

## The complaint

Mr and Mrs H complain that Bank of Scotland plc, trading as Birmingham Midshires Mortgages (BM), gave them wrong information about porting the interest rate product on their buy-to-let mortgage to a new property, and they have lost out as a result.

## What happened

Mr and Mrs H took out their buy-to-let mortgage with BM in 2020, on the recommendation of a broker. They borrowed £555,000 plus fees at a fixed interest rate of 2.16% until 30 September 2025.

In 2022, Mr and Mrs H were thinking about selling the mortgaged property and buying another. The mortgage terms said the 2.16% interest rate product could be ported, or transferred, to another property, and if Mr and Mrs H were borrowing the same amount or more secured on the new property, they wouldn't have to pay an early repayment charge.

Mr and Mrs H were concerned about how long they would have to port their existing rate, because they wouldn't be able to afford to go ahead if they couldn't port, and they thought it unlikely that they could complete on the property sale and purchase simultaneously. They phoned BM to ask about its process. They say BM gave them wrong information, and also insisted on them going through a broker to make their application.

Mr and Mrs H exchanged contracts for the sale of the property on 9 September 2022, with an agreed completion date of 21 October 2022. They say they did so on the basis that they didn't need to complete on the sale and purchase at the same time in order to transfer the 2.16% interest rate to the new property. On consulting a broker, however, the broker told them that BM required the property sale and purchase to happen at the same time in order for them to keep their existing interest rate product.

This left Mr and Mrs H in a very difficult position, since they weren't ready to complete on their new purchase. They say they had to delay completion of the sale and leave various equipment at the previous property in order to incentivise their buyers to agree to the delay. They also incurred some extra costs and had to deal with a huge amount of stress.

The transaction ultimately went ahead: the sale and purchase completed on the same day and Mr and Mrs H were able to port their 2.16% interest rate product to the new property. They complained to BM, saying it had assured them on three phone calls that the sale and purchase didn't need to happen simultaneously in order for them to port the mortgage and keep the fixed interest rate. They had relied on those assurances in exchanging contracts for the sale and setting a completion date, and had lost out because completion had to be delayed when they found out that sale and purchase did have to happen at the same time if they were to keep the interest rate product.

BM accepted it had caused some confusion and paid Mr and Mrs H £75 by way of compensation. Our Investigator thought that wasn't enough, and recommended that it pay an extra £75, making £150 in total.

BM accepted that conclusion, but Mr and Mrs H did not, and they asked for an Ombudsman's review.

### **My provisional decision**

I reviewed the complaint and came to the same overall conclusion as our Investigator, but for different reasons. I therefore issued a provisional decision. I said:

In practice, in porting, Mr and Mrs H weren't porting the mortgage itself. The mortgage on the first property was replaced by a new mortgage on the new property; it was the interest rate product – that is, the 2.16% fixed interest rate and the conditions attached to that – that was ported from the old to the new property. It is the interest rate product and the conditions attached to it that is ported, rather than the mortgage itself.

Mr and Mrs H were entitled, under the terms of the mortgage they took out with BM in 2020, to apply to port – or transfer – the interest rate product to a new property. The terms of the 2020 offer said:

“You can take the following product(s) with you to a new mortgage on another property. You can only do this during the period(s) shown below:

The product rate that applies to the mortgage can be taken until 30/09/2025.

Your new mortgage must be with Birmingham Midshires and you must meet the lending policy that applies when you make your application. The new mortgage must also be taken out under our Buy to Let mortgage scheme.

If you take any product(s) with you to a new mortgage, during an early repayment charge period, provided you borrow the same or a greater amount, you won't normally have to pay the charge.”

The mortgage offer and terms and conditions didn't have to include all of BM's requirements for a product to be ported. Its criteria may change over time, and that's not unreasonable. BM should, however, have provided Mr and Mrs H with accurate information when they asked about porting. Mr and Mrs H complain that it didn't do that, and they made decisions as a result which caused them loss and stress.

I asked BM for records of its calls with Mr and Mrs H since June 2022. It has provided details of three calls with Mr H, on 8 June, 6 September and 30 September 2022. I've listened to recordings of all of those calls. I've also considered BM's policy on porting at the relevant time.

I'm satisfied that BM's policy required Mr and Mrs H to apply to port through a broker. It wouldn't accept applications from borrowers directly, even where, as here, an existing borrower didn't want to borrow any more money.

I'm also satisfied that BM's policy required the property sale and purchase to take place simultaneously in order for a borrower to transfer an existing interest rate product to a new property and avoid paying an early repayment charge. Where simultaneous sale and purchase didn't happen, it allowed existing borrowers three months to apply for a mortgage on a new property – on a new interest rate product from its current range – and it would refund the early repayment charge or a proportion of it, if the new application was approved.

Mr H initially called BM on 8 June 2022 to ask how long he would have to port, and asked whether there would be a window to do so such as six months. He was given the right information about BM's policy, as above. Mr H asked for confirmation that he and Mrs H would get a rebate if they applied to port within three months and BM confirmed that was correct.

On 6 September 2022, Mr H called BM because he and Mrs H had found a buyer and a property they wanted to buy, and they wanted to go ahead with a porting application. He asked whether they could apply direct. He was given the right information again, and told they would need to apply through a broker.

On 30 September 2022, Mr H called BM because he had been in touch with a broker who had told him the property sale and purchase needed to be simultaneous in order to transfer the existing fixed interest rate to the new property, and he was concerned. BM's staff member initially told him that this didn't sound right, but they then checked the position and told Mr H that the broker was right – he couldn't port the rate if the sale and purchase weren't simultaneous. Mr H complained that this isn't what BM had told him before.

Having reviewed the calls alongside BM's policy, I don't find that BM misled Mr and Mrs H or gave them wrong information until the call on 30 September 2022. In that last call, I think its staff member initially caused some confusion, but they cleared that up later in the same call. While BM's policy provided for what it called 'Non Simultaneous Porting', what that meant was that a borrower could get a refund of an early repayment charge if they took a new product from BM's current range within three months of redemption of an existing mortgage. But it didn't mean that BM would allow an existing interest rate product to be transferred to a new property if sale and purchase were not simultaneous.

On that basis, I don't think that Mr and Mrs H lost out as a result of anything BM did wrong. They had already exchanged contracts and agreed a completion date with their buyers before BM very briefly gave them some wrong information at the end of September which was put right within minutes. It follows that I can't fairly hold BM responsible for the losses Mr and Mrs H are claiming.

BM is entitled to decide its lending criteria for itself, including the circumstances in which it allows an interest rate product to be ported and how it accepts applications. It should be consistent and treat its customers fairly, and there's nothing to indicate that it treated Mr and Mrs H differently to any other customers in its application of its policy, or that it caused unreasonable delay to their application.

I think BM caused some avoidable confusion in the 30 September 2022 call and it compounded that in its initial response to Mr and Mrs H's complaint. In all the circumstances, I consider a total payment of £150 for the resulting upset and inconvenience to Mr and Mrs H is fair and reasonable.

I invited Mr and Mrs H and BM to let me have any further comments or evidence they wanted me to consider before making my final decision.

Mr and Mrs H had no more to add and said they wouldn't be taking their complaint any further. BM also had no more to add.

### **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.

Neither Mr and Mrs H nor BM have said they disagree with my provisional decision or added anything more for me to take into account. I therefore see no reason to come to a different view, and I confirm my provisional decision.

I've noted that Mr and Mrs H have said they don't want to take their complaint further. I am issuing this final decision for completeness and to give them the opportunity to accept the award of compensation I'm making if they wish to do so.

### **My final decision**

My final decision is that Bank of Scotland plc, trading as Birmingham Midshires Mortgages, should pay Mr and Mrs H £75, in addition to the £75 it has already paid them, to settle this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H and Mrs H to accept or reject my decision before 6 March 2024.

Janet Millington  
**Ombudsman**