

## **complaint**

This complaint is about a mortgage that, until recently, Mr and Mrs Y held with Bank of Scotland plc trading as Birmingham Midshires ("BM"). The debt was in two parts; the original main mortgage of around £225,000 plus fees and interest from 2012, and a further advance of around £75,000 plus fees and interest taken out in 2013.

When Mr and Mrs Y sold the house in 2014, BM only sent their solicitor a redemption statement for the main mortgage. The solicitor paid the amount on that statement, and sent what was left over to Mr and Mrs Y. Mr and Mrs Y are unhappy that BM is looking to them to repay the shortfall, which they say they have already used to pay other creditors.

## **background**

The adjudicator who looked at the complaint thought BM should pay Mr and Mrs Y £1,250 compensation rather than the £150 already paid. She didn't think BM should waive the shortfall, but said it should remove its charge over the original house.

BM has removed the charge. It also says it's willing to arrange the registration of a new charge on another of Mrs and Mrs Y's properties to secure the remaining debt. But BM didn't think it should pay the additional £1,100 the adjudicator recommended.

Given it had offered to cover Mr and Mrs Y's additional conveyancing costs, BM said £500 (that is, an extra £350) was fair. Meanwhile, Mr and Mrs Y say BM should waive the remaining debt altogether. They say BM is "estopped" from demanding the money because they acted to their detriment on the basis of the incorrect redemption statement.

## **my findings**

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

BM says it sent redemption statements for both accounts on 4 July 2014. But it can't produce copies of them, only an electronic history note saying they were sent. Even if BM did send statements for both accounts, it looks likely to me that Mr and Mrs Y's solicitors didn't receive them. That's the logical explanation for why the solicitor contacted BM three days later asking for the information again.

In that context, it doesn't really matter that BM might have sent the right information out the first time. It was asked to send it again on 7 July 2014, and this time only sent part of it. So, by any reasonable assessment, BM has made a mistake that has had significant consequences. What I have to decide is how it should put things right.

The adjudicator was right to say BM should remove its charge on the old house. The continued existence of the charge meant the buyers couldn't register a new charge. The buyer was threatening Mr and Mrs Y with legal action. BM has now removed the charge, so I don't need to order it to do so.

The adjudicator was also right to say that BM should substantially increase the compensation due to Mr and Mrs Y. BM doesn't dispute this on principle. But it's only willing to increase the compensation to £500 rather than £1,250. The reason for this is that BM says it's also willing to reimburse Mr and Mrs Y for their extra conveyancing costs.

That might be so, but the award of compensation is for the trouble and upset Mr and Mrs Y have suffered. Reimbursement of their out-of pockets expenses is a separate matter. The adjudicator assessed fair compensation of £1,250 (£150 has already been paid) and in all the circumstances, I agree.

The disputed shortfall is in the region of £77,000, and Mr and Mrs Y have explained in detail why they aren't in a position to pay it in one go. They've also argued in similar detail why they shouldn't have to. I've thought hard about that, but overall, I don't agree that BM can't expect them to pay the money back.

Mr and Mrs Y say they used the money from the sale to pay other creditors. This was on the assumption that BM had told their solicitor the right amount needed to repay the mortgage. I am familiar with the doctrine of "estoppel", but I'm not persuaded Mr and Mrs Y can rely on it here.

The extra money came from a further advance they'd taken out less than a year earlier. The amount in question was substantial. It's not clear to me why Mr and Mrs Y didn't realise that they'd received a lot more money from the sale than they could reasonable have been expecting. Overall, I don't think Mr and Mrs Y's reliance on the assumption that the mortgage had been repaid in full was reasonable.

Whether or not Mr and Mrs Y accept my decision, they'll still owe BM the outstanding debt. It's not my role to dictate the terms on which the money should be repaid. That's something the parties will need to agree between them including, if necessary, arranging a fresh charge over another property. Hopefully BM and Mr and Mrs Y can do this without recrimination over what's happened before. All I'd add is a reminder to BM that it has a duty to treat consumers in financial difficult fairly.

### **my final decision**

My final decision is that I uphold this complaint in part. To settle the dispute I order Bank of Scotland plc trading as Birmingham Midshires to:

- pay Mr and Mrs Y £1,100; and
- on condition Mr and Mrs Y product the relevant invoices, reimburse their additional conveyancing costs in connection with the release of the charge on their former property and the creation of a new charge to secure the residual debt.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs Y to accept or reject my decision before 10 April 2015.

Jeff Parrington  
**ombudsman**