

Mr A complains that The Mortgage Business Plc took action to possess his property, unfairly and without warning.

What happened

Mr A took out an interest only mortgage with TMB in 2004. The term expired in 2014. He says he wanted to change to a repayment mortgage, but TMB didn't help him with this. So he continued to make monthly payments. Mr A says TMB didn't follow the correct process to start possession action and it didn't respond to his questions.

Our investigator didn't recommend that the complaint be upheld. She said TMB had been in regular contact with Mr A and given him time to put forward proposals to repay the balance. While TMB hadn't responded specifically to Mr A's letters, it had addressed the main issues with him in its communications and its final response letter. TMB had considered Mr A request for a repayment mortgage, but said this wasn't affordable. Our investigator said TMB hadn't behaved unreasonably or unfairly.

Mr A didn't agree. He wants TMB to respond to every point in his letters. And he wants signatures on court documents to be checked and verified by a handwriting expert

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.

The term of Mr A's mortgage expired in 2014. He has an outstanding balance of £175,000. Mr A and TMB didn't reach agreement about how the mortgage would be repaid. TMB started legal action and was granted a possession order in mid-2019.

Mr A says TMB didn't follow the correct process in taking legal action. He says it hasn't responded specifically to each question in his letters of complaint. And it hasn't responded to his request for a repayment mortgage.

We offer an informal dispute resolution service. Consistent with this, I won't address each individual issue raised by Mr A in his letters. Instead, I'll focus on what I think is at the heart of this complaint: that Mr A has an unpaid mortgage balance, he believes TMB acted unfairly in taking recovery action and he'd like to agree a way to repay it without selling his property.

Mr A borrowed the money from TMB and he does have to pay it back. Fairness requires, as a starting point, that he did so when it was due at the end of the term. Unfortunately, Mr A's circumstances didn't allow this.

Rules on mortgage regulation require lenders to assess affordability and, in the case of interest only mortgages, repayment strategy before offering or varying mortgages. There are certain exceptions to this for mortgages taken out before 2014, as Mr A's was. In brief, TMB didn't have to decline Mr A's requests for a repayment mortgage or extension of his interest only mortgage due to issues with affordability or repayment strategy if the proposed change was otherwise in his best interests.

I should say here though that I think it's reasonable for TMB to consider affordability and how the mortgage will be repaid when assessing what's in Mr A's best interests.

TMB says it doesn't offer lifetime mortgages. It says a repayment mortgage isn't affordable for Mr A. As Mr A's income is from a pension it seems unlikely this will change. It says it can't offer him an interest only mortgage for a fixed term as Mr A doesn't have a strategy to repay the balance.

In mid-2019 TMB referred Mr A to an adviser, at no cost to Mr A, to look into whether he'd meet criteria for a lifetime mortgage with another provider. I don't know if Mr A discussed his options with the adviser, or if he's taken independent advice elsewhere. If not, he could consider doing this.

Otherwise, Mr A has limited options and there's nothing to suggest his position will improve. It seems Mr A has no means to repay the mortgage other than by selling the property. Based on what TMB's notes say, Mr A has equity in his property currently. He could sell the property, repay the mortgage and have some funds left to help him find a new home. There's no guarantee this will continue to be the case if his interest only mortgage is extended – and Mr A will have paid more interest in the meantime. Mr A says he's vulnerable due to his age and ongoing health conditions. It's possible that moving home will become more difficult for him in future.

I don't think it's in Mr A's best interests for TMB to change his mortgage to a repayment basis if he can't afford the monthly payments. Nor, for the reasons above, is it clearly in Mr A's best interests for TMB to extend his interest only mortgage. So I don't think it's reasonable or fair to require TMB to offer him a new mortgage or term extension.

Mr A would like TMB to contact him on his mobile phone as he's away from home a lot. He's frustrated that he wasn't at home when field agents visited the property. He says if TMB had communicated better, court proceedings could have been avoided.

Mr A might not have seen letters and notices from TMB immediately if he was away from home. But TMB has to send some notices and communications in writing. I think it's reasonable for it to send them to Mr A's address. I think it's reasonable for it to ask field agents to try to contact Mr A at his address. And TMB also says – supported by its records – that it tried to reach Mr A by phone. TMB's contacts (or attempts at contact) about it taking legal action took place over the six months before the court hearing. I think it made reasonable efforts to contact Mr A about the steps it was taking.

It seems unlikely that matters would have been different if TMB had been in contact with Mr A. He's been aware of the legal action for about a year. And he was referred to a mortgage adviser at about that time. The mortgage balance remains unpaid, and no agreement has been reached about how to repay it.

TMB responded to the main issues raised by Mr A. I don't think it needed to respond to each issue individually, or in the same order or using the same format as Mr A's letters. And I don't think the situation would have been different or better if it had. Mr A has recently raised concerns about the signatures on court documents. As this wasn't part of the complaint he brought to us, I can't consider it here.

The court issued a possession order. TMB put recovery action on hold while we looked into Mr A's complaint. And due to the Covid-19 pandemic and related Government restrictions, the regulator issued guidelines which say that lenders can't take or resume possession action until November 2020. This gives Mr M a few months' breathing space.

I'd encourage Mr A to use that time to explore what options might be available to him, and consider whether to take independent advice if he hasn't already. He should keep TMB informed about the steps he's taking to repay the mortgage, either by re-mortgaging or selling the property. I'd expect TMB to continue to treat Mr A fairly as he takes the necessary steps to repay the mortgage – but, ultimately, if he's not able to it is entitled to take possession as a last resort.

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 A to accept or reject my decision before 12 August 2020.

Ruth Stevenson
Ombudsman