

### **The complaint**

Ms C's complaint is about a mortgage account with Mortgages plc. Ms C is unhappy that a payment made to redeem the mortgage via a third party's account was returned by Mortgages plc and was not used to pay off the mortgage.

Ms C is also unhappy that Mortgages plc failed to respond to her representative, Mr S, and that it has contacted her about the mortgage, which she believed was paid off in January 2020.

To settle the complaint, Ms C would like an apology, and a refund of fees and charges added to the account since January 2020. Ms C would also like to be compensated for financial loss and trouble and upset caused to her.

The complaint has been brought on Ms C's behalf by Mr S.

### **What happened**

The events leading up to the complaint can be summarised briefly. On 22 January 2020 Mortgages plc was sent a payment of £30,042.05 to redeem Ms C's mortgage. However, the payment had not come from Ms C, but was sent by Mr S from his account.

On 23 January 2020 Mortgages plc telephoned Ms C, who said she would call back, but did not. On 24 January 2020 Mortgages plc spoke to Ms C and explained that they needed to know where the payment had come from. Ms C said they should speak to Mr S. It was explained to Ms C that, although Mr S had Ms C's authority to discuss the account, there was no third party authority to allow him to make payments on her behalf and so the money would have to be returned.

Ms C said she would speak to Mr S and would call back in half an hour, but she did not. The payment was returned to the originating bank on 27 January 2020. Over the next few months Mortgages plc tried to contact Ms C, but without success.

On 8 June 2020 Mr S wrote to Mortgages plc, but the letter was overlooked and not replied to until 29 July 2020.

On 30 June 2020 Ms C telephoned Mortgages plc. She was unhappy that she was receiving text messages and phone calls. Ms C said she had paid off her mortgage in January, but the payment had been returned. Ms C said nobody had contacted her to tell her this. Ms C was also unhappy that Mr S's letter had not been responded to.

On 29 July 2020 Mortgages plc issued its final response letter. In the letter it was explained that it wasn't possible to accept a payment from a third party and that this had been discussed with Ms C on 24 January 2020. Mortgages plc clarified that the majority of its

contact since then had been to see if Ms C had been affected by the pandemic and needed any assistance from Mortgages plc. However, it hadn't been able to speak to Ms C.

Mortgages plc didn't uphold the complaint about returning the money. But it was acknowledged that the letter from Mr S sent on 8 June 2020 should have received an earlier response. Mortgages plc offered Ms C compensation of £25 for this.

Dissatisfied with this, Ms C (through Mr S) brought her complaint to the Financial Ombudsman Service. An investigator looked at it but didn't think Mortgages plc had acted unfairly. He noted Ms C had been advised within two days of receipt that the payment couldn't be accepted and that she had said she would speak to Mr S and call back – but did not.

The investigator also thought the contact from Mortgages plc after that was appropriate, and wasn't persuaded that Ms C had been harassed. He explained that third party authority to discuss the account didn't mean Mortgages plc was required to substitute Mr S as the main correspondent on the account. Consequently, he didn't think Mortgages plc had done anything wrong in contacting Ms C.

Mr S, on behalf of Ms C, didn't agree with the investigator's findings. In his response dated 26 May 2021, Mr S said he was dissatisfied at the length of time it had taken for the complaint to be dealt with – which he attributed to racial discrimination based on Ms C's ethnicity. Mr S also made various points about when the investigator's letter was "*deemed served*" and what constitutes a working day for the purpose of service of documents.

Mr S also said that Ms C was not concerned with the appearance of fairness or unfairness. Rather, Ms C wanted to know if Mortgages plc was permitted to reject the payment, and under which financial regulation or financial law this was sanctioned.

Mr S asked that the complaint be escalated under the "*next steps protocol*" either within the Financial Ombudsman Service or to some "*higher body that has overarching and substantive authority to further investigate this most serious complaint directed to a member of the public within the financial service sector*".

### **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 will begin by clarifying that the Financial Ombudsman Service is a service set up by Parliament under the Financial Service and Markets Act 2000 to investigate disputes between financial businesses and their customers. We are not a regulator or a court, and our processes are informal. We are not subject to the rules of service contained in the Civil Procedure Rules, nor any protocol. The rules under which we operate, known as the DISP rules, are published by the regulator, the Financial Conduct Authority.

I will also mention that our complaints process doesn't include us obtaining any information about a consumer's ethnic origin. So although I've noted Mr S's perception that the delay in dealing with Ms C's complaint might be as a result of her ethnic origin, there was no information in our file from which Ms C's ethnic origin could be known, until we received Mr S's letter of 26 May 2021 in which Ms C's ethnic origin is first alluded to.

That said, I am sorry for the delay in the complaint being allocated to an investigator, which took longer than we would have liked, due to the pandemic. But once it was with the investigator, I can see he was able to look into the complaint quickly.

Mr S says that Ms C isn't concerned with fairness or unfairness. But I am legally required and duty bound, under the Financial Services and Markets Act 2000, to reach a decision on the basis of what I think is fair and reasonable. This is the overarching principle under which the Financial Ombudsman Service operates.

Turning now to the complaint points, I've reviewed what happened. I'm satisfied that Mortgages plc contacted Ms C the day after the money was received to pay off the mortgage. She wasn't able to discuss the matter that day, but did so the following day, 24 January 2020, when Ms C was told that the third party payment would need to be returned. I note Ms C told Mortgages plc in June 2020 that nobody had explained this to her, but I am afraid she is mistaken about this.

So I'm satisfied that Ms C was made aware of the position almost immediately after the payment had been made. Consequently, Ms C could, I find, have taken steps to arrange for the payment to be made to her, and then transferred from her account to Mortgages plc.

There are various legitimate reasons why mortgage lenders (not just Mortgages plc but other lenders) won't accept third party payments.

One reason is that, where a third party who is not on the account makes payment towards a mortgage, that party might later claim an equitable or beneficial interest in the property as a result of having paid the mortgage. This generally arises in situations where the parties are cohabiting but only one is on the property title and mortgage account, which I understand is not the situation here. But in any event, Mortgages plc is entitled to ensure that its security isn't affected by third party payments that might give rise to a claim for an equitable interest in the property. As a result, Mortgages plc will not accept third party payments from an unknown source.

But the main reason lenders generally don't accept third party payments is because of anti-money laundering regulations, more specifically The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017.

At this juncture, I must emphasise that I am not in any way accusing Ms C or Mr S of money laundering, but Mr S asked for clarification of why the payment was refused, and I am providing that clarification.

Borrowing funds to purchase a property presents a number of options for laundering money. The most obvious option may seem to be at inception with the payment of the deposit, but in my experience this option is rarely used. This is because someone wanting to launder funds will know that this stage of the process requires both the conveyancing solicitor and mortgage lender to carry out thorough KYC (Know Your Customer) checks. So a more likely method for successful laundering is through either the regular overpayment or a one-off overpayment of a loan.

Because of this, all mortgage lenders are required to know – and are entitled to ask – about the source of payments if those payments are not made from the customer's own bank account from which regular payments are received, even more so if the payment is a large lump sum as it was in this case. If the source of the funds can't be confirmed, Mortgages plc has a process in place to reject payments from third parties who do not have payment authority for the account in question. I'm satisfied it is reasonable for Mortgages plc to have a process to ensure compliance with money-laundering regulations.

In Ms C's case, there was no third party payment authority on file, only a third party authority from October 2019 for Mr S to discuss the account. In the circumstances, I don't think Mortgages plc did anything wrong in rejecting the payment where there was no authority to receive it. I also think it was reasonable for Mortgages plc to contact Ms C rather than Mr S. Ms C is the account holder, and so was the most obvious party to be able to provide confirmation of the source of the funds.

I'm satisfied Ms C knew on 24 January 2020 that the funds were to be returned. I also think it's likely Mr S would, or should, have known the money had been returned to his bank account on 27 January 2020. Given this, I think Ms C had the opportunity by the end of January 2020 to mitigate her position by arranging for Mr S to make the payment directly to her, so that Ms C could forward the money on to Mortgages plc to redeem her mortgage.

Because Ms C did not mitigate her position, I'm not persuaded it would be fair or reasonable for there to be any refund of interest, fees or charges on the account, nor any adjustment to Ms C's credit file.

Mortgages plc has offered Ms C £25 for not responding to Mr S's letter of complaint dated 8 June 2020 until 29 July 2020. Mortgages plc did, in fact, respond to the complaint within eight weeks of receiving it, in compliance with DISP 1.6.2, but should have acknowledged receipt of the complaint promptly.

The way in which Mortgages plc deals with complaints isn't an activity covered by our rules, but I can see a payment of £25 has been offered for not acknowledging the letter, which seems fair in the circumstances.

I appreciate this isn't the outcome Ms C was hoping for, but after taking account of everything that happened, I'm satisfied Mortgages plc hasn't done anything wrong.

### **My final decision**

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

This final decision concludes the Financial Ombudsman Service's review of this complaint. This means that we are unable to consider the complaint any further, nor enter into any correspondence about the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C to accept or reject my decision before 14 July 2021.

Jan O'Leary  
**Ombudsman**