

The complaint

Mr and Mrs B complained that their let to buy mortgage application was declined by Bank of Scotland plc trading as Birmingham Midshires. They've said this was due to errors made by Birmingham Midshires.

What happened

Mr and Mrs B wanted to move house and rent out their current residential property. To that end they applied – through a mortgage broker – for a let to buy mortgage with Birmingham Midshires for their current property and a new residential mortgage with Halifax for the new property.

There were issues with both lenders in that Mr B's name was changed in error on the applications which led to multiple soft credit searches being carried out each time it was changed and changed back. There were also other issues with how the broker had keyed the applications, which were corrected, and I understand the projected rental income wasn't seen to be as high as the broker had put on the application.

The Halifax mortgage application was declined and the broker raised an appeal against that decision. On 8 July 2022 The Halifax underwriter emailed to confirm that he would overturn the decline decision for the Halifax application, on the understanding *"Provided there is no new borrowing or adverse..."*

The Halifax application went to offer and subsequently completed in mid-August.

In the meantime the Birmingham Midshires application was declined on 21 July 2022, a decision that wasn't appealed at the time.

In December 2022 the broker raised a complaint with Birmingham Midshires. In that he set out the details of what he said had happened, and said that on 22 September 2022 he'd applied for a new let to buy application with Birmingham Midshires and that was accepted. He said that due to the mini-budget at the end of September rates had increased to the point an application now couldn't be made as it wouldn't meet the stress test.

Birmingham Midshires didn't uphold the complaint. It said it didn't know why Mr B's name had been changed but in any event the application wouldn't have been successful as it didn't meet Birmingham Midshires' affordability criteria and there were discrepancies between the applications. It said it couldn't disclose any further information and recommended Mr and Mrs B contact a credit reference agency to review their outstanding credit commitments.

The complaint was looked at by one of our Investigators. Whilst he didn't uphold the main thrust of the complaint as he didn't think the application would have been successful anyway, he said Birmingham Midshires should pay £200 compensation for the error made in amending Mr B's name.

Birmingham Midshires accepted our Investigator's findings and recommendation for compensation. Mr and Mrs B didn't agree and so the complaint has been passed to me to decide.

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 trust Mr and Mrs B won't take it as a discourtesy that I've condensed their complaint in the way that I have. Although I've read and considered the whole file I'll keep my comments to what I think is relevant. If I don't comment on any specific point, it's not because I've not considered it but because I don't think I need to comment on it in order to reach the right outcome.

I've carefully considered the legal arguments Mr and Mrs B have made. But the Financial Ombudsman Service is an informal alternative to the courts. It may be the courts would look at this matter differently, but my role is to concentrate on what I consider fair and reasonable. If Mr and Mrs B feel their claims have merit, then they can test that in court if they wish. However I would urge them to get independent legal advice first.

We're not the regulator, and I've no power under our terms of reference to comment on, or otherwise determine, how financial businesses operate in general terms. I have to consider this complaint by reference to Mr and Mrs B's particular situation. When I do that, I don't uphold this complaint. I'll explain why below.

Whilst Birmingham Midshires agreed to the application in principle, that was all it was; an agreement in principle. The application was always then subject to full underwriting and a decision on whether or not Birmingham Midshires was willing to lend once it had all the supporting evidence and information it needed.

Mr and Mrs B have said their broker told them that any affordability issues are taken into account at the agreement in principle stage, and he's right that they are. However affordability is an ongoing consideration as the agreement in principle stage is based on what has been declared and what is found on a search. Sometimes that information is wrong or incomplete which leads to an application passing the agreement in principle stage when it wouldn't have if the correct or complete information had been declared/found. On other occasions whilst the application passes the agreement in principle affordability check, when an underwriter looks at everything in full they have concerns about the lending proposal overall. So it isn't as simple as saying once an application passes the affordability check at the agreement in principle stage that affordability is then settled and the application can't later be declined.

Mr and Mrs B's broker appealed the decline decision from Halifax and that was overturned. It is unfortunate the broker didn't do the same here with Birmingham Midshires as, had he done so, it may be the application would have been agreed at that time. However, as he didn't make an appeal at the time we can't say for sure what would have happened; it's possible the application would still have been declined.

Mr and Mrs B's broker said he didn't appeal the Birmingham Midshires decline decision at the time because he (and Mr and Mrs B) were worried that more searches would affect Halifax's decision. The broker said

"If you remember the senior underwriter stated that he was prepared to support your Halifax application as long as there was no new Lending or adverse appearing on your

credit file.

Too many searches can definitely affect credit scores and with this in mind the protection of your main Residential application was my overriding concern.”

But the Halifax underwriter didn't say Mr and Mrs B's credit score must remain the same, only that they shouldn't take out any new lending and that no new adverse credit should appear on their credit files. Adverse credit markers are missed/late payments made to existing credit agreements, not further soft credit searches made for a linked application the underwriter was aware of.

It seems unusual that the broker didn't think to query this either with Birmingham Midshires, or with the Halifax underwriter that he'd already spoken to, at the time in question. He could have let Birmingham Midshires know about the successful Halifax appeal, and asked the Halifax underwriter if an appeal with Birmingham Midshires would impact the residential mortgage application. Had he done so either the application would have been successful, and the mortgage would have completed, or a full answer would have been given as to why Birmingham Midshires was unwilling to lend.

Instead the broker did nothing until September when he completed another agreement in principle. But as I've explained above, a successful agreement in principle doesn't guarantee any application would be successful as it would still be subject to full underwriting, so the fact the September agreement in principle was accepted doesn't mean the previous application wouldn't have been declined had an appeal been made.

As part of the complaint process a Birmingham Midshires underwriter looked at the application again and said they wouldn't look to approve it. Whilst I can't provide a copy of their decision as it contains information that is commercially sensitive I've reviewed it in full and I'm satisfied that assessment was fairly considered and the outcome wasn't unreasonable.

At the heart of this complaint is a lending decision Birmingham Midshires made. Birmingham Midshires was entitled to decide for itself whether or not it was prepared to grant the mortgage Mr and Mrs B wanted. There was no obligation on it to lend. Whilst it had given an initial indication that it might be prepared to do so, that was all it was – an indication. A decision to agree a mortgage was always subject to the lender's assessment of a full application.

I have to decide whether Birmingham Midshires dealt fairly with Mr and Mrs B's application and gave it proper consideration. Its records satisfy me that it did, and that it exercised its commercial discretion legitimately. I'm also satisfied that it dealt with the application in a reasonable timeframe. For that reason I make no award for the loss Mr and Mrs B say they've incurred due to not being able to obtain the interest rate product they applied for with Birmingham Midshires.

All that said, I agree with our Investigator that the issue with Mr B's name would have caused confusion and for that I also agree that £200 compensation should be paid.

My final decision

I uphold this complaint in part and only insofar as I order Bank of Scotland plc trading as Birmingham Midshires to pay £200 compensation to Mr and Mrs B for the confusion caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs B to accept or reject my decision before 13 January 2024.

Julia Meadows
Ombudsman