

The complaint

Mr L's complaint is about a mortgage he has with Bank of Scotland plc trading as Birmingham Midshires (BoS). He is unhappy that BoS decided to take legal action to repossess his home when, he believed, there was an agreement in place for a negative equity sale.

What happened

Mr L took out his mortgage with BoS in 2006 following advice from an independent mortgage broker. He borrowed slightly over £221,000, including fees, over a term of 14 years. The mortgage was arranged on an interest-only basis with the capital borrowed to be paid as a lump sum at the end of the term.

Payments to the mortgage started being missed toward the end of 2007. Payments continued to be periodically missed and a significant arrears balance built-up over time. BoS was granted possession of the property in 2011, but possession was given back to Mr L shortly thereafter.

In 2017 Mr L started to speak to BoS about being able to sell the property for less than the amount owed on the mortgage – the 'Negative Equity Scheme' (NES). He completed and returned an NES application in June 2018. A valuation was completed shortly afterwards, which raised issues regarding the property. These issues – questions over the legal address, potential right of way problems and possible boundary issues - meant valuing the property and assessing the application was not straightforward. Added to that, the Covid-19 pandemic slowed matters down due to Mr L's health. Mr L called BoS regularly for updates on the application throughout 2018, 2019 and into 2020.

The mortgage term ended in October 2020. Due to the situation with the Covid-19 pandemic and the ongoing assessment of Mr L's NES application, BoS extended the term of the mortgage to 26 September 2021. By this point the arrears balance was over £80,000.

Mr L's application to sell the property under the NES was declined on 8 October 2022 due to the very low offer that was being made. BoS then contacted Mr L about his plans to repay the mortgage, but as no plan was agreed, it started legal action to repossess the property at the beginning of 2023. Mr L complained in April 2023 as he thought the sale of the property should have gone through as he thought his NES application had been approved in 2018.

BoS responded to Mr L's complaint in a letter of 18 May 2023. It set out a timeline of events and confirmed that the application for a NES had never been agreed and had been formally declined in 2022. It acknowledged the assessment of the application had taken significantly longer than would usually be expected due to issues with the property.

Mr L wasn't happy with the response and referred his complaint to this Service.

One of our Investigators considered the complaint, but he didn't recommend that it be upheld. He said that the evidence overall didn't indicate that BoS had at any point agreed a sale under the NES. While the Investigator considered the time taken to make the decision

about the NES application was significant and much longer than would usually be expected for such an assessment, the complexities relating to the property and problems caused with the process due to the Covid-19 pandemic meant that the timescale was largely out of BoS' control. The Investigator also concluded that it had not been unreasonable for BoS to start legal action to repossess the property, given that the term had ended more than two years earlier, and Mr L didn't have a way of repaying the money owed.

Mr L didn't accept the Investigator's conclusions. He named a member of BoS staff he said he had spoken to in 2018, who told him his application had been accepted. He said she went on to confirm that he should accept the offer he'd been made, and that the sale contract would be sent to the purchaser's solicitors. Mr L was then to leave the keys and the money with the purchaser's solicitors. However, BoS hadn't issued the contracts. Mr L said he had questioned this at the time and had been told by a different named member of staff that BoS had been having problems finding the property deeds. Mr L said he had told BoS the name of the solicitors that was holding the deeds. Mr L also said that the Covid-19 pandemic had caused no issues as the application had been approved before it happened. Mr L asked for his complaint to be passed to an Ombudsman.

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.

Mr L has said he was told that the NES application had been approved in 2018 after the valuation was done. I have reviewed all of the evidence we have about the events in 2018 and I can't find anything that indicates this is the case. Indeed, the valuation in 2018 raised issues that meant a valuation wasn't possible for the property. A valuation couldn't be completed until the issues were explored and resolved. I also find it unlikely that had Mr L believed the NES application had been approved, he would have continued to ask for updates on it over the following years and not questioned being told that a decision couldn't yet be made. In addition, I would have expected him to have questioned the letter he was sent in 2022 telling him the application had been declined.

I would also comment that if BoS had approved a below value sale, it would not have been the party that drew up the contracts of sale between Mr L and the purchaser. That would have been a job for Mr L's solicitors, as it always is when a property is sold. That is not a mistake a lender would likely make and, again, doesn't support Mr L's recollection of conversations he had with BoS in 2018.

Overall, I am satisfied that BoS did not approve Mr L's request to sell his home for less than he owed BoS on the mortgage.

As for the matter of BoS starting legal action to repossess Mr L's property, I don't think that was unreasonable. Mr L was due to repay the mortgage in 2020, but he didn't do so. It was more than two years after the mortgage term ended, and more than four months after the NES application was declined, that BoS started legal proceedings. I don't consider these timescales were unreasonable. Nor was the decision to do so, given that Mr L had no plans or ability to repay the money he owed BoS and the debt was increasing on a monthly basis.

My final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr L to accept or reject my decision before 26 July 2024.

Derry Baxter
Ombudsman