

## The complaint

Mr H complains that Birmingham Midshires unfairly declined his application for a mortgage on his buy-to-let (BTL) property.

## What happened

Mr H had a BTL mortgage with another provider. In September 2022 he approached Birmingham Midshires to apply to re-mortgage his BTL property.

As part of the application process, Birmingham Midshires sent a surveyor to value the property.

The surveyor visited the property in October 2022 and found that it was not suitable for lending. This was because it was noted that the only reception room was being used as a bedroom and therefore the property would effectively be classed as a House in Multiple Occupation (HMO).

Birmingham Midshires told Mr H's broker that it wasn't willing to continue with the application following the surveyor's comments.

Mr H, via his broker, contested Birmingham Midshires' decision. Birmingham Midshires subsequently passed on Mr H's concerns to the surveyor and included further evidence such as the Assured Tenancy Agreement (AST) and the reason Mr H gave as to why the reception room appeared to be used as a bedroom.

The surveyor considered Mr H's objection but didn't change their stance. As such, Birmingham Midshires told Mr H that it wasn't willing to proceed with his application unless the appropriate adjustments were made to the property prior to a reinspection.

In November 2022, Mr H complained to Birmingham Midshires. He was unhappy with the surveyor's response and the subsequent decline of his mortgage application. He didn't feel that Birmingham Midshires had treated him fairly. He felt the surveyor had made a discriminatory decision based on the ethnicity of the residents at his property and that the surveyor's conclusion not to value the property was at odds with Birmingham Midshires' lending criteria.

Mr H also said that there is nothing in Birmingham Midshires' lending criteria which talks about how a bed in a lounge would be viewed. So, he believes Birmingham Midshires' decision was unfair.

Birmingham Midshires didn't uphold Mr H's complaint. It didn't agree that the surveyor's decision was based on racial bias. It said the decision was made on what the surveyor could see, rather than *who* they could see. It said that the surveyors it used were registered with the Royal Institute of Chartered Surveyors (RICS) and it was entitled to trust their judgement.

Mr H wasn't satisfied with Birmingham Midshires' response and referred his complaint to our service.

One of our investigators looked into Mr H's complaint and didn't uphold it in his favour. She said that Birmingham Midshires was entitled to rely on the expert opinion of the qualified surveyor it appointed. And she said she found no evidence to suggest that the surveyor's judgement was based on racial bias. She also pointed out that our service is unable to look at the actions of the surveyor as they're not a FCA regulated financial business.

As Mr H didn't accept our investigator's view, he asked for an ombudsman to review the case and make a final decision.

### **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.

Having done so, I don't think this complaint should be upheld. I realise this might be disappointing for Mr H. But I hope the reasons I've set out below will help him to understand why I have come to this conclusion.

Firstly, I feel it's important to establish our role in this complaint. Surveyors aren't financial businesses and therefore they aren't regulated by the FCA. As such, it isn't for our service to comment on, question, or undermine the findings of a surveyor that has inspected a property. We will only look at the role played by the FCA regulated business – in this case Birmingham Midshires as the lender.

When a lender considers a mortgage application, it has to be satisfied that the property is worth at least what it's being asked to lend. So, it will generally instruct a surveyor to inspect the property. In doing so, it's expected that the lender will appoint a suitably qualified surveyor – which will usually be RICS qualified. In turn, the lender is entitled to rely on the expert opinion of the surveyor that's valued the property. The surveyor Birmingham Midshires appointed in this case is RICS qualified.

Mr H feels that he'd proved the property wasn't a HMO following the valuation, but Birmingham Midshires ignored that evidence.

Where an applicant doesn't feel the valuation is right and raises some objections, we'd expect the lender to pass these comments on to the surveyor for consideration – along with any further evidence it's been provided with. And I'm satisfied that's what Birmingham Midshires did in this case.

On this occasion, the surveyor didn't change their mind. The surveyor explained that, at the time of the inspection, both the bedroom and reception room were fully fitted out as bedrooms. The surveyor said it's standard practice for a rental property to have a room set aside for living space. Without this, the property is too intensively occupied and would effectively be classed as a HMO.

I don't agree that Mr H's property would necessarily be classed as a HMO. That's because one condition of a HMO is that at least three tenants live there which forms more than one household. It seems two people live at the property. That said, a letter from Mr H's mortgage broker dated 21 October 2022 says that one of the tenant's daughters was also living at the property – which potentially would mean the property met the definition of a HMO at the time.

In any event, I'm satisfied that whether or not Mr H's property could be classed as a HMO is ultimately irrelevant. I say this because Birmingham Midshires has provided me with a copy

of the lending criteria it shares with its valuers. This criteria specifies that one room in the property must be retained/used as a reception room. It's also specified that any room furnished as a bedroom should be regarded as such.

With this in mind, I'm satisfied that the surveyor assessed the property against the criteria it was given and reached a reasonable conclusion on this basis.

As I've mentioned, Birmingham Midshires was entitled to rely on the expert opinion of the surveyor. And as the surveyor wasn't prepared to value the property as a standard residential occupation, it was reasonable for Birmingham Midshires to trust the surveyors' judgement on the matter.

I don't agree with Mr H's comments regarding Birmingham Midshires' lending criteria. He said that it didn't make it clear to him at the outset about how a bed in a lounge could be viewed. A lender isn't required to share all of its criteria with the public. A lender's criteria is commercially sensitive information. And aside from that, it simply wouldn't be feasible for a lender to disclose every possible reason an application might be deemed unsuitable to lend on.

What I have to consider here isn't whether Birmingham Midshires' criteria is fair or not – as a lender is entitled to establish its own attitude to risk – but whether it has applied its criteria fairly in the circumstances of this complaint. And for the reasons I've explained, I'm satisfied it has.

I can't comment on Mr H's belief that the surveyor's decision was racially motivated. But I'm satisfied that Birmingham Midshires applied its criteria here in the same way it would with any other similar application. So I don't think Birmingham Midshires' decision was discriminatory. As our investigator has said, if Mr H is unhappy with the actions of the surveyor, he'll need to raise his concerns directly with them.

### **My final decision**

My final decision is that I don't uphold Mr H's complaint about Bank of Scotland plc trading as Birmingham Midshires.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 15 May 2024.

Arazu Eid  
**Ombudsman**