at a time when it had no security over their property.

our initial conclusions

Our adjudicator didn’t recommend the complaint should succeed. He concluded that registration of title wasn’t the responsibility of BM. He was satisfied that the complaint had no prospect of success. Miss J and Mr K disagreed. They maintain that BM isn’t entitled to demand arrears for the period when their title and its security was unregistered.

my final decision

To decide what is fair and reasonable in this complaint, I have considered everything that Miss J and Mr K and BM have provided.

Registration of title is a conveyancing matter and so does not fall within the remit of the Financial Ombudsman Service. BM was entitled, when it learned title hadn’t been registered, to take steps to do so. It offered £100 for customer service issues arising out of that.

As far as arrears are concerned, Miss J and Mr K are mistaken in their belief that, because BM’s mortgage wasn’t registered, BM is unable to recover arrears accrued in the period before its title was registered. The mortgage deed itself doesn’t represent the debt – it is simply the instrument by which the debt is recorded. The debt is incurred when the money is advanced – an event which took place in 2005. I can see no basis upon which Miss J and Mr K can argue that they shouldn’t have to repay money lent to them by BM. Furthermore, the courts have held that failure to register a charge does not automatically extinguish the rights a lender can expect if that charge had been registered. I do appreciate that the arrears are substantial, but I’m satisfied that BM is entitled to pursue Miss J and Mr K for repayment of the money they borrowed from it.

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Miss J and Mr K either to accept or reject my decision before 27 August 2013.

Jan O’Leary

ombudsman at the Financial Ombudsman Service

The ombudsman may complete this section where appropriate – adding comments or further explanations of particular relevance to the case.

ombudsman notes

In the event that BM seeks possession of the property, it is always open to Miss J and Mr K to advance their argument that BM has no right to seek repayment of the arrears in court, should they reject this final decision. They would be well-advised to seek legal advice before doing so.

I do not know if the £100 cheque for poor customer service during the registration process has been cashed by Miss J and Mr K, as they have not raised this in the current complaint.

what is a final decision?

- A final decision by an ombudsman is our last word on a complaint. We send the final decision at the same time to both sides – the consumer and the financial business.
- Our complaints process involves various stages. It gives both parties to the complaint the opportunity to tell us their side of the story, provide further information, and disagree with our earlier findings – before the ombudsman reviews the case and makes a final decision.
- A final decision is the end of our complaints process. This means the ombudsman will not be able to deal with any further correspondence about the merits of the complaint.

what happens next?

- A final decision only becomes legally binding on the financial business if the consumer accepts it. To do this, the consumer should sign and date the acceptance card we send with the final decision – and return it to us before the date set out in the decision.
- If the consumer accepts a final decision before the date set out in the decision we will tell the financial business – it will then have to comply promptly with any instructions set out by the ombudsman in the decision.
- If the consumer does not accept a final decision before the date set out in the decision, neither side will be legally bound by it.