

The complaint

Mr and Mrs M complain that Bank of Scotland plc (trading as Birmingham Midshires) didn't treat them fairly when the term of their interest only mortgage expired. Mr M has dealt with the complaint throughout.

Mr M asks that Birmingham Midshires writes off unpaid interest applied since the mortgage term expired and allows him to take out an equity release product to repay most of the mortgage. He asks that Birmingham Midshires accepts security on a buy to let property to cover the shortfall, or writes it off.

What happened

Mr and Mrs M took out a mortgage with Birmingham Midshires in 2005. The mortgage was recommended by a broker. Originally, part was on a repayment basis. In 2007 Mr and Mrs M asked for all of the mortgage to be on an interest only basis. The term of Mr and Mrs M's interest only mortgage expired in April 2022 with an unpaid balance of about £230,000.

Mr and Mrs M complain that Birmingham Midshires:

- didn't tell them interest rate would be applied at a higher rate after the term expired. Mr M says if he'd known he'd have adapted his plans. He asks that the interest is written off.
- didn't agree to the options he put forward to repay the balance owed. Mr M says he can take out an equity release product to repay most of the mortgage if Birmingham Midshires accepts security on his buy to let property to cover the shortfall, or writes it off.

Our investigator said Birmingham Midshires wasn't obliged to tell Mr and Mrs M it would continue to apply interest after the term expired. She said Birmingham Midshires hadn't extended the term, but had given grace periods for Mr and Mrs M to put forward proposals to repay the balance.

As Mr and Mrs M didn't agree, the complaint has been passed to me, an ombudsman, to re-consider.

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.

Where the evidence is incomplete, inconclusive or contradictory, I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

Interest applied since the mortgage term expired

Mr M says he called Birmingham Midshires each month after the mortgage term expired to

update it. Mr M had to make these calls to Birmingham Midshires' end of term team so that it would hold recovery activity on the account.

Mr M says despite this regular contact, Birmingham Midshires didn't tell him the interest rate applied to his account had increased. He says he only found this out when he received a redemption statement in early 2023 and saw the mortgage balance had increased.

I don't think it was unfair for Birmingham Midshires to continue to apply interest to the mortgage balance while it remained outstanding. The annual statement sent to Mr and Mrs M in April 2022 said the mortgage was on a variable rate. It also said that its variable rate can change at any time.

Birmingham Midshires says it doesn't re-calculate monthly payments when a mortgage term has expired. That's because it's expecting the balance to be repaid.

Mr M says he received letters from Birmingham Midshires about the interest rate but paid no attention to them. He says Birmingham Midshires' end of term team said while recovery action was on hold he'd continue to receive standard letters which he could disregard.

It's unfortunate Mr M didn't read the letters about the changes in the interest rate, especially given media coverage about interest rises in 2022. But I think Birmingham Midshires made Mr and Mrs M aware that their mortgage was on a variable interest rate which could change.

In response to Mr and Mrs M's complaint, Birmingham Midshires gave them the monthly interest amount and offered to recalculate the monthly payment. It said it could arrange to collect this by direct debit. As Mr and Mrs M didn't agree to this or increase their monthly payments to cover the interest, I don't think I can fairly find they'd have done so if Birmingham Midshires had offered this earlier.

I don't think it's fair and reasonable in the circumstances to require Birmingham Midshires to refund or write off the interest.

Mr M says he'll take this matter to court as he considers Birmingham Midshires are in breach of contract. If Mr and Mrs M don't accept my decision, they will be free to take the matter to court.

Repayment of the mortgage balance

Mr M explained their family circumstances which make it important for them to keep the property. I'm sorry for Mrs M's recent health issues and wish her a swift recovery.

What I need to consider here is whether it's fair and reasonable to require Birmingham Midshires to accept Mr M's proposal that he repays most of the mortgage by taking out an equity release product and Birmingham Midshires writes off the shortfall or accepts a secured loan. While Mr and Mrs M will be disappointed, I don't think it is.

When Mr and Mrs M took out the mortgage they agreed to repay it on or before the expiry date. I think Mr and Mrs M are in a position to repay the mortgage balance in full.

Mr and Mrs M were offered an equity release product which would have funded repayment of most of the mortgage. The offer has lapsed. But I haven't seen anything to suggest that they wouldn't be able to source an equity release product.

Mr and Mrs M also have buy to let properties. Birmingham Midshires says Mr and Mrs M's intention had been to repay the mortgage by selling buy to let properties. In early 2022 Mr M

told Birmingham Midshires he didn't want to do this as he was receiving income from the tenants and didn't think it was a good time to sell.

Mr M recently sold a buy to let property. He says he used the funds for work to the property and wants to keep some funds for emergencies.

Mr M says he wants to improve the property to increase its value, and therefore the amount they can raise with an equity release product. He said he might take out a bridging loan to repay the mortgage with Birmingham Midshires and finish the work to the property so that he can re-apply for an equity release product.

The mortgage term expired in April 2022. Birmingham Midshires offered grace periods which now total about 18 months. I think this was fair and allowed reasonable time for Mr and Mrs M time to complete improvements to their property to increase its value, market and sell buy to let properties, take independent financial advice and otherwise explore their options to repay the mortgage without selling the property.

Mr and Mrs M have savings and assets they can use to repay the mortgage or any shortfall after taking out an equity release product. I don't think it's fair and reasonable to require Birmingham Midshires to write off part of the debt, accept a new debt or wait for the mortgage debt to be repaid so that Mr and Mrs M can use the money for other purposes, such as investment in buy to let properties.

Other matters

Mr M says they were declined a term extension about three years prior to the term expiring, and Birmingham Midshires hasn't offered this since. As this wasn't part of the complaint brought to us I can't consider it here.

Mr M has also said the mortgage was mis-sold. He says Birmingham Midshires should have looked more closely at their financial situation in 2005 (when they took out the mortgage) and in 2007 (when they switched to interest only). He considers that rules on mortgage regulation in force from 2014 mean that Birmingham Midshires became responsible for checking the borrowing was affordable in 2005 and 2007 and it can't hide behind his broker. Mr M said they didn't want us to look into this aspect of their complaint, as they are pursuing this issue with a different entity.

My final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and Mrs M to accept or reject my decision before 6 November 2023.

Ruth Stevenson
Ombudsman