

## The complaint

Mr C complains that Bank of Scotland plc trading as Birmingham Midshires incorrectly recorded a default on his credit file. Mr C says that as a result of the default, he was declined further lending and needed to take bridging loans that were subject to higher interest rates.

## What happened

Mr C had a buy-to-let (BTL) mortgage with Birmingham Midshires. It was a joint mortgage with another party not involved in this complaint. In May 2012, Mr C entered into bankruptcy and a Law of Property Act (LPA) receiver was appointed to manage the BTL property. The property was tenanted, and the LPA receiver decided things should be left as they were, with the rental income used to decrease the outstanding balance owed on the mortgage.

Mr C was discharged from the bankruptcy in May 2013. In February 2019, the property was no longer deemed viable by the LPA receiver due to increased interest rates. Birmingham Midshires attempted to contact Mr C but was unsuccessful. The property was repossessed by Birmingham Midshires in June 2019 and sold in April 2020, leaving a shortfall as the sale proceeds weren't sufficient to fully repay the mortgage, and the BTL account was closed.

In March 2023, Mr C complained to Birmingham Midshires about a default on his credit file for the BTL mortgage. He said he had been declined further BTL mortgages for his property development businesses, which led him to discover a default from Birmingham Midshires on his credit file. He said that Birmingham Midshires shouldn't be reporting a default for the BTL mortgage so long after his bankruptcy, and he wanted Birmingham Midshires to correct his credit file. Mr C said he'd had to take out bridging loans with significantly higher interest rates because his applications for BTL mortgages had been declined due to the default. Mr C wanted Birmingham Midshires to compensate him for the additional interest he'd needed to pay by doing this.

Birmingham Midshires responded to Mr C's complaint over multiple response letters. In summary, it said it had acted correctly. It said it had issued a notification of correction to the credit reference agencies in 2018 to reflect Mr C's bankruptcy in 2012 and discharge in 2013, and the account had been removed from his credit file in 2018. It said it didn't have an explanation as to why one of the credit reference agencies began reporting the account again in 2019 and Mr C should refer to the credit reference agency for this. It confirmed it had removed the account from Mr C's credit file again after receiving evidence from Mr C of his bankruptcy discharge as part of the complaint. It said it had been unable to remove the account earlier as it didn't have evidence of Mr C's discharge.

Mr C didn't accept this. He said the default had impacted the finance he was able to obtain for his businesses and he wanted Birmingham Midshires to compensate him for that. Mr C referred the complaint to our Service where one of our Investigators looked into the complaint.

Our Investigator thought the complaint should be upheld. He said that the default shouldn't have been recorded on Mr C's credit file more than six years after his bankruptcy. Birmingham Midshires had already corrected Mr C's credit file, but he thought it should pay

Mr C £350 for the distress this matter had caused him. The Investigator didn't think there was enough evidence to show the default alone had impacted Mr C's ability to secure financing for his businesses.

Birmingham Midshires accepted this, but Mr C didn't. He said in summary that it was the bank's error that caused him to go into bankruptcy in the first place, and he was being penalised 12 years later by still having a default on his credit file. So, he still wanted compensation for the increased costs he'd had to pay in bridging loans, until he could get BTL mortgages approved.

As Mr C didn't agree with our Investigator, the complaint has been passed to me to consider 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.

I'm sorry to hear of the difficult circumstances Mr C has been in leading up to his bankruptcy and since. Mr C has said it was an error of the bank that caused him to enter into bankruptcy. I understand these matters have been decided in court, so I won't comment further on them. I've focussed on what I consider to be the crux of this complaint, being Birmingham Midshires' reporting of the default and the impact of this on Mr C.

As a starting point, it's important to establish that a default will remain on a credit file for six years from the default date. Birmingham Midshires has told our service it was notified in 2012 of Mr C's bankruptcy and it noted the default on the account accordingly. The default date must be consistent with that of the bankruptcy, and neither party has suggested this initial default wasn't recorded accurately. So, I wouldn't expect to see a default linked to Mr C's bankruptcy recorded on his credit file later than 2018.

Mr C was discharged from bankruptcy in May 2013. Birmingham Midshires has said it was not provided with evidence of Mr C's discharge until he complained in 2023. So, it said it didn't update his credit file to reflect the discharge before this point.

I've reviewed Birmingham Midshires' system notes and there is a note from November 2018 which said "*Credit records have now been corrected for the mortgage to reflect bankruptcy 22 May 2012 to 22 May 2013. As this is over 6 years the mortgage account has been removed from credit report*". Birmingham Midshires' internal complaint notes from 2023 also said that contact was made in May 2015 with the Insolvency Practitioner, who confirmed they had no interest in the property.

So, it appears that Birmingham Midshires was aware that Mr C had been discharged from the bankruptcy in 2013, that the Insolvency Practitioner had no interest in the property and Mr C (and the other party to the mortgage) weren't seeking to regain control of the property. It also appears Birmingham Midshires understood that the default shouldn't be reported on Mr C's credit file after 2018.

Birmingham Midshires has said the account ceased to be reported to credit reference agencies in 2018 for both parties on the mortgage. From the evidence I've seen, this appears to be the case. The default which is the subject of this complaint is recorded as from 13 June 2019. So, it's likely the original default from the bankruptcy in 2012 was removed from Mr C's account after six years, and a new default was recorded in 2019 when the property was repossessed by Birmingham Midshires.

Birmingham Midshires has said that without evidence of Mr C's discharge from bankruptcy, it correctly reported a default for Mr C when the property was repossessed and then sold at a shortfall. While I appreciate it would be Mr C's responsibility to make Birmingham Midshires aware he had been discharged from bankruptcy, in this case I can see that Birmingham Midshires was already aware of his discharge when it removed the account from reporting in 2018. So, Birmingham Midshires recording a default for this account for Mr C in 2019 wasn't a fair and accurate representation of his handling of the account.

The BTL property was included in Mr C's bankruptcy and a default for this was recorded on his credit file for six years. Mr C no longer had an interest in the property, and it appears Birmingham Midshires was aware of this before 2018 when it previously removed the default. So, I don't think Birmingham Midshires acted fairly by recording another default in 2019, seven years after Mr C's bankruptcy and when he had no interest in the property.

I'm satisfied that Birmingham Midshires has now corrected and removed the account from reporting on Mr C's credit file. But this has clearly had a significant impact on Mr C who has spent considerable time and effort trying to rectify this problem. He's also said the default has impacted his ability to take out further BTL mortgages for his businesses and he's had significantly increased costs as a result.

I've thought very carefully about the impact Birmingham Midshires' mistake has had on Mr C. We've requested evidence from Mr C of the lenders' reasoning for declining his applications, but we've not been provided with this. Mr C has provided testimonials from the brokers involved in his applications for the BTL mortgages. These testimonials show that the brokers involved thought that the default had caused Mr C's applications to be declined. But the brokers also suggested that the default had highlighted Mr C's past credit history, and that had been a factor in the decisions. Mr C has also told our Service that he entered into bankruptcy again in 2016.

Looking at Mr C's circumstances as a whole, I can't fairly say that the default Birmingham Midshires reported from 2019 was the sole cause of his applications being declined. It may be that the default brought attention to Mr C's past credit history. But it is often the case that lenders will ask during the application process if there has been a history of bankruptcy, and Mr C would need to answer this truthfully. So, I think Mr C's credit history would have come to light during the application process regardless of the default.

I also note that Mr C has since taken out lending through specialist lenders after the default was removed, which incurs higher interest rates and fees. This suggests Mr C was unable to secure BTL lending through the original lenders even after the default had been removed from his account.

I'm sorry to disappoint Mr C as I appreciate how strongly he feels about these matters, and I realise that he has been put under significant financial strain by the bridging loans he took out. But I can't fairly say that if it was not for Birmingham Midshires' error in reporting the default, he would have been approved for the further lending he applied for.

Mr C first complained to Birmingham Midshires in March 2023 and his credit file was correctly amended in late April 2023. It's clear the default caused him significant worry and effort to sort out over these weeks and it's right that Birmingham Midshires compensates him for this. I think the payment of £350 represents a fair and reasonable way to put things right.

### **My final decision**

I uphold this complaint and direct Bank of Scotland plc trading as Birmingham Midshires to pay Mr C £350.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 19 December 2024.

Emma Taskas  
**Ombudsman**