

## **The complaint**

Mrs H complains The Mortgage Works (UK) plc (TMW) refused to agree the transfer of equity on her buy to let property mortgage, resulting in her incurring unnecessary charges.

## **What happened**

Mrs H says she approached TMW to inform them that she and her husband had separated and the two buy to let properties they owned, were to be split into their individual names as part of their divorce settlement. Mrs H says she explained on numerous occasions that property A was to be transferred into her sole name with the existing tenants and she required the existing mortgage to be transferred into her sole name. Mrs H says she informed TMW, that property B's buy to let mortgage (BTL) would be repaid in full and her husband would take sole ownership of that property where he would then live going forward.

Mrs H says she was told by TMW staff in mid- August 2020 that this process would take between five to seven days to complete, but TMW delayed matters and it eventually declined her transfer of equity request on her BTL. Mrs H says this meant she had no other option but to repay the BTL on property A and pay an early repayment charge (ERC) of around £3,000, as she had a deadline of the end of August 2020 to complete matters, under the terms of her divorce agreement.

Mrs H wants TMW to reinstate the BTL on property A, refund the ERC and pay her compensation for the inconvenience caused.

TMW says it couldn't guarantee how long it would take to agree to a transfer of equity application, and there was further information it needed that added to the time taken here. TMW says it declined Mrs H's transfer of equity application as it had concerns over the fact Mrs H's husband would be residing in property B going forward and it wasn't able to do that, as it would breach the terms and conditions of the BTL.

Mrs H wasn't happy with TMW's response and referred the matter to this service.

The investigator looked at all the information available and upheld Mrs H's complaint. He felt that Mrs H had made clear the BTL on property B, was to be repaid at the same time the transfer of equity in property A was made to her and that BTL was to be in her sole name. The investigator says he felt TMW's decision to decline Mrs H's request was unfair, as no mortgage on property B would be in place at the time the transfer of property A to Mrs H's sole name, took place. The investigator felt TMW should refund the ERC. In addition, the investigator felt TMW should pay Mrs H a total of £200 in compensation for the trouble and upset caused.

TMW didn't agree with the investigator's view and asked for the matter to be referred to an ombudsman for a final decision.

## **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.

Having done so, I have come to the same outcome as the investigator and I will explain how I have come to my decision.

I can understand it would have been upsetting for Mrs H to have her request for the transfer of equity in property A declined at the last moment, resulting in her having to pay off the BTL on it and incur ERC'S as a result.

When looking at this complaint I will consider if TMW acted reasonably when it decided to decline Mrs H's transfer of equity (TOE) request on property A and charge her the ERC on her BTL.

While I have been provided with numerous telephone call recordings I won't be commenting on these individually, that's not to say I haven't listened to them, I have - but I don't think it's necessary in order to come to a full and impartial decision here.

It's worth clarifying the transactions involved, following the separation of Mrs H from her husband. The main matrimonial home (X) was being sold, Mrs H was moving into a new home (Y) with this property being financed elsewhere.

At the same time the two buy to let properties mortgaged with TMW, owned jointly by Mrs H and her husband at that time, property A and property B were to be split with Mrs H owning property A and her husband taking property B, as part of the divorce settlement. Following Mrs H's TOE request, property A was to be transferred into her sole name with the existing BTL also being transferred into her sole name, keeping the existing tenants in place. Property B was to be transferred into Mrs H's husband's sole name, with the existing BTL outstanding on that property to be repaid – all these transactions were to happen simultaneously to meet the requirements of the divorce settlement.

Having listened to various telephone conversations and read the file notes provided to this service, it's difficult to say TMW weren't made aware by Mrs H, in earlier telephone conversations leading up to the TOE request, the circumstances sitting behind it. This was important as not only did Mrs H advise TMW of the urgency of the case when she rang in early August 2020, she did explain why she was asking for property A to be transferred to her name solely – that her husband was to move into property B, having first repaid the BTL on it.

Mrs H has made the point that TMW told her the process would only take 5-7 days to complete, but having listened to the phone calls, while this timescale was given initially, that was only referring to the underwriters assessment, provided all the information was available to them. Here, Mrs H needed to provide identification as her signature was different to that held on file and at the same time Mrs H was looking to change her name, which would have added to the time needed to process and approve her TOE request. That said, I'm satisfied there was still reasonable time available for TMW to have approved Mrs H's TOE request, as it was in fact declined on 27 August 2020, so with that in mind I will focus my decision on whether or not TMW acted fairly when it decided not to support Mrs H's TOE request, rather than the time it took to make the decision it did.

From what I can see, the full background to Mrs H's TOE request may not have been fully understood by the underwriters. I say this as from the underwriters notes it states the reason for the decline of the TOE was *"It is a breach of T&C moving to BTL."* TMW have further explained what it meant by this, and have told this service that agreeing to the TOE would have meant consenting to Mrs H's husband residing in property B.

While I understand the point TMW are making here, that would only have been of concern to them if it was going to continue to provide a BTL on property B – but that wasn't the case here. In the same note from the underwriters it comments that property B was subject to a BTL with them, but it is about to be repaid – so it's fair to say TMW were aware that this was going to happen and this was central to the application for Mrs H's TOE request on property A. If TMW needed any further reassurances on this point, then it could have simply obtained an undertaking from Mrs H's solicitor to confirm this.

While it's not for me to tell TMW it must agree to provide the TOE request, it's fair to say, for the reasons I have already explained, the reason behind its decision to decline the TOE remains at best confused. TMW have told this service “*Mrs H's husband was going to be moving into the BTL property and at the time of the assessment the mortgage account wasn't redeemed*”. But what is important here is, the BTL would have been redeemed at the same time property A was being transferred into Mrs H's sole name, so there wouldn't have been a situation where Mrs H's husband lived at the property, while the BTL was still outstanding, which doesn't seem to have been taken into account.

It's worth saying that perhaps the communication between both parties could have been clearer and in hindsight the application form for the TOE probably needed more detail, but here even after some clarification had been provided, TMW seem to have not fully understood what it was being asked of. It's reasonable to say if TMW were unsure as to how the transactions would work, they could have asked Mrs H's solicitors to provide the reassurances it needed – but that didn't happen here.

With that in mind, like the investigator I don't feel Mrs H has been treated fairly here and I am satisfied given the timings of the various transactions, which were dependent on one another, Mrs H was left with little option but to repay the BTL on property A and pay the ERC that was due. For the reasons I have already given, I feel this situation could have been avoided, and it follows TMW should refund the ERC it charged Mrs H and additionally, TMW should pay Mrs H £200 for the trouble and upset caused.

While TMW will be disappointed with my decision, I am satisfied this is a fair outcome here.

### **Putting things right**

I instruct The Mortgage Works (UK) plc to refund the ERC it charged Mrs H when she redeemed the BTL on property A and additionally, pay her £200 for the trouble and upset caused.

### **My final decision**

My final decision is that I uphold this complaint.

I instruct The Mortgage Works (UK) plc to refund the ERC it charged Mrs H when she redeemed the BTL on property A and additionally, pay her £200 for the trouble and upset caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 25 April 2022.

Barry White  
**Ombudsman**