

## **The complaint**

Mr W complains Bank of Scotland plc trading as Birmingham Midshires have refused his request to extend the term of his mortgage.

## **What happened**

In 2007 Mr W took out an interest only mortgage with Bank of Scotland plc trading as Birmingham Midshires (BM) that was secured over his residential property. He borrowed around £500,000 over a term of five years. The term came to an end in 2012. BM agreed to extend it to August 2019.

In 2020 Mr W brought a complaint to the Financial Ombudsman Service after BM refused to extend the term further in 2019 and he thought they'd given him a lifetime mortgage. That complaint was resolved on the basis BM would consider an application for a term extension from Mr W in line with the rules set out in the Mortgages and Home Finance: Conduct of Business sourcebook (MCOB), including whether a term extension was in Mr W's best interests.

Mr W's application was delayed by the coronavirus pandemic. BM considered it in early 2022 and refused the extension. They said, broadly, Mr W didn't meet their criteria for a further extension on grounds of affordability. Mr W complained. He said he could meet his monthly payments; BM had failed to take into account dividends he could pay himself from his business; and he could sell his property and business at the end of two years to repay what he owed. When BM didn't uphold the complaint he brought it to the Financial Ombudsman Service.

Our investigator thought BM had acted fairly in considering and rejecting the request. She said whilst Mr W wanted to delay selling his properties and business, the term had come to an end. The terms and conditions of the mortgage required him to repay it. And he was able to repay it using the repayment vehicles he'd suggested in 2019 and more recently.

Since Mr W didn't agree, his complaint was passed to me to review afresh. I recently issued a provisional decision, an extract of which follows:

### ***"What I've provisionally 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 appreciate Mr W's strength of feeling about his complaint. I may not mention all the information he and BM have provided. No discourtesy is intended by that. It simply reflects the informal nature of the service we provide. I'll focus on what I consider key in coming to my decision. Based on what I've seen so far, I've come to the same outcome as our investigator. Since my reasons are different in part, I'm issuing a provisional decision to give the parties the chance to make further comments before I come to a final decision.*

*I understand that when Mr W requested a term extension in 2019 there was some confusion about whether he had a lifetime mortgage. Mr W's mentioned that in relation to his current complaint. But it was addressed and resolved when he brought this specific point to us previously. It has no bearing on this complaint, so I won't consider it here. The complaint I'm considering is about BM declining Mr W's application for a term extension following the previous complaint.*

*There was a delay in BM considering the application due to the pandemic. The effect of that was that the mortgage carried on. But it hasn't affected Mr W's overall position. The term extension he's asking for now is essentially the same as it was before. He'd like an extension for two years beyond his 75th birthday in September this year to allow time to sell his rental property and his business and use the equity released to repay the loan.*

*The starting point for considering Mr W's complaint is the terms and conditions of his mortgage. The term of the mortgage was five years. It was a condition of the mortgage he repay the borrowing at the end of the term. BM were entitled to expect him to do so. I appreciate it would have been difficult for Mr W to sell his assets during the pandemic. But he's already had a five-year term extension and additional time due to the delay in BM looking at his request. I'd nevertheless expect BM to have treated him fairly and reasonably, taking into account MCOB and the outcome of the previous complaint, when they considered it.*

*Broadly MCOB requires a lender to make sure that any change to a mortgage that is material to the affordability of the mortgage is affordable for the borrower. A term extension that goes into or further into retirement is considered to be a change that is material to affordability. Where the mortgage is an interest only mortgage, the lender must also make sure that the borrower has a credible repayment strategy.*

*A lender need not apply the affordability or credible repayment strategy rules in certain circumstances, which apply here, if it's in the borrower's best interests to agree to a term extension. But it may not be in the borrower's best interests to continue with a mortgage if they can't afford it. And it wouldn't be unfair for a lender to rely on an affordability assessment in those circumstances.*

*It's not clear from BM's response whether they considered Mr W's best interests in carrying out the review. They only mentioned the mortgage wasn't affordable for him and didn't meet their lending criteria. They've said since that a term extension wouldn't be in Mr W's best interests as he'd pay more interest on the mortgage and his proposals for repaying the mortgage are the same now as they were in 2019.*

*From what I understand, BM's calculation showed Mr W's income exceeded his expenditure. But once they'd stress tested the mortgage payments to see what they might cost in the future, there was a shortfall, even if rental income was considered. I note Mr W feels BM should also have taken into account dividend payments he could have paid himself from his business but hadn't. He's pointed to a newspaper article about another lender that accepted it could have done that in its case. And he's said BM acknowledged they would have taken dividend income into account if he'd had any. Different lenders treat dividend income differently. I don't think BM were unreasonable in not taking potential dividend income into*

*account without evidence of Mr W paying himself a regular dividend and knowing how much it was.*

*Based on BM's assessment, the mortgage was unaffordable for Mr W going forward. If that was right, then it was fair for them to take that into account in determining if it was in his best interests to extend the mortgage term. If Mr W can't afford to pay the mortgage now or once he's retired, it's unlikely to be in his best interests for the mortgage to continue. He could fall into arrears, become liable for additional interest and charges and, potentially, be subject to possession proceedings.*

*But even if BM were wrong about affordability, I'm not persuaded it would be in Mr W's best interests, or fair to BM, for a further extension to be granted for the reasons I'll explain.*

*There's no suggestion here that Mr W can't repay the mortgage. From what I understand, the repayment vehicles he plans to use are the same now as they were previously. I'm aware Mr W would like to tie in repaying the BM mortgage with his retirement and when other borrowing is due to be repaid. But I'm not aware of any compelling reason why he shouldn't be required to repay the mortgage now. He hasn't explained why he needs to retire at 75. There's no guarantee he'll be in the same or a better financial position in the following two years. It's possible the value of his rental property and business could decline if he holds off selling. If property prices do fall and he realises less from the sales than he hopes for, he may be unable to repay the mortgage as planned. That could put his residential property at risk as well as BM's security. Bearing everything in mind, I don't think it's in Mr W's best interests or fair to BM to delay.*

*In all the circumstances, I don't think it's unreasonable for BM to have declined Mr W's application to extend the mortgage term. And I don't intend to ask them to.*

*Mr W will need to arrange to market and sell the assets he intends to use to repay his mortgage with BM. He should take reasonably prompt steps to do that and keep in touch with BM to update them on progress. Mr W will need to continue making his mortgage payments in the meantime. BM should continue to treat Mr W fairly and reasonably, and to allow a reasonable period of time for the transactions to complete before taking any action to recover their loan.*

### ***My provisional decision***

*For the reasons I've explained, I don't intend to uphold this complaint."*

### **Developments**

BM had no comments to make on my provisional decision.

Mr W didn't agree and made several points, which I'll summarise:

- The issue about whether BM had given Mr W a lifetime mortgage wasn't satisfactorily resolved. He considers it to be part of this complaint.
- BM didn't carry out a thorough financial review. They didn't look into whether Mr W could take a dividend from his company. He hadn't needed to before as he could make the CMP without it.
- The properties which are Mr W's repayment vehicle have increased significantly in value over the years given their location. Even if values fell, he'd still be able to repay the mortgage easily.

- He's asked for two years to sell as he thinks it could take that long based on his experience of other properties in the same location.
- I've noted BM haven't shown that they acted in Mr W's best interests.
- The repayment of Mr W's business loan doesn't fall due until 2026.
- Affordability is irrelevant. Mr W could continue to pay the mortgage without a problem. His pension income and income from his businesses would continue unchanged until the properties are sold.
- BM haven't acted fairly from the start – from giving him a lifetime mortgage in 2012 to carrying out a full and thorough investigation of his full income.

I'll go on to give my final decision bearing Mr W's comments in mind.

### **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've thought carefully about what Mr W has said. Whilst I understand he'll be disappointed, I'm not persuaded to change my mind.

I note Mr W remains unhappy about the lifetime mortgage issue. But that was addressed when Mr W complained previously that BM wouldn't extend the mortgage term. Our investigator explained then that where a business makes a mistake, we generally tell it to put the customer into the position they would have been in had they been given the right information. He said if BM hadn't made a mistake in telling Mr W they'd given him a lifetime mortgage, they would have told him they don't offer lifetime mortgages. So, we wouldn't ask BM to give Mr W a lifetime mortgage.

Our investigator said the offer BM had made to compensate him was fair to reflect the false expectation Mr W had been given. He also said BM should carry out a mortgage review with BM and consider if it was in Mr W's best interests for the term to be extended. The complaint was resolved in 2020 on that basis.

Here I am considering Mr W's separate and later complaint about BM's action in carrying out the mortgage review and the outcome of that. It doesn't include a review of the lifetime mortgage issue.

The points Mr W's made in response to my provisional decision aren't substantively new.

Even if I thought BM ought to have looked into potential dividends Mr W could pay himself more closely when assessing affordability, I don't think that affects the outcome of the complaint. That's because, even setting aside the affordability assessment, and even though I didn't think it was clear if BM had considered best interests in their review, I don't think extending the term is in Mr W's best interests or fair to BM.

Even though Mr W's confident there would be sufficient equity in his properties to pay the mortgages off following a two-year extension, even if their values fell, that's not certain. It's not certain either he'll continue to receive the same level of income from his businesses going forward even if his pension income stays the same. If he doesn't, that could affect the affordability of the mortgage. And continuing the mortgage will cost him more in interest

overall.

I also need to consider BM's position. I appreciate Mr W understood previously BM had agreed to give him a lifetime mortgage. But that had been clarified by 2020. And although the pandemic meant the mortgage review was delayed, the mortgage term ended several years ago. BM are entitled to be repaid under the terms of the mortgage. Mr W's plan to repay the mortgage in two years' time will be the same as it is now. Given the potential risks to BM's security a delay might cause, however small Mr W thinks they might be, I'm not persuaded it's fair to extend the term.

I understand Mr W thinks it will take two years for a sale of his businesses to go through. It's possible it could happen sooner. As I said in my provisional decision, he will need to take reasonably prompt steps to arrange to market and sell the assets he intends to use to repay his mortgage with BM. He should keep in touch with BM to update them on progress. And he will need to continue making his mortgage payments in the meantime. BM should continue to treat Mr W fairly and reasonably, and to allow a reasonable period of time for the transactions to complete before taking any action to recover their loan. If Mr W feels BM aren't treating him fairly and reasonably, he can raise a new complaint.

Bearing everything in mind, for the reasons I've set out, I don't uphold Mr W's complaint.

### **My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 20 September 2023.

Julia Wilkinson  
**Ombudsman**