

## **The complaint**

Mr and Mrs W complain that Leeds Building Society at first said it would be able to offer them additional borrowing on the mortgage they have for a buy to let property ("BTL") but then changed its mind.

## **What happened**

Mr and Mrs W said they had an existing BTL mortgage with Leeds, which they'd held for some years. They wanted to borrow more money from Leeds, releasing equity from their BTL property, to help family members with a different property purchase. They said they initially enquired on 12 August 2021, and received a very positive response from Leeds, indicating they could borrow a little less than £200,000 if they wished. Mr and Mrs W said their family members relied on this, in their negotiations about property they intended to buy.

Mr and Mrs W then rang back on 4 October, and booked an appointment with a mortgage advisor, for 20 October. But by the 20 October appointment, Leeds had changed its mind. It said they couldn't have a mortgage, as it wasn't lending on their particular type of rented property, which is a House in Multiple Occupation ("HMO").

Mr and Mrs W said Leeds had blamed them for not providing the right information about their rented property initially, but they said they had always responded accurately to the questions they were asked. They thought Leeds had all the information it needed to see their property was an HMO on the call on 4 October, so if this was going to be an issue, it should have been raised then. In fact, probably earlier, because they said this property has always been rented as an HMO, from 2014 to now. They said if Leeds hadn't previously noted the property as an HMO, that was its fault, not theirs.

Mr and Mrs W said once Leeds realised their rented property was an HMO, it said it couldn't lend to them, as it wasn't offering lending on this sort of property at that time. But they told us what Leeds said about this was confused and contradictory. And its position was directly contradicted by the lending guidance that Leeds had recently published, which said it would lend on HMO properties.

Mr and Mrs W said, because of the misinformation and delays, they were concerned that the family members they were trying to assist would lose the property they had been in the process of purchasing. Mr and Mrs W said it was ridiculous that Leeds wouldn't lend to them, and if they went elsewhere for lending on the BTL property, they would need to move their existing mortgage from Leeds, which would trigger a large early redemption charge ("ERC").

They complained, and asked Leeds either to lend to them, or waive the ERC. In response, Leeds said it had now reinstated lending on HMO properties, but based on the rent they received, the maximum loan would be only a little more than half what Mr and Mrs W wanted to borrow, and less than half what they were initially told they could obtain.

Mr and Mrs W said by this time, their family members had an offer accepted on a home they wanted to buy, and had paid solicitors fees. When Mr and Mrs W then discovered that they would need to seek other lending elsewhere, those family members had to withdraw from

this purchase, and pursue a different property. They lost money on this.

When Leeds replied to Mr and Mrs W, it said it had failed to ask them if their property was an HMO when they first asked about lending, in August. It said it should have asked then. And Mr and Mrs W told it on 4 October that the property was being let to multiple occupants. It failed to pick this up then too, when it made an appointment with a mortgage advisor.

In the 20 October appointment Leeds told Mr and Mrs W it couldn't lend on an HMO property at that time. It then reinstated lending on these properties, but it still calculated the amounts it would lend on HMO's differently to other BTLs, so the maximum loan it could offer was considerably lower than Mr and Mrs W had hoped for.

Leeds said Mr and Mrs W's original mortgage application didn't indicate that the property was an HMO. So it didn't know about the status of the property before 4 October. Leeds accepted that Mr and Mrs W had had a mortgage with it, for this property, for a while, but it said each time they remortgaged, they had done so without any advice from it.

Leeds said HMO's are more complex properties. They have their own product range and criteria. It had stopped lending on HMOs temporarily during the pandemic. Leeds acknowledged its recent guide, published for brokers, mentioned lending to HMOs, but said that this guide made clear that:

*'All criteria, including: Buy-to-Let, Portfolio Buy-to-Let, Holiday Let, and HMO, is subject to product availability.'*

And the criteria page states:

*'Please note, some of our lending criteria has temporarily changed due to the current situation. Please visit our dedicated page for more information.'*

So Leeds said the information making clear that there were no HMO products available was available to brokers, although it wasn't clear about how Mr and Mrs W were to be made aware of this.

Leeds paid Mr and Mrs W £75 to say sorry because it didn't pick up that their BTL property was an HMO until their 20 October appointment. It wouldn't do more than that. It wouldn't lend any more than it had offered, and it wouldn't waive the ERC on their existing lending.

Mr and Mrs W wanted us to look into how they were supposed to know that Leeds wasn't going to lend to them, as information on product availability only seemed to be shared with brokers. They felt that the focus on their 2014 application form was an attempt to deflect the blame onto them for Leeds' failure to identify the property as an HMO. And they said that if being an HMO impacted on Leeds' lending criteria, then they thought their initial application in 2014 and transfer applications made regularly since, should have specifically asked whether the property was let out as an HMO. But Leeds had never asked this.

Mr and Mrs W also said they weren't convinced that HMO's were a different type of property. They said any BTL property which has 3 or more non-related tenants could be classed as an HMO, and not all of these need a licence.

They still thought Leeds should waive the ERC, so they could move their lending elsewhere.

Our investigator didn't think this complaint should be upheld. He said that it's up to Leeds what mortgage products, and lending criteria, it has in place for HMOs. Our service can't comment on that. Leeds had accepted it should have checked whether the property was an HMO in the initial enquiry in August 2021, and then on the call of 4 October 2021.

Our investigator said he hadn't found any evidence that Mr and Mrs W had been anything other than transparent in their dealings with Leeds, but it still wasn't aware that the property

was an HMO before 4 October. He thought what Leeds had paid in compensation was fair. And he couldn't say the ERC should be written off, because it wasn't linked to the mistake that Leeds had made.

Mr and Mrs W didn't agree. They wanted us to look at how Leeds had contradicted itself, hadn't followed its own published lending guide, and failed to indicate in good time that it wouldn't lend to them. They said they were only ever offered very considerably less than Leeds had indicated they could borrow, meaning they were forced to go elsewhere, and pay both a large ERC and fees. So they said that a compensation payment of £75 was derisory.

They said their broker hadn't misled Leeds in their initial 2014 application. They wanted to refute any suggestion that they should have alerted Leeds to the property being an HMO then, and set out their reasons for this. And they thought that if the way their property was rented out was really an issue of significance, then Leeds would have got clarification on it earlier.

Mr and Mrs W also said we were wrong to say an ERC would always have been payable. If they had been able to get the extra lending they were offered from Leeds, they wouldn't have had to pay this.

Mr and Mrs W thought that if Leeds had properly upheld their complaint, it would have addressed its negligence seriously and offered more than £75 in compensation.

Because no agreement had been reached, this case was passed to me for a final decision. I then reached my provisional decision on this case.

### **My provisional decision**

I issued a provisional decision saying why I proposed to uphold it. This is what I said then:

Mr and Mrs W have set out their arguments to our service in detail. I thank them for this. Although I haven't set their arguments out in the same level of detail here, I have read those representations carefully and in full. But before I begin, I'd like to say to Mr and Mrs W that, although I do think this complaint should be upheld, and Leeds should pay a little more than it has offered, it's likely that my proposal will fall far short of their expectations in this case, and I'm sorry to say that it is likely to be disappointing for them.

I'll explain why I've reached that view. And I'd like to start by looking back at what happened before Mr and Mrs W asked about additional lending. Mr and Mrs W said that Leeds should already have known their home was an HMO, and I can see Leeds has referred back to the original application they made. But I don't think this is likely to be relevant to the discussions between Mr and Mrs W and Leeds in the second half of 2021.

Mr and Mrs W applied for their lending in April 2014. Whilst mandatory HMO licencing was actually introduced in 2006, it wasn't until 2018 that it was greatly expanded. There's no suggestion that Mr and Mrs W's BTL property would have been treated as an HMO in 2014, when they made this application. I can see that Mr and Mrs W have told us that there was no requirement for their property to be licenced as an HMO until much more recently.

So I don't think that Leeds had to ask if the property was an HMO in 2014, and I don't think Mr and Mrs W had to declare this then. It just wasn't likely to be an issue.

Since then, as Mr and Mrs W acknowledged, the underlying legal position has changed, and their BTL property does now fall within HMO licencing requirements. The pandemic

may also have affected the position of HMOs, and their attractiveness to lenders. So I've thought about whether Leeds ought to have asked about this after 2014, but before 2021.

Mr and Mrs W had repeatedly remortgaged with Leeds, taking out new fixed term interest rate offers every two years. But each time they did that, they were only changing the interest rate on existing lending, not asking to borrow any more. So I wouldn't expect Leeds to ask detailed questions about the property's status as part of this, or indeed about the income used to repay the mortgage.

That's because Leeds is in a very different situation when it looks at existing lending, to when it's asked to lend more. If Leeds has concerns about existing lending – including about whether changes in underlying legislation or wider societal changes may have affected the security for the lending - then its options are quite limited. It couldn't just ask Mr and Mrs W to give back all the money it had already lent them, and which they were still using to cover their investment in this property.

But Leeds can decide not to lend more. So the two situations are very different, and very different levels of information are requested. Moving existing lending to a new interest rate is often light touch, but adding additional lending requires a full application.

So I think the first time when it was important for Leeds to be aware of the status of Mr and Mrs W's property was in August 2021, when they asked about how much more they might be able to borrow. Leeds has accepted it ought to have checked then whether the property was an HMO. And it says it also ought to have picked up on this on 4 October, when Mr W described the property as occupied by a number of professionals under one lease.

Mr W also says that Leeds has been inconsistent about whether it could lend to him. He noted that its published guide suggested he could borrow on an HMO, and he didn't know where he was supposed to find out that he couldn't do so.

But I also note that Mr and Mrs W don't seem to have suggested that they were actually misled into making this extra lending application to Leeds, either by the brokers guide, or by Leeds' website. It seems that this is documentation they didn't see until after Leeds had turned them down for extra lending, because their property was an HMO.

That's consistent with the call I've listened to on 4 October.

I would expect, if Mr W had been aware on 4 October that Leeds had different criteria for lending to an HMO, as set out in the guide he later shared with us, then he would have volunteered this information to Leeds, to check that it had taken this into account. He didn't do that.

Like our investigator, I don't think Mr W deliberately left this information out when he was talking to Leeds. I don't think he was trying to mislead the building society. I think he simply hadn't realised at this stage that the particular status of his BTL might be an issue.

Leeds says it wasn't lending on HMOs at that time. And I haven't seen anything to contradict what Leeds said to Mr W, when it told him it had suspended lending on HMOs during the pandemic, but was planning to review this position. (I've already said I don't think Mr W was misled by the guide Leeds produced shortly in advance of that review, saying it could lend on these properties, subject to product availability.) So it appears that when Mr W enquired, Leeds just wasn't offering lending on HMO properties, although it seems to have been planning to start doing so again soon. And indeed, whether it wasn't offering lending on HMO properties at all, or wasn't able to offer them the amount they

wanted on their property, the situation remains the same. Mr and Mrs W would always have had to look elsewhere for the lending they wanted.

The issue, I think, is when Mr and Mrs W were told that Leeds wouldn't lend them what they wanted to borrow. Leeds didn't flag up the issues with lending to HMOs to Mr and Mrs W, either in August or on 4 October. And it's accepted it should have done so. That means I have to think about the consequences of this.

If Mr and Mrs W had been alerted earlier to the issues with lending on their property, then they could have talked to other lenders sooner. But they would still have needed to look elsewhere for this lending. I think this is the situation our investigator was referring to when he said an ERC would then always have been payable. And I think that's right.

I can see Mr and Mrs W were told, when they were offered their most recent fixed term mortgage deal in June 2020, that an ERC would be payable if they moved their existing lending before the end of July 2022. And they've told us Leeds charged that when they moved their lending elsewhere. I don't think Leeds had to waive this charge.

Mr and Mrs W said that by the time they realised Leeds wouldn't lend to them, their family members had found a property they wanted, had an offer accepted, and had incurred legal costs for the start of the purchase process. But I also have to bear in mind that Mr and Mrs W don't appear to have had anything other than a very high level discussion about how much Leeds might be prepared to lend, before 20 October. They didn't have a mortgage offer in place. So, although Leeds could have checked the status of their property earlier, and then alerted them to the different lending issues for HMOs, I also think that it's not Leeds' fault that Mr and Mrs W's family members went ahead with an offer on a property, and incurred costs as part of that, in advance of any formal mortgage offer by Leeds. I don't think that Leeds has to contribute towards those costs.

I do, however, think that Leeds missed opportunities to alert Mr and Mrs W to the issues with their property earlier. And what Mr W has said about the enquiries he made after the lending was refused, make me think that Leeds' communications at this point were confused, and confusing. So, in all the circumstances of this complaint, I don't think that the payment Leeds has made is quite enough. But, because I don't think Leeds is responsible for many of the consequences of the delay in telling them it wouldn't lend, I'm afraid that my view here will fall considerably short of what Mr and Mrs W have proposed.

I think that a payment of £200 by Leeds, to make up for not alerting Mr and Mrs W earlier that they needed to seek their lending elsewhere, and for not communicating clearly with them when their lending was refused, would provide a fair and reasonable outcome to this complaint. I understand that Leeds has already paid £75, so I'll allow it to count that payment towards my award.

I invited the parties to make any final points, if they wanted, before issuing my final decision. Both sides replied.

### **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.

Leeds said it was happy to accept my decision.

Mr W replied on behalf of himself and Mrs W, to say they didn't agree. He set out their concerns in detail. They didn't think £200 was enough compensation for what Leeds had done, and the extent to which the delay in informing them impacted on them.

Mr W noted I'd said Leeds didn't have to ask if the property was an HMO in 2014, as it wasn't likely to be an issue. He asked why Leeds made it an issue in its response. I think that may be because the property's HMO status did affect lending by the time of this application, so Leeds wanted to show it didn't know the property was an HMO before this. But whatever the reason, I don't agree that Leeds has attempted to, as Mr and Mrs W suggested, use this as "... a smokescreen to avoid them having to admit liability."

Mr W also wanted to clarify how they believed they were misled by Leeds. I'd said I thought Mr and Mrs W hadn't seen the brokers' guide they referred to until after Leeds refused the extra lending. Mr W said it was primarily Leeds' advisors who misled him, but he thought the guide indicated why this might have happened. I don't think that's likely, as Leeds' advisors are unlikely to work from a guide it publishes for brokers. I'd expect its advisors to work from Leeds' own internal information, which could be more flexible and quickly updated.

Mr W said there wasn't enough emphasis on the fact they were misled by Leeds staff who weren't aware of the confusion around the policy on lending on HMOs. He said that may explain why it wasn't flagged up, which in turn led to them being unfairly inconvenienced.

Mortgages are a complex financial product, and for lending continuing over a very long term, can be surprisingly fast-moving. So it can be the case that only those who are formally positioned as mortgage advisors will be fully in touch with a firm's existing product range. But Leeds has accepted that the advisor Mr W spoke to in August should have alerted him to the particular issues on lending secured on HMO properties then.

I understand there was some confusion after the lending was refused. And it's frustrating to initially receive mixed messages about what's gone wrong. But I have taken that into account in reaching my view on the fair and reasonable outcome to this complaint.

Mr W quoted my reasons for concluding he hadn't seen the broker guide before 4 October. But he said the guide confirmed what he'd assumed, Leeds would lend on HMO properties. Mr W said in that case he'd have no reason to volunteer these details about his property.

I disagree. The guide makes clear that, even when Leeds will lend on HMOs, it uses different criteria. For example, the maximum loan to value ("LTV") for HMOs is lower than for other BTL property. So I would've expected Mr W, if he had already read this guide, would want to ensure at the earliest possible stage that Leeds knew his BTL property was an HMO.

I don't infer from Mr W's comments that he had access to this guide before 4 October. But I don't agree with his contention that the point when he got access to this guide isn't relevant.

Mr W said I'd quoted two sections from this guide (in italics in the "*what happened*" section above). Mr W said he'd question whether "*product availability*" referred to the suspension in lending to HMOs. He asked why it would, when the guide indicated Leeds would lend on HMOs. And he asked why the statement on changes to lending criteria would refer to the decision not to lend on HMO properties. He said if that was the case, why weren't customers told this? He said making information available to brokers but not customers showed a two-tier service that discriminates against the customer, in their case with seriously detrimental consequences. Mr W didn't think I'd given this enough weight in the summing up.

I think that the reason I've not focussed greatly on the content of the guide is because I've concluded that it's not likely Mr W was misled by this guide. And because of that, I just don't think the guide is central to this case, in the way he has argued for.

Mr W thought what Leeds did was inconsistent with the guide – and that this undermined what it said about not lending on HMOs. So I have considered the guide to see if Leeds' actions were inconsistent with it. But I don't think they were.

The guide Mr W has now read, at least in part, isn't written for customers. It's intended for brokers, who are familiar with the mortgage market, and it assumes a level of baseline knowledge. I think that's why it doesn't state mortgage products on offer can change on a daily basis, or explain why an overarching guide to mortgage products doesn't offer any guarantee that lending would be available generally in the areas it covers.

I should also be clear that I don't think this guide is inconsistent with Leeds having withdrawn from lending on HMO properties. I still think it's likely Leeds had withdrawn from this lending before Mr W's first enquiry in August 2021, and it then published a guide which included HMO lending because it was hoping to resume this lending shortly.

Mr W wanted to stress that he was told he could borrow more on 12 August 2021, and on 4 October. But on 20 October he was told Leeds wasn't lending on HMO properties.

Mr W noted I'd said it didn't matter whether Leeds wasn't lending on HMO properties at all, or wasn't able to offer the amount they wanted, they would still have had to look elsewhere. But he said they wouldn't necessarily have had to look elsewhere if Leeds' position had been clear from the outset – it wasn't lending on HMOs but was planning to do so again soon. They could then have chosen to wait until Leeds was lending again. And they could have looked for a place that they could afford using what Leeds was prepared to lend.

Mr W said I'd also decided it wasn't Leeds' fault their family members made an offer on a property, and incurred costs, without securing a mortgage offer from Leeds. They said they made the initial enquiry so they could then look at properties to purchase, and they told Leeds this. They thought it was partly Leeds' fault that they went ahead, because they weren't given any precautionary advice to do otherwise, and the delay was considerable.

I understand Mr and Mrs W did say they wanted to use the money to help purchase a property, but I haven't seen or heard anything to suggest Leeds had told them they could rely on getting this lending. On the call Mr W had with Leeds on 4 October, the advisor said to Mr W that he would go through some details, get Mr W's appointment booked in, so he could get a decision in principle - then go ahead with an offer on the property he wanted. Mr W said on this call that he should've got this decision in principle before the offer was made.

I don't think Leeds is responsible for warning Mr and Mrs W they could not rely on lending until a mortgage offer was in place. What I can hear is consistent with Leeds not having made any commitment to lend, and indeed with Mr W having understood this was the case.

Nor do I think Leeds ought to have said in early August 2021 that it was likely to resume HMO lending soon, so that Mr and Mrs W could plan on that basis. Although Leeds's guide (in effect from late September) does suggest it was aiming to restart this lending, it didn't do so until November 2021. I think it's likely things were still just too uncertain in early August 2021 for Leeds to be able to set things out for Mr and Mrs W with any level of confidence.

Mr and Mrs W said Leeds must be partly responsible for what had gone wrong, because it had twice said they were eligible for further borrowing. It was then ten weeks before they

were told they weren't. They said that's a long time not to be looking for a property, and they stressed they had no reason to suspect they would be refused an offer.

I've explained that I simply don't think it's Leeds' responsibility to warn Mr W or his family not to enter into financial commitments relying on its lending before it, in turn, is actually committed to making that lending to him. And I've not seen anything to suggest to me that the time between Mr W's first enquiry, in mid-August, and when Mr W called to book an appointment for a mortgage interview, in early October, was a delay caused by Leeds.

Mr W didn't think £200 was enough to encourage Leeds to put right practices discriminating against the customer, and to encourage it to properly inform customers of its lending policies, as well as improve how it trains staff. They didn't think it would compensate for the wasted time and energy in applying for a mortgage they were never eligible for, and the consequences of not telling them this earlier. They thought this should be greatly increased.

Our service isn't a regulator, and we don't exist to punish businesses. I cannot make an award on the basis that it will motivate a business to do better in future. When I consider the appropriate amount of compensation in a case, I can look only at the circumstances of that case. And I do understand that Mr and Mrs W are likely to have a different view on compensation, because they have a different view on how much of this is Leeds' fault.

I have set out for them why I haven't reached the same conclusions. And when I look at the things I think Leeds did do wrong here, I do still think that a compensation payment of £200 provides a fair and reasonable outcome to this complaint.

I appreciate that Mr and Mrs W will be disappointed, but for the above reasons, I haven't changed my mind. I'll now make the decision I originally proposed.

### **My final decision**

My final decision is that Leeds Building Society must pay Mr and Mrs W £200 in compensation. Leeds Building Society can count any payment it has already made for this complaint towards that total.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W and Mrs W to accept or reject my decision before 22 September 2022.

Esther Absalom-Gough

**Ombudsman**