

## The complaint

Mr C complains about the way that Bank of Scotland plc trading as Birmingham Midshires administered two mortgages.

## What happened

Mr C had two mortgages with– one residential with Bank of Scotland, the other a buy-to-let with Birmingham Midshires. This complaint is only dealing with the buy-to-let mortgage.

Mr C complains:

1. The bank has never accounted for the rental income it received when it had possession.
2. Despite having control of the property it never passed any surplus rental income or sale proceeds to him. This caused him losses and financial difficulty.
3. The bank did not treat him fairly when it took possession of the property.
4. It took too long for the bank to sell the property and it was sold for too little.
5. The bank wrongly held him responsible for all payments relating to the property, including service charges and maintenance. That meant he had the stress of dealing with the landlords.
6. It has recorded incorrect information on his credit file.
7. He should be paid interest on the money denied to him, plus reimbursement for costs, stress and time, along with other financial losses.

I issued a provisional decision explaining that that there were parts of the complaint we could not consider – and not upholding the parts of the complaint we could look at. My provisional findings, which form part of this decision, were:

### **Jurisdiction**

*The complaint about the residential mortgage has been resolved by way of a final decision. I won't be dealing with it here – my provisional decision relates solely to the buy-to-let mortgage.*

*I explained to Mr C in my previous decision that I didn't have all of the information I'd want to see to properly determine what complaint we can or should look at. And I'm not sure what I said was interpreted as I intended. I apologise for the lack of clarity.*

*We have now been given over 17 letters from Bank of Scotland responding to complaints from Mr C. So I am able to clarify what complaints we can look at.*

*We have also already issued another decision on whether we have the jurisdiction to consider some of these complaints. And I note that Mr C has recently referred at least three*

*more complaints to us that cover the same ground as these complaints.*

*Under our rules, I can't consider anything that has been referred to us more than six months after the date of any final response – unless the business consents or there were exceptional circumstances that prevented Mr C complying with the time limits. And I can dismiss a complaint if it impairs our effective operation, for example if we have already considered or excluded a complaint, unless there is material new evidence that has subsequently become available to Mr C.*

*I am satisfied that the complaint Mr C referred to us on 6 February 2023 in respect of the buy-to-let mortgage was as set out above. For clarity I will set out the complaint points that we can't consider and why.*

*The following complaints were dealt with in a final response dated 8 August 2018:*

- 1. The bank has never accounted for the rental income it received when it had possession.*
- 2. Despite having control of the property it never passed any surplus rental income or sale proceeds to him. This caused him losses and financial difficulty.*
- 5. The bank wrongly held him responsible for all payments relating to the property, including service charges and maintenance. That meant he had the stress of dealing with the landlords – that was also followed up in a final response dated 6 September 2018.*
- 6. It has recorded incorrect information on his credit file.*

*I know that Mr C considers that Birmingham Midshires did not properly address or understand his complaint. But I consider it has attempted to address those points in the final response dated 8 August 2018 – and in follow up letters. If Mr C did not agree with the outcome, then he could have referred those complaints to us. The letters set out he could do so and the time limits for that.*

*Mr C first referred those complaints to us on 11 July 2019. Another ombudsman found that Mr C had referred those complaint outside the time limits, Birmingham Midshires had not consented to us considering the complaint and there were not exceptional circumstances that prevented Mr C from complying with our time limits.*

*I see no reason to reach a different outcome from the previous ombudsman. While Mr C might have had exceptional circumstances, they clearly did not prevent him referring his complaint to us. He – or his representative – continued to correspond with Birmingham Midshires during the six months he had to refer the complaint to us. It follows there was nothing preventing him from referring the complaints to us. So I couldn't reasonably find that any exceptional circumstances prevented Mr C complaining in time.*

*I appreciate Mr C's strength of feeling about this matter, but I am the second ombudsman who has reached the same outcome on these complaints. I'd note that under our rules I can dismiss a complaint if it impairs the effective operation of our service. An example of that is where we've already considered or excluded a complaint, unless there is material new evidence that is likely to affect the outcome that has subsequently become available to Mr C.*

*Mr C has no new evidence. I think looking at these matters again would impair our effective operation. And that is likely to be the same if Mr C chooses to pursue these complaints again. It is up to Mr C if he wishes to do so – but it is likely to be a waste of his time.*

*I can consider the above complaints from either 8 August 2018 or 6 September 2018. I would note that even if I had considered the merits further back for those complaints, it is unlikely that they had any reasonable prospect for success – for the same reasons I set out below.*

*I can also consider the following complaints:*

- 3. The bank did not treat Mr C fairly when it took possession of the property*
- 4. It took too long for the bank to sell the property and the property was sold for too little.*
- 7. Mr C should be paid interest on the money denied to him, plus reimbursement for costs, stress and time, along with other financial losses.*

### **Merits**

*I note Mr C considers that Birmingham Midshires has not acted in line with the FCA rule in the way it has administered this mortgage. But this was a buy-to-let mortgage and it is unregulated.*

- 1. The bank has never accounted for the rental income it received when it had possession.*
- 2. Despite having control of the property it never passed any surplus rental income or sale proceeds to Mr C. This caused him losses and financial difficulty.*

*I'm only looking at events from 8 August 2018 – but my answer would likely be the same even if I'd considered events before that.*

*The property was under the control of Law of Property Act receivers. The receivers acted for Mr C – not Birmingham Midshires. So Birmingham Midshires is not responsible for anything the receivers did or did not do. I can't consider a complaint about the receivers as they are not covered by our jurisdiction.*

*The receivers were responsible for collecting and disbursing the rent. If Mr C considers the rent hasn't been properly accounted for or passed on correctly, then he would need to take that up with the receivers.*

*Birmingham Midshires has explained that the rent was paid towards the mortgage and any surplus used to reduce the arrears. I haven't seen any evidence to show that did not happen. I note that usually the receiver will deduct its costs, so the full rental amount may not be applied.*

- 3. The bank did not treat Mr C fairly when it took possession of the property.*

*Birmingham Midshires took possession of the property in October 2018. There were significant arrears and no tenant in place. I consider it was reasonable for it to take possession. There was no viable plan to get things back on track.*

- 4. It took too long for the bank to sell the property and it was sold for too little.*

*Birmingham Midshires said that once it had possession of the property the locks had been changed by the second charge lender, so it had to arrange for the locks to be changed. Then it spent some time carrying out basic tidying up of the property. That was reasonable and in*

*line with the steps a lender should take.*

*The lender had a valuation carried out in January 2019. They valued the property at £310,000, with a suggested asking price of £325,000. The valuation was carried out by a suitably qualified independent surveyor. So it was reasonable for it to rely on their opinion. The property was marketed straight after the valuation. I can't see there were any delays by Birmingham Midshires in obtaining valuations or putting the property up for sale.*

*The first offer was made in August 2019 – but it was significantly under the valuation. There were at least a further 30 offers on the property up until July 2021. They were either rejected as being too low or accepted and then fell through.*

*Birmingham Midshires should take account of the valuation and balance achieving the best price with the time it takes to sell a property. I don't consider it acted unreasonably in rejecting the offers it received bearing in mind the valuation it had. And there were a number of offers accepted where the buyer was not able to complete the purchase.*

*While Mr C does not think that Covid is an excuse for any delays, in my experience it is likely to have added time to the process. For example, there was a great deal of uncertainty when the first lockdown was put in place, there were periods where viewings were restricted and also delays in valuations taking place. So I think Covid, lockdowns and the various restrictions will have had some impact on the time taken to sell the property.*

*Birmingham Midshires told us that the property is aimed at retired people, that it was a leasehold property with less than 70 years remaining on the lease and it needed some updating. Those things were likely to reduce the number of interested buyers and potentially to make it more difficult for interested buyers to proceed. Many lenders will not lend on a property with a lease of that length.*

*The property eventually sold for £230,000 in August 2021. I consider this was reasonable in the circumstances. I don't consider Birmingham Midshires acted unfairly or unreasonably in selling the property or that it was responsible for the length of time it took.*

*I understand why Mr C thinks that Birmingham Midshires could have sold the property at auction. But the property was attracting interest from buyers throughout the period in question, so I don't consider it was unreasonable for Birmingham Midshires to persist with its strategy. And we don't know what the outcome would have been had the property been auctioned. It does not follow that it would have sold or achieved a higher price.*

*Mr C said that the bank was receiving a rental income. My understanding was that there was no tenant when the property was repossessed. But I'd ask both sides to clarify in response to this provisional decision.*

5. *The bank wrongly held Mr C responsible for all payments relating to the property, including service charges and maintenance. That meant he had the stress of dealing with the landlords.*

*Under the terms and conditions of the mortgage, Mr C had agreed to pay Birmingham Midshires costs and expenses for it incurred in relation to the mortgage and protecting its security. That would not change when Birmingham Midshires had possession of the property but the mortgage had not been repaid.*

*It was reasonable for Birmingham Midshires to pay overdue ground rent and service charge costs to protect its security. If Mr C considers those amounts were not due or he was overcharged then he can challenge the freeholder directly. If he is successful then*

*Birmingham Midshires should consider refunding those amounts to him with interest. But as things stand, the amounts appear to have been charged correctly by the freeholder. So I don't consider it was unfair for or unreasonable for Birmingham Midshires to pay those amounts and to pass them on to Mr C.*

*I've already found that Birmingham Midshires did not cause any unreasonable delays in selling the property. So it was reasonable for it to pass on any of the above costs while the property was for sale.*

6. *It has recorded incorrect information on his credit file.*

*Birmingham Midshires is obliged to record true and accurate information about how the mortgage was conducted. I consider it has done so. It recorded that the mortgage was in default from October 2018. I consider that is a true reflection of how the account was conducted.*

7. *He should be paid interest on the money denied to him, plus reimbursement for costs, stress and time, along with other financial losses.*

*I have not upheld any of the complaints Mr C has made. So there is no basis on which I could say that Birmingham Midshires should refund anything to Mr C or to pay him interest or any compensation.*

Birmingham Midshires accepted my provisional decision. Mr C did not. He made a number of points, including:

- The points held made to a previous investigator had not been considered fairly.
- He did not communicate with Birmingham Midshires between January and July 2019. A bank manager had submitted a complaint on his behalf and he was waiting for a response. So there was no final response.
- His new points were different to those raised previously.
- It was incorrect to say the receivers acted for him. He had a letter from Birmingham Midshires' solicitors which said that they had appointed receivers to take control of the property and collect rent on behalf of the bank. Therefore the bank received all the rental income and overpayments from the receivers – and it was responsible for the receivers.
- It is contradictory to say he was responsible for the receivers. The receivers acted on direct instructions from Birmingham Midshires.
- From the date the receivers were appointed up to date of possession there were no missed payments, so it was wrong to record missed payments on his credit file.
- The November 2018 final response was solely based on a request for support – not a complaint. And the points of his complaint had not happened by that date. So the final response is irrelevant.
- The provisional decision refers to an email sent by his brother – but that was not a complaint but a request for support. He had no one else to help him and he was incapacitated and was incapable of making a complaint – and was not aware of any reason to complain.
- He has not claimed the bank had not treated him fairly when it took possession.

- At the time the bank took possession there were no arrears because the receiver had paid surplus funds to the mortgage. There was a tenant paying much more than the mortgage payment each month. So there was no reason to take possession. Nor was there any reason not to renew the tenancy.
- The bank took possession in January 2018. Covid was not until two years later. It can't be argued that the bank sold the property in a reasonable time.
- The property was sold for too little. Evidence from the land registry shows that identical properties sold at the time for over £400,000. His was larger and more sought after.
- The bank charged him for a lease extension.
- The bank treated his requests for help as complaint. That meant it issued final responses, which he could not respond to within the time limits because of his circumstances. There were exceptional circumstances preventing him from complaining. We hadn't considered the new evidence he'd provided.
- He is an accidental landlord – and therefore MOCB applied.
- Birmingham Midshires had admitted that its arrears balance was incorrect undermines the credibility of its other evidence.
- Birmingham Midshires was receiving rental income from February 2018, not June 2018.

### **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.

Following Mr C's response, I have sought some clarification from Birmingham Midshires. Its response was potentially misleading regarding the level of arrears. That was particularly unhelpful and it has led to Mr C questioning the credibility of the evidence it has provided. The bank said it made a genuine mistake and it was not aware that any other errors or misleading information being provided.

Nevertheless, after reviewing everything again – and giving Mr C an opportunity to comment on the new evidence from Birmingham Midshires, I don't have grounds to uphold this complaint. So I am not changing the overall conclusions I reach. I am satisfied that I have enough information to reach a fair and reasonable outcome in this case.

### **Jurisdiction**

I am satisfied that Mr C made a complaint to Birmingham Midshires in 2018 about points 1, 2, 5 and 6. I know Mr C saw his correspondence as a request for help. But the FCA defines a complaint as an expression of dissatisfaction, whether justified or not, about the provision of, or failure to provide, a financial service which alleges the complainant has suffered (or may suffer) financial loss, material distress or material inconvenience. So it was reasonable and in line with the relevant rules for Birmingham Midshires to deal with Mr C's queries as a complaint.

The complaints were dealt with in final responses dated 18 August and 6 September 2018. So Mr C was too late when he referred those complaints to us in February 2023.

Colleagues have already issued decisions where they were not persuaded that Mr C had

exceptional circumstances that prevented him referring the complaints dealt with in those final responses in our time limits. It is not really for me to interfere in that. That is the end of the matter as far as we are concerned. Mr C can't raise the same matters again hoping for a different answer.

Nevertheless, the evidence we have is that Mr C was communicated directly with Birmingham Midshires a number of times after the August 2018 final response was issued and within the six month window he had to refer the complaint to us. So – even if I were to look at these matters again – I would not reach a different conclusion to my colleagues. I do not consider that any exceptional circumstances prevented Mr C complying with our time limits. So I see no reason to reach a different conclusion than I did in my provisional decision.

In any event, Mr C said that the events he is complaining about had not happened until after June 2018. So I am considering most of the time he is complaining about. And as I said in my provisional decision – even if I were to look back further, Mr C's complaints have no prospect of success for the same reasons I will set out below.

### **Merits**

Mr C considers that he is an “accidental landlord” and that as a result MCOB applies to his mortgage. I'm afraid that isn't correct. Consumer buy-to-let mortgages were available for mortgages taken out from March 2016. This mortgage was taken out before that so the relevant rules do not apply to it.

MCOB does not apply to consumer buy-to-lets. Rather it is the Schedule 2 of the Mortgage Credit Directive Order 2015/910 that applies. But even if I take into account those rules – as being good practice – I don't consider it changes the outcome of this complaint.

1. The bank has never accounted for the rental income it received when it had possession.
2. Despite having control of the property Birmingham Midshires never passed any surplus rental income or sale proceeds to him. This caused him losses and financial difficulty.

Mr C had missed payments to the mortgage and he'd told Birmingham Midshires a third party had possession of the property. Under the terms and condition of the mortgage either of those things that meant Birmingham Midshires was allowed to appoint a receiver:

*“Any receiver appointed by the lender will be the borrower's agent and will be entitled to exercise all the lender's powers in connection with the mortgage, all the powers given to receivers by the Law of Property Act 1925, and all the powers of an absolute beneficial owner of the property.”*

That is consistent with the Law of Property Act 1925. Mr C is not the only borrower in such circumstances who finds the arrangement confusing. Although Birmingham Midshires was entitled to appoint receivers, the receivers acted for him. The receivers are not covered by our jurisdiction. And I have not seen any evidence that they were acting on direct instructions of Birmingham Midshires. So I can't say that Birmingham Midshires was responsible for anything the receivers did – or did not – do.

The receivers were responsible for collecting the rent and paying it to Birmingham Midshires. As far as I can see, Birmingham Midshires has applied any payments it received to the mortgage during the period I am looking at. If Mr C thinks there are additional amounts not

accounted for, he will need to raise that with the receivers. Other than initially being instructed by Birmingham Midshires, there is no evidence that the receivers were acting on specific instructions from it.

3. The bank did not treat Mr C fairly when it took possession of the property.

The bank took possession of the property in October 2018 – not January 2018. Looking at the information available to it about how the account had been conducted, it was reasonable – and consistent with the terms and conditions of the account – for it to make that decision. I don't consider the fact that it might have been possible to continue letting the property makes any difference to that. And in the circumstances, I can't see what forbearance it could have offered Mr C.

I would not expect a lender to let the property once it had taken possession. Birmingham Midshires has confirmed that it did not let the property once it had possession.

4. It took too long for the bank to sell the property and it was sold for too little.

The bank took possession in October 2018. Birmingham Midshires had to get the locks changed and carry out some basic maintenance. I understand that took until around January 2019. That is not an unreasonable timescale in the circumstances.

Mr C has provided evidence of the sale prices for what he considers to be comparable properties. But Birmingham Midshires had the property valued by an independent surveyor who valued the property at £310,000. I can also see that there was another valuation by a property management company that was in line with the surveyor's valuation.

While I understand why Mr C thinks that the sales evidence he's provided shows the property was worth more than Birmingham Midshires thought, I am satisfied that it took reasonable steps to determine the value of the property before putting it up for sale. There was no reason for it to doubt the valuations it had received.

While other similar properties might have sold for more, it does not follow that Mr C's property was worth as much as those other properties. There are many things that might have accounted for the difference in value. Without knowing the relative size, condition, tenure etc of the other properties, I don't consider the sales evidence makes any difference to the outcome of this complaint.

Birmingham Midshires said that there were a number of factors that affected the value, of Mr C's property including that there was a restriction that meant the property could only be sold to people aged over 65, the length of the lease and the condition of the property. I accept that all of those things are likely to affect the value of a property.

The evidence I have shows that Birmingham Midshires paid ground rent and service charges for Mr C. While I can see that Birmingham Midshires considered extending the lease, it said it did not do so. And there is no evidence to show that it did. For example, I have not seen evidence of any lump sum payment equivalent to the amount that would likely have been required to do so. I am not persuaded the lease was extended.

I do not consider a payment of £750 would have been to extend the lease. That would be a very low amount to pay in my experience. And the evidence we have suggests that the actual figure would be around £26,000 with around £10,000 in costs.

Ultimately, Birmingham Midshires took reasonable steps to ascertain the value of the property and put the property for sale on the open market. It seems likely that it achieved



the best price that someone was willing to pay for the property.

In regard to the time it took, there should be a balance between obtaining the best price and selling the property quickly. But the circumstances here were not straightforward bearing in mind the first offer was made in August 2019 and there were at least a further 30 offers on the property up until July 2021. They were either rejected as being too low or accepted and then fell through.

I don't agree that it took four years for Birmingham Midshires to sell the property. It took from January 2019 until July 2021. That is around two years and seven months. I agree that is a relatively long time. But I consider the circumstances set out above explain why that was. And Covid was relevant as the property was still being marketed and sold during the time when restrictions were in place. It was not the sole cause of the time it took – but it was a factor.

I understand why Mr C thinks it took too long to sell the property. But I don't think it was unreasonable in view of the individual circumstance of this complaint. Nor is there any evidence that there were any acts or omissions by Birmingham Midshires that caused any delays. And it's not clear if Birmingham Midshires had attempted to sell the property at auction it would have sold or that a better price would have been achieved or that there was any financial loss caused by selling on the open market.

Overall, I consider that Birmingham Midshires took reasonable steps to obtain the best possible price for the property.

5. The bank wrongly held Mr C responsible for all payments relating to the property, including service charges and maintenance. That meant he had the stress of dealing with the landlords.

I see no reason to reach a different conclusion than I did in my provisional findings set out above.

6. Birmingham Midshires recorded incorrect information on his credit file.

Birmingham Midshires was obliged to record true and accurate information on Mr C's credit file. Following Mr C's response to my provisional decision I sought some clarification about the position of the mortgage from Birmingham Midshires. It came to light that the information it had given us about what it had recorded on Mr C's credit file was incorrect – it related to his residential mortgage – not this mortgage. Birmingham Midshires said that due to the passage of time it was no longer able to access the information it recorded on Mr C's credit file in relation to this mortgage.

I am only considering events from 8 August 2018. From that point only one payment of £102 was made to the mortgage until November 2020 when there were a number of credits. So it would have been reasonable for Birmingham Midshires to reflect the missed payments and any arrears on Mr C's credit file. It would also be reasonable to mark the account as in default bearing in mind receivers had been appointed and Birmingham Midshires subsequently took possession of the property.

I don't consider there is anything about Mr C's individual circumstances that would prevent Birmingham Midshires recording accurate information about how the mortgage was conducted. Mr C is free to add a notice of correction if he wishes to provide context to any potential creditors.

**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 C to accept or reject my decision before 31 July 2024.

Ken Rose  
**Ombudsman**