

The complaint

Mr B brings this complaint against Birmingham Midshires on behalf of the estate of his late father. He complains that Birmingham Midshires (BM) has not acted fairly in relation to a mortgage account that his father held.

In particular, Mr B says that BM did not follow through with a Possession Order issued in 2014, has given him incorrect information and that it has acted unfairly regarding his attempts to transfer the mortgage from the estate and into his own name.

What happened

Mr B is the personal representative of his father's estate. Mr B's father sadly passed away in 2012 and Mr B has been managing the estate's affairs since.

A court issued a Possession Order in November 2014 giving BM permission to repossess the property. BM didn't take possession of the property. Instead, Mr B has been making interest only payments to BM on behalf of the estate, such that the mortgage capital hasn't yet been repaid and the property is still owned by the estate.

Mr B has raised a number of complaints over time, of which two were referred to the Financial Ombudsman Service. In 2021, we considered a complaint about Mr B being given the impression by BM that the mortgage could be transferred from the estate into his sole name and BM subsequently saying this wasn't possible. In summary, the Ombudsman concluded that BM's offer of £500 compensation to reflect that it could've been clearer with Mr B was fair and reasonable and didn't require BM to do anything further.

When reviewing a second complaint from Mr B in 2023, another Ombudsman said that part of this further complaint was fundamentally the same issue as the one dealt with by the Ombudsman in 2021. The other part related to BM's refusal to agree a further term extension, on which the Ombudsman didn't think BM had acted unfairly.

Later in 2023, Mr B raised further concerns with BM. BM didn't uphold the complaint. In summary, it said the only new issue being raised was to do with it not repossessing the property in 2014 – and on which it didn't think it had acted unfairly.

Mr B referred this complaint to the Financial Ombudsman Service. In summary, the following issues have been raised with both BM and the Financial Ombudsman Service within this complaint:

- BM gave incorrect information to the courts in the lead up to the Possession Order being granted.
- BM ignored the court's decision to repossess the property, causing a financial loss.
- BM has acted unfairly with regards to Mr B's attempts to transfer the mortgage from the estate into his sole name.

An investigator here issued opinions under this case reference and another (ending in

D3B9). In summary, the investigator said:

- The Financial Ombudsman Service couldn't look at Mr B's complaint about information given to the courts ahead of the Possession Order, because Mr B wasn't an 'eligible complainant' under our rules, in relation to that particular issue.
- Mr B hadn't wanted the property to be repossessed, so BM hadn't acted unfairly in not repossessing the property.
- The complaints about BM preventing the mortgage being put into Mr B's name and it not agreeing to a further term extension had previously been investigated by the Financial Ombudsman Service and it wouldn't be appropriate for us to revisit those same issues again.

Mr B asked for the matters to be escalated to an Ombudsman and so both cases have been passed to me. As part of his response, Mr B expressed concern about BM not having given its written consent for the Land Registry to make certain changes to the property title, when he requested this in 2018. He says this has caused further financial losses and unnecessary upset.

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.

In this decision, I am focusing on the following issues (those that relate specifically to the estate):

- Mr B's concerns that that BM didn't repossess the property after the court had issued a Possession Order.
- Mr B's concerns about BM's handling of his attempts to transfer the mortgage from the estate into his sole name, in so far as this has affected the estate.

The concerns relating to:

- Information BM provided to the court ahead of it issuing the Possession Order.
- BM not providing its written consent in 2018 for the property title to be transferred from the estate into Mr B's sole name; and
- BM's handling of Mr B's attempts to transfer the mortgage from the estate into his sole name, in so far as this has affected him personally.

Have been addressed under a different case reference – where Mr B himself, rather than the estate, is the complainant.

That BM didn't repossess the property after the court had issued a Possession Order.

Mr B says that the court order set out that possession of the property should be transferred to BM on or before 4 December 2014. He says he never petitioned the court for a stay on the Possession Order and that it better suited BM to let him reside in the property and continue to make payments on the mortgage. Mr B also says that as more than five years have elapsed since his father's passing, BM is no longer entitled to take any action to recover the debt on the property.

BM says that all Possession Orders remain valid for six years, but that if action is required after that timeframe, BM can apply to the courts for the original Possession Order to be used – which the court would then need to make a decision on.

I cannot see there are grounds here to say that BM isn't entitled to continue to seek repayment of the debt owing by the estate. There is no question that a mortgage balance remains unpaid.

Contact notes show that Mr B has not wanted the property to be repossessed, nor to sell it and repay the capital owed. So, while I appreciate Mr B says that it's been in BM's interest to not repossess the property, it seems its decision in this regard has been based – at least in part – on his express wish to remain in the property, and his choice to keep paying the mortgage so that he could do so. With that in mind, it is hard for me to say BM has acted unfairly or unreasonably in not opting to enforce its Possession Order.

In any case, it's Mr B's responsibility as the personal representative of the estate to settle the estate and he could have taken steps at any point to do so (e.g. by selling the property), but didn't. The mortgage account has also generally been up to date such that there hasn't been a point at which I think BM ought reasonably to have enforced its Possession Order (for example with the mortgage falling into significant and sustained arrears). All in all, I don't think there is a reasonable basis for me to say that BM shouldn't continue to hold the estate responsible for payment of the mortgage debt.

BM giving Mr B the impression the mortgage could be transferred into his sole name and it then not doing this.

The Financial Ombudsman Service will not generally consider a complaint about the same issue more than once. Our rules allow us to dismiss a complaint without investigating it where it relates to something that we've already considered. The Financial Ombudsman Service has finite resources and it's right that those resources are directed towards investigating and resolving disputes that haven't previously been considered. And there needs to be some finality to a complaint, for both parties involved.

The rules (DISP 3.3.4 – available online) do include an exception to this – where material new evidence which we consider likely to affect the outcome has become available to the complainant subsequent to the matter being considered the first time around.

The points Mr B is raising about the impression BM gave him about transferring the mortgage from the estate into his sole name and it then not doing this were considered by an Ombudsman in 2021. I can't see that Mr B has provided any material new evidence likely to affect the outcome. So, I find that it would not be appropriate for us to look into this part of Mr B's complaint again.

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 the estate of Mr B to accept or reject my decision before 12 June 2024.

Ben Brewer
Ombudsman