

## The complaint

Mr E has complained about how Oakwood Homeloans Limited has treated him since his mortgage term ended in 2016. He is a vulnerable consumer and says that Oakwood forced him to sell his house for less than it was worth due to the pressure he was placed under. He also says that he was unable to remortgage due to information Oakwood recorded on his credit file, and he was unable to work which meant he didn't receive all the income he should have done.

## What I've decided – and why

I issued my provisional decision in April 2022, the findings of which said:

*"It is clear that things have been incredibly difficult for Mr E for a long time. I won't go into any details about that in my decision to protect his privacy, but I can reassure Mr E that I've read and considered everything he has said and provided.*

*Mr E has said that, in 2018, the judge adjourned matters for an indefinite period, so he is unhappy that Oakwood took things back to court not long afterwards. That individual hearing was adjourned due to Mr E's ill-health that day, but I can't see anything to indicate the judge ruled matters should be adjourned indefinitely. If that was the case I would have expected to see a court order detailing that. Instead it seems the hearing was simply rescheduled for a few months later.*

*There were further court hearings after the one Mr E says he felt the judge ruled matters were to be adjourned indefinitely in. Had there been a ruling that matters be adjourned indefinitely the time and place for Mr E to raise that would have been in the court hearings that followed. I don't find that Oakwood did anything wrong in proceeding with litigation as I've not seen any evidence to suggest the judge ruled matters be adjourned indefinitely.*

*Mr E has said that he had a remortgage in place, and the only reason that couldn't go through is because the lender did a further credit check and that showed two missed payment markers Oakwood had placed on his credit file. Mr E says those markers are incorrect as he'd paid his mortgage in advance – he's said he was making large advance payments of £2,000 a month when the markers were put on. He's also asked why Oakwood didn't continue to put the markers on each month thereafter.*

*Firstly, I should make it clear that the markers Oakwood put on were missed payment markers, not defaults as Mr E has referred to them as. Defaults are a very different thing to – and much more serious than – missed payment markers. Oakwood hasn't put any default markers on Mr E's account, it has put two missed payment markers on.*

*The missed payment markers were put on the account in January 2017 and February 2017. I've looked at the transaction history for the mortgage for that period and I can see that the Department for Work and Pensions ("DWP") was making payments to the mortgage for a number of years, with the last full payment being made in November 2016 and then it made a part payment in December 2016. The last payment Mr E had made himself at that point was in May 2010. No payments were made by either the DWP or Mr E*

*in January 2017 or February 2017. Mr E then paid £1,260 in March 2017 which covered the January and February payments.*

*Mr E didn't make his first £2,000 monthly payment until April 2017, so after the missed payments that were reported on his credit file. Whilst the DWP payments were higher than the interest due, Mr E's mortgage doesn't allow for credit to be built up to then allow the borrower to "miss" payments. Instead the DWP overpayments just came off the mortgage balance, and so reduced the amount of interest that was due.*

*The terms and conditions of the mortgage state "You will make a monthly payment to us on each payment day..." With 'monthly payment' defined as "the amount which you are required to pay each month..." and 'payment day' as "the day in each month on which you are required to make a monthly payment..."*

*From this we can see that the terms of Mr E's mortgage are that a payment must be made every month on the payment day.*

*As no payments were made to the mortgage in January 2017 and February 2017 the information Oakwood reported to the credit reference agencies about Mr E's mortgage – in that he missed the payments in those months – is correct. To answer Mr E's question about why Oakwood didn't report ongoing arrears – that was because, in March 2017, he made a payment to cover the missed payments and brought the account back up to date.*

*Oakwood reported arrears to the credit reference agencies when Mr E missed his mortgage payments. Like all lenders, Oakwood has a responsibility to report that information accurately, as it has done. There are no grounds for me to order Oakwood to amend Mr E's credit file information as it is a true reflection of the conduct of his mortgage account. If Mr E wants to add an explanation to his credit file, he can contact the credit reference agencies directly and ask to add a notice of correction, that way other lenders can read Mr E's explanation for the situation when they are deciding whether or not to lend. But I can't order Oakwood to remove the missed payment markers as they are an accurate representation of what happened.*

*For that reason I can't hold Oakwood liable for the fact Mr E was unable to secure a remortgage to repay his Oakwood mortgage.*

*Mr E has said he sold his property for £245,000 when it was worth £300,000. He says he did so due to the pressure from Oakwood.*

*Mr E has said "Just to clarify, the property was not officially sold in Dec 2018 - I had no offers made for my property until [sic] late Jan 2019 it was then I reluctantly agreed to exchange contracts in Feb 2019 to sell at £55,000 below market price". But that's not supported by the evidence Mr E supplied to us from his solicitor. Mr E's solicitor said "[The property] was sold subject to Contract towards the end of 2018."*

*It seems from the contact notes that Mr E told Oakwood back in early 2018 that the property was on the market, and throughout 2018 he said he received various offers. The contact notes indicate he told Oakwood:*

- 8 March 2018 that he had turned down an offer of £200,000 as it is £90,000 under market value.*
- 7 June 2018 that he had turned down a few offers of between £220,000 and £230,000 as he believes they are too low, albeit when Oakwood checked it couldn't find any record online of the property being marketed.*
- 15 June 2018 that he had received an offer for the property (amount not noted).*
- 7 August 2018 that he had accepted an offer of £299,000 but there was a chain involved so no timescales could be provided for completion.*
- 13 August 2018 that he had agreed a sale price of £290,000 and he would send evidence of this from his solicitor.*
- 14 August 2018 he had accepted an offer for £250,000 and he would send proof of that from the estate agent. The notes indicate Oakwood received the evidence.*
- 17 September 2018 the valuer – in respect of the £250,000 offer – had been out to value the property the week before.*
- 8 November 2018 he said the sale had fallen through and he was now looking to remortgage (this is the remortgage I mentioned earlier in this decision).*
- 9 November 2018 Mr E's representative phoned and said the property was back on the market.*
- 27 November 2018 Mr E's representative said the property was on the market for £295,000 and she felt it was worth £270,000.*
- 29 November 2018 he is thinking of reducing the asking price to £250,000.*
- 6 December 2018 Mr E's representative said she now has Power of Attorney to sell the property, she had reduced the marketing price to £250,000, and has viewings in place.*
- 25 January 2019 a third party advised that contracts had been issued to the buyer's solicitor on 2 January, and a final valuation was due to take place the following week (the context to the 'final valuation' is explained in the contact notes as "we note that repairs to the roof were required to be completed before the survey could be instructed").*

*The mortgage term had ended in June 2016 and so at that time the full mortgage debt became immediately due. The court – after considering everything both sides said and provided – granted Oakwood an Order for Possession in March 2017, which said Mr E was to give possession of the property to Oakwood by 24 April 2017. There were various hearings after that with Mr E trying to retain possession of his property, with the final hearing being on 13 August 2018 when Mr E's last appeal was dismissed. Despite that Oakwood still allowed Mr E until March 2019 for a sale to complete.*

*At the time contracts were exchanged on the sale it seems - from what the contact notes indicate Mr E told Oakwood - that the property had been on the market for a year and that various offers had been made in that time which were mostly around the level of (or below) the one that proceeded to completion.*

*Mr E has said his property was sold at well below market value but in reality a property is only worth what a buyer is willing to pay for it. Mr E says his property was worth £300,000 but the potential buyers didn't agree. The marketing literature, from what I can see online, had no internal pictures and the property description said that the property requires modernisation and redecoration. The contact notes indicate the roof needed repairs before a final valuation could be carried out. Whilst Mr W has said that online estimates indicate his property was worth more, those are simply figures based on average sale prices in the wider area and aren't specific based on the actual property, and the condition of that property.*

*In any event, Oakwood did nothing wrong in insisting the debt was repaid and if the only means Mr E had to do that was to sell the property then that was what he needed to do. At the time the property was sold the mortgage debt was over two and a half years overdue and Oakwood simply didn't have to allow any more time.*

*Mr E has said that he was unable to return to work because of how Oakwood treated him – he said this led to him missing out on earnings of £5,000 a month. I've considered this point very carefully but, having done so, I'm unable to uphold this part of Mr E's complaint. I'll explain.*

*Oakwood didn't receive the correct Third Party Authorisation Form until 8 January 2019. Before then Oakwood spoke to third parties upon receiving individual verbal authorisation each time from Mr E, but until it had a formal third party authorisation in place it was unable to deal with any third parties proactively. This meant any calls it needed to make outbound had to be to Mr E.*

*In any event, I can't consider any calls before 23 January 2019 because Oakwood responded to a complaint about those on that date, and it had responded about earlier calls in its earlier final response letters. As I explained in my decision about our jurisdiction, those complaints weren't referred to us in time and so we can't consider them.*

*Oakwood had noted on the account that Mr E was vulnerable, and once it had the correctly completed third party authority I can see that it only made one attempted call to Mr E, which was on 25 January 2019 and he didn't answer it. In its response to our investigator's assessment Oakwood accepted it shouldn't have tried to call Mr E that day, and for that error it offered £200 compensation.*

*Mr E has provided conflicting information about whether he was working or not. The contact notes indicate Mr E told Oakwood:*

- 5 August 2016 he will be returning to work on a self-employed basis in October of that year, with a contract for which he would be paid £2,500 a month. He said the director of the company he would be working for was a friend of his.*
- 20 December 2016 he will be returning to work on 3 January 2017 and that he will be receiving a £1,700-£1,800 monthly retainer, and then monthly bonuses of about £300-£400. Oakwood asked for various pieces of evidence to show income and expenditure which weren't received.*

- 20 March 2017 he said he will be receiving £2,000 a month from 1 April 2017. The evidence Mr E provided indicated it was only for 12 months and then would be reviewed. Mr E said he would contact the employer to ask them to send a letter saying that upon the 12 month review his income should increase rather than decrease.
- 31 March 2017 Mr E said the employer was now willing to pay him £3,000 a month plus £500 a month in bonuses. He also said he had an interview for a second job that he would work evenings and weekends. A letter was received from the first employer saying it would pay Mr E £3,000 a month, and that it would be reviewed in 12 months.
- 10 April 2017 he said he'd got the second job and would be starting on 1 May 2017. Later notes indicate Mr E said he'd be receiving a £2,000 a month retainer and would receive an annual bonus of £2,000.
- 12 April 2017 a letter was received from the first employer saying Mr E's contract was now permanent and the retainer will be reviewed every 12 months.
- 1 August 2017 Mr E said he'd previously sent the bank statements that were required for his term extension appeal, and he would send them again the next day by recorded delivery. He said he was unable to scan and email them across as he was emailing from work and didn't want his personal issues to be seen at work.
- 4 August 2017 an email was received from Mr E saying he'd now received his bank statements but was unable to send them in as he hadn't received an income and expenditure form to complete to send with them.
- 10 August 2017 the bank statements were received and reviewed and didn't show the income that Mr E had said he was earning.
- 8 March 2018 he's due to receive a £5,000 commission payment shortly and will pay it straight to the mortgage.

So it can be seen from all these contacts that – when wanting to extend the term of his mortgage – Mr E was very clear that he was working at that time (that is, from April 2017 onwards) and he said his income was £5,000 a month in retainers, plus bonuses and commission. The term extension request was turned down as Oakwood felt Mr E's bank statements didn't show he was in receipt of that income. Whilst I can't consider the fact the term extension was turned down as that complaint wasn't referred to us in time I need to mention all this to give the background for this part of the complaint, as Mr E wants to claim compensation for loss of earnings as he says he had been unable to work (since 2016) due to the impact Oakwood had on his health.

I asked our investigator to clarify the discrepancy with Mr E – that is, he previously said he was working and earning £5,000 a month since April 2017, but also wanted to claim for a loss of income as he said he was unable to work between 2016 and 2020. In response Mr E has said:

*"I'm very sorry for the confusion about my employment.*

*That is correct ie that i didn't work from 2016 to 2020 due to [Mr E's health condition].*

*However, at the time of applying for a remortgage to pay off Oakwood Home Loans, I had an offer of employment and would have been earning £5,000 per month.*

*When my mortgage was rejected because of the lies that Oakwood Home Loans had told the Credit Ref Agency it made me ill and I couldn't return to work."*

*This is slightly different again, with Mr E saying he wasn't working in 2017 contrary to what he'd previously told Oakwood when applying for a term extension, but instead he had an offer of employment in 2018 when he was applying for the remortgage. Mr E has said that the reason he couldn't take up that offer of employment was because his remortgage was rejected, which triggered his health issues.*

*I've already found previously in this decision that the information Oakwood recorded on Mr E's credit file was factually correct and so I have no grounds to order it be amended or removed, and so it follows that I can't uphold this part of Mr E's complaint that he was unable to return to work due to that remortgage being turned down (which he has attributed to that information on his credit file).*

*It is clear Mr E has been through some very difficult times, and I give him my best wishes for the future. I'd like to thank Mr E for how open he has been with us about his health concerns, and personal circumstances, it can't have been easy for him to recount everything to us. As I explained in my decision about our jurisdiction, the points I can consider here are fairly limited, and having now considered those limited points the only issue I'm able to uphold is that one attempted call to Mr E on 25 January 2019 which shouldn't have been made, and Mr E didn't answer.*

*That means any consideration of compensation will be fairly modest. I acknowledge things were stressful for Mr E, and that with his health concerns matters were likely to affect him more than most, but equally I must keep in mind all I am upholding is one attempted call to Mr E that he didn't answer. After very careful consideration I'm provisionally minded to award Mr E £250 compensation for that error."*

Oakwood accepted my provisional decision. Whilst Mr E said he was disappointed he'd only been awarded £250 he made no further submissions, and asked when he'd receive the payment.

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 – and having considered the full file afresh – I see no reason to depart from my provisional findings.

### **My final decision**

I uphold this complaint in part, and order Oakwood Homeloans Limited to pay Mr E £250 compensation. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 31 May 2022.

Julia Meadows  
**Ombudsman**