

## **The complaint**

Mr and Mrs K took out a mortgage in 2006. The mortgage was taken out with another lender and later transferred to Derbyshire Home Loans Ltd (DHLL). The Mortgage Works (TMW) is the administrator of the mortgage.

Mr and Mrs K complain that TMW won't consent to them taking out further secured borrowing (secured by a second charge on their property) which they need to pay for work to the property. They ask that it gives consent and compensates them for the delays.

## **What happened**

Mr and Mrs K want to carry out work to their property. In mid-2021 they applied via a broker to a third-party lender for a secured loan to pay for this. They need consent from DHLL for the second charge on the property. As administrator of the mortgage, TMW dealt with the request on behalf of DHLL.

The request was declined. Mr and Mrs K say this is unfair and unreasonable. They point out they aren't asking DHLL to provide additional borrowing: they've been offered a secured loan by another lender. And the work will increase the value of their property, which they say will deteriorate if they can't borrow money to carry out repairs.

Our investigator said TMW re-considered Mr and Mrs K's request and instructed a valuation. Based on the valuer's report, TMW declined to give consent saying the work wasn't essential and Mr and Mrs K's application was outside its criteria. Our investigator said this wasn't unfair or unreasonable. But our investigator said Mr and Mrs K had been given conflicting information and the matter had gone on for longer than necessary before they were given correct information. The investigator said DHLL should pay compensation of £350 (in total), which it agreed to do.

Mr and Mrs K didn't agree. They said if TMW had told them what criteria it would apply they wouldn't have asked it to re-consider and incur the cost of the valuation. They say their property was purposefully down-valued, as evidenced by a nearby property selling for more. And Mr and Mrs K say they met DHLL's criteria for residential mortgages and it wrongly applied criteria for buy to lets. When their broker questioned this, DHLL raised Mr K's bankruptcy as another hurdle.

Mr and Mrs K said DHLL had already paid compensation of £125, and an additional £225 wasn't enough for all their upset.

## **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.

We offer an informal dispute resolution service. I need to decide what's fair and reasonable in all of the circumstances and explain why I reach my decision. I'm not required to answer each point raised by Mr and Mrs K.

Mr and Mrs K asked TMW for consent for a second charge on their property. They wanted to borrow £30,000 to pay for work to their property.

Initially, TMW declined consent for the second charge. Mr and Mrs K asked it to re-assess. TMW said it would re-consider, to assess whether it could consent on the basis the circumstances are exceptional. The underwriters said they'd need more information, including a valuation. TMW instructed a valuation, which was carried out in September 2021. The valuer valued the property at £275,000 and said the property was suitable security for mortgage purposes. No essential repairs were listed in the valuer's report.

TMW again declined to give consent for the second charge. It said it didn't consider the work Mr and Mrs K wanted to do to be an essential repair, as the valuer said the property was suitable security with no works required. It said the additional borrowing would take the loan to value ratio over 50%, which was outside its criteria. It also said the conduct of the account was unsatisfactory as it was in arrears until 2019. And it said there might be cheaper ways for Mr and Mrs K to raise the funds.

Mr and Mrs K disagree with this. They say they met DHLL's criteria. They say their house is worth more than the valuation, so the additional borrowing wouldn't take them over the loan to value limit. They say arrears three years ago aren't relevant. And Mr K's bankruptcy was discharged some eight years ago.

Mr and Mrs K say TMW is unreasonably withholding consent. They say it should apply the lending criteria of the original lender to the decision, not its own criteria. They say applying its own criteria is a change to the terms and conditions.

*Was it reasonable for TMW to decline consent for the second charge?*

The mortgage terms and conditions say "unless you have our prior written consent or unless your offer says otherwise...you must not...agree to any other security on [the property]". The mortgage conditions say the lender will not unreasonably withhold its consent. And that the borrower agrees it's not unreasonable for the lender to refuse consent if it might affect the lender's security or the value of the property.

Mr and Mrs K need consent from TMW before agreeing to a second charge on the property. I'd expect TMW to have criteria about when it would – or wouldn't – give consent and to apply its criteria fairly to Mr and Mrs K's request. All lenders are entitled to make a commercial decision about their lending criteria, and to change their criteria from time to time. I think it's reasonable for TMW to apply DHLL's criteria when dealing with the mortgage, rather than a previous lender's criteria. While Mr and Mrs K's mortgage was taken out with another lender, it is now owned by DHLL.

TMW sent a copy of its criteria (which also applies to DHLL) to us, in confidence. Lending criteria can be commercially sensitive so I wouldn't expect TMW to provide its criteria to Mr and Mrs K. However, TMW told Mr and Mrs K it declined their request because the additional borrowing would take the loan to value ratio over 50% and this is consistent with its criteria.

A member of staff at TMW sent an email to Mr and Mrs K's broker in November 2021 setting out criteria (under the heading "residential") which would have been easier for Mr and Mrs K to meet. Mr and Mrs K are upset that TMW didn't apply these criteria to their request, but I can't fairly require it do so. We've asked TMW about the email and it said that these aren't the criteria that apply to Mr and Mrs K's mortgage. TMW said it applied the correct criteria to Mr and Mrs K's application. As I said, this is consistent with the copy of TMW's criteria provided to us.

Mr and Mrs K say when the valuer arrived at their property he assumed he'd be carrying out a survey for a buy to let property and they had to explain this wasn't the case. Mr and Mrs K say the valuer wasn't interested in the information they offered about the sale of a nearby house or the work they wanted to carry out. And Mr and Mrs K say the date on the report is incorrect by a few days. I understand their frustration about this. Ultimately though, it's clear the valuer knew it was a residential mortgage and he'd have been able to assess whether repairs were necessary regardless of whether the property was residential or to be let. It seems unlikely the incorrect date had any effect on the valuer's conclusions.

TMW considered whether it could consent to the second charge, despite this being outside its criteria. I think this was fair. However, TMW didn't consider the work Mr and Mrs K want to do to the property to be essential, to prevent detriment to its security. This, and the poor conduct of the account in the past, meant it declined to give consent to the second charge outside its criteria.

Mr and Mrs K described the work they want to do and sent photos of the property. But they didn't provide evidence from a suitably qualified third party, such as a surveyor, that the work was an essential repair. I don't think, based on the available evidence, I can fairly find it was unreasonable for TMW to rely on the valuer's opinion about the value of the property or whether work was essential.

TMW still had a record of Mr K's bankruptcy, which had been discharged in 2014. I appreciate Mr and Mrs K were upset about this. However, TMW provided evidence of the decision made by its underwriters. The underwriters reviewed the position after receiving evidence of the bankruptcy discharge and made the same decision (to decline consent). I don't think the initial or later decision to decline consent for a second charge would have been different, even if TMW hadn't had a record of Mr K's bankruptcy.

I'm satisfied that the reason TMW declined consent for a second charge was because the secured loan would have taken the loan to value over the limit in its criteria. And I'm also satisfied that it was reasonable for TMW to rely on the expert opinion of the valuer. I think it was fair for TMW to consider whether Mr and Mrs K's circumstances would make it fair to give consent despite this being outside its criteria, and that it was fair for it to take into account the conduct of the account, the equity in the property and the necessity of the proposed work to the property when doing so. Ultimately, TMW had to balance the necessity for work to the property (funded by a second charge loan) against the possible negative effect of a second charge on its security. I appreciate that Mr and Mrs K will be disappointed, but I don't think TMW was unfair when it declined consent for the second charge.

*Did TMW deal with the request for consent in a timely manner?*

TMW agreed its service had been poor at times and paid compensation. It agreed with our investigator's recommendation that it pay £350 (in total) for giving Mr and Mrs K conflicting information and taking too long to give them correct information.

Mr and Mrs K don't consider this is enough, for their trouble and upset. And they say that if they'd been told the criteria at the outset they wouldn't have incurred the valuation fee.

It's unfortunate there's been so much confusion about the criteria that TMW applied (or that Mr and Mrs K think it should have applied). But I must take into account that TMW told Mr and Mrs K at the outset their request was declined. When Mr and Mrs K asked TMW to re-consider they must reasonably have known it was possible that consent wouldn't be given. They agreed to pay the valuation fee on this basis.

I think it was reasonable for TMW to ask for information – including a report and valuation of

the property – to assist it in making a decision. This inevitably meant matters went on for longer.

I understand Mr and Mrs K's frustration. They have equity in their property, they cleared their previous arrears and another lender assessed the additional loan as affordable. Mr and Mrs K want to make improvements to their property, and are upset that TWM didn't give consent to the second charge so they can borrow money to pay for this. But, as I said, TMW re-considered Mr and Mrs K's request and I think it did so fairly. I don't think in the circumstances I can fairly require TMW to give consent or pay compensation for Mr and Mrs K's disappointment or any costs they incurred as a result of it declining to give consent.

TMW agreed to pay compensation of £350 (in total) for not providing a good service and giving Mr and Mrs K clear information at times. I think for the additional upset caused by this, compensation of £350 (in total) is fair and reasonable.

### **My final decision**

My decision is that I uphold this complaint. I order Derbyshire Home Loans Ltd to pay £350 (in total) to Mr and Mrs K. It can deduct any compensation it has already paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K and Mrs K to accept or reject my decision before 24 March 2023.

Ruth Stevenson  
**Ombudsman**