

The complaint

Mr L complains that Bank of Scotland plc trading as Birmingham Midshires has unfairly appointed Law of Property Act receivers to manage some of his rental properties.

What happened

Mr L has six buy-to-let properties mortgaged with Birmingham Midshires in his sole name. He has other buy-to-let mortgages in joint names with other parties. But I'm only looking at the mortgages that are in his sole name as only Mr L has brought this complaint. I'd also note that my decision is based on the position on or soon after the complaint was referred to us in July 2023.

At the time in question, Birmingham Midshires had appointed receivers to manage two of the mortgaged properties (S and A) and were in the process of appointing receivers on two other properties (B and Y).

Mr L complains that Birmingham Midshires hasn't treated him fairly:

- He'd suffered a breakdown and it took him around three years to recover. During that time he was unable to manage the properties he had let. That led to his credit rating being damaged.
- He reinstated monthly payments, and his intention is to pay off all of the mortgages – but that was hampered by Covid and the cost of living crisis.
- It is aware he is vulnerable and has been diagnosed with a degenerative disease, that he has vulnerable tenants and that it is his intention to sell all the properties – yet it has vindictively and hastily appointed receivers. That meant he has incurred receiver's fees, often greater than the amount of the arrears.
- Birmingham Midshires has acted spitefully in refusing to let him sell the properties in order to clear the debts.

The investigator did not think the complaint should be upheld.

Mr L did not accept what the investigator said. He made a number of points, including:

- We'd ignored how Birmingham Midshires treated him despite his detailed plans that were about to come to fruition.
- He contests the receiver's fees, when under the Law of Property Act 1925, the receiver is meant to act in his interests. He does not understand how the level of fees applied could be in his interests.
- He used to have monthly calls from a dedicated case manager, but suddenly he started receiving calls from unknown people at Birmingham Midshires at inconvenient times.

- Birmingham Midshires had ignored his plan to clear the arrears and sell the property. • His vulnerability had not been taken into account.
- The disputed amount is “nothing” to a large business like Birmingham Midshires, yet it is a fortune for him.
- He is of good character, but Bank of Scotland is not – Mr L gave an example of where it had been involved in fraud and was fined by the regulator.
- Birmingham Midshires had failed to answer his questions.
- Affordability was not relevant as he was selling the properties.
- Birmingham Midshires initially agreed to give him three months to sell property A – but then appointed receivers within a month – and they withdrew the property from the market and threatened the tenant with eviction. Birmingham Midshires had seen evidence that he had appointed an estate agent to sell the property, yet it instructed receivers just over a month later – meaning he could not sell the property and incurred receiver’s fees. He did not understand how this was in line with the receiver’s duty to act in his best interests.
- Birmingham Midshires appointed receivers on property S after the arrears had been cleared.
- On property M (which at the time in question had not receivers appointed) he paid over £1,000 to the arrears in view of his tenant’s vulnerability. The total amount he paid cleared a third of his arrears balance and should have led Birmingham Midshires to pause any action.
- On property B, Birmingham Midshires appointed receivers despite telling him that had not happened. He was not allowed to let the previous tenant reoccupy the property, meaning he lost out on rent.
- Birmingham Midshires has now removed properties A, S and B from the receiver’s control, but has still added the fees to the mortgage balances.

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.

I thank Mr L for his honesty in telling us about his circumstances and I was sorry to hear what he has gone through. I acknowledge that dealing with a significant property portfolio, with arrears and some challenging circumstances must have been extremely difficult and stressful. But I'm afraid that after carefully reviewing everything I don't consider Birmingham Midshires has treated him unfairly.

I note this is an ongoing matter. But we can only consider events up to the date when the complaint was referred to us on 8 July 2023. So my findings relate to events up to that point.

The receivers were acting for Mr L not Birmingham Midshires. They were his agents. So I can't look at any acts or omissions by the receivers – and they are not covered by our jurisdiction. I know Mr L sees it that it is going against his interests by appointing receivers and charging him the associated fees. But appointing receivers is a legitimate step for a lender to take in certain circumstances. The receivers should step into Mr L's shoes and manage the properties in line with his best interests – but that does not mean that it is required to do what Mr L wants or agree with what he regards as being in his best interests.

I can't look at what the receivers did unless there is evidence it was acting on direct instructions of Birmingham Midshires. I'm afraid the evidence I have does not support that any decision taken by the receivers about how to manage the properties was because of instructions by Birmingham Midshires. They appear to have made their own decisions.

I am required to decide what I consider is fair and reasonable in the individual circumstances of this complaint.

I note what Mr L has said about Bank of Scotland's past conduct, but that is not relevant to my consideration of this complaint. Both sides have been given a fair opportunity to present any comments and evidence they wish. I have no reason to doubt that the information we have received from both parties has been provided in good faith.

There is clearly a significant difference between the bank's resources and Mr L's and it might make little difference for it to absorb the receiver's fees that were charged to Mr L. But it does not follow that I could justify that as a reason for me to uphold the complaint.

Mr L was not acting as a consumer here. He was not an accidental landlord, he entered into these contracts with the intention to let the properties and run a business. He had a relatively large portfolio of properties. I can understand that his personal circumstances and other things outside his control would have made that very difficult to manage. And I have taken account of his vulnerability – which Birmingham Midshires was aware of – in deciding what is fair and reasonable.

Buy-to-let mortgages are unregulated. But I can still consider if Birmingham Midshires has acted fairly and reasonable.

Under the terms and conditions of the mortgage Mr L was in default if any of the mortgages were more than one month in arrears. That entitled Birmingham Midshires to take possession of the property, collect rent and appoint receivers. There is no formal requirement for it to remove receivers once they have been appointed. Usually it would be good practice for a lender to give a borrower more time than that – and there may sometimes be good reasons for a lender to remove receivers.

In this case, Birmingham Midshires said it does not consider appointing receivers until there have been at least 12 months arrears and other conditions have been met or do not apply. It will also remove receivers if the arrears are cleared in full, all fees and charges are paid, and an income and expenditure form is completed to show affordability without rental income. On the face of it, those are reasonable policies that are in line with good industry practice. So I need to decide if Birmingham Midshires followed its policies and whether it applied them fairly in the individual circumstances of this complaint.

At the time in question, each of the four properties had been in arrears for over 12 months. So it was reasonable for Birmingham Midshires to consider appointing receivers. It asked Mr L to complete an income and expenditure form on a number of occasions. Mr L refused to do so as he did not think it would necessarily be an accurate reflection of his circumstances and he wanted to use any spare cash on the properties to prepare them for sale. I consider it was reasonable for Birmingham Midshires to want to understand what Mr L's income and expenditure was. I don't agree that affordability was irrelevant. It would have made it difficult for Birmingham Midshires to assess the sustainability of the mortgages without that information – and that was a valid consideration.

Further, Birmingham Midshires was aware of Mr L's strategy to update and repair the properties and then sell. But I can see why Birmingham Midshires might have found that unacceptable. It was entitled to protect its position and expect any mortgage arrears to be prioritised. So it was not unreasonable for it to expect Mr L to use the funds to clear the mortgage arrears rather than on other things.

I know Mr L feels strongly that his strategy was in everyone's best interests. But I don't think it was unfair or unreasonable for Birmingham Midshires not to share that view and to look to protect its position. That is not to judge him or to say that his plan was not going to work. But rather that Birmingham Midshires was entitled to use its own commercial judgment to consider Mr L's proposals – and the decisions it took were reasonable based on the information it had.

Looking at things overall, I consider Birmingham Midshires took reasonable steps to engage with Mr L and gave him a considerable amount of forbearance bearing in mind the position of the mortgages – and I understand that Mr L's vulnerability was one of the reasons for that. So I don't consider it was unfair for Birmingham Midshires to appoint receivers when it did. I can't see any evidence that this decision was made vindictively – it was an entirely reasonable decision for a lender to make in these circumstances. And it could have taken that decision earlier if it followed its policy to the letter.

Birmingham Midshires took steps to record Mr L's vulnerability and adapted the way it dealt with him. That was fair. I don't think it would mean that it would be required to do what Mr L wanted or that it could not appoint receivers or take other recovery action if that was appropriate.

It's not clear that Birmingham Midshires had formally agreed not to take any action in respect of property A to give Mr L time to sell it. And even if it knew Mr L planned to sell it, that would not prevent it appointing receivers. For the reasons I've explained it was reasonable for Birmingham Midshires to appoint receivers when it did. Birmingham Midshires said the receivers decided to continue to let the property as the market value would not be enough to repay the mortgage in full.

On property S the arrears were cleared on 5 June 2023 – but the evidence I have shows that was after receivers had been instructed. In any event, it was reasonable for Birmingham Midshires to look for the other criteria for removing receivers to be met.

On property B, the information we have is that as at 9 July 2023 receivers were in the process of being appointed, but had not been appointed.

Mr L has told us that Birmingham Midshires has now removed the receivers from properties A, S and B. I don't consider it follows that the decision to appoint them in the first place was wrong or unfair. Birmingham Midshires was entitled to do so under the relevant law and the terms and conditions of the account. It followed its policy, had good reasons to appoint receivers and exercised more forbearance than it usually would. In all the circumstances, I don't consider it acted unfairly. It is entitled under the terms and condition of the mortgage to pass on the receiver's fees to Mr L and add them to the mortgage debt.

This was clearly a very difficult and challenging time for Mr L. Looking at the evidence I have I can't see that Birmingham Midshires dealt with him in an unfair or unprofessional way. There was no requirement for it to acknowledge receipt of funds to the mortgage individually – just as it would not acknowledge receipt of a contractual monthly payment. And it isn't unreasonable that it can't accommodate every request to call at a certain time – or where it might not be able to call at the exact time previously agreed.

Birmingham Midshires has paid Mr L £100 to recognise that some comments caused Mr L to feel upset. I think that was fair.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 28 March 2024.

Ken Rose
Ombudsman