

The complaint

Mr B and Mrs N's complaint is about two buy-to-let mortgages they have with Mortgage Express (ME). The complaint relating to the first mortgage (mortgage 1) is that ME has refused to provide redemption statements when requested and enforced its right to consolidate this debt with the mortgage they took out in 2006 (mortgage 2). Mr B and Mrs N don't consider that ME is treating them fairly.

In relation to mortgage 2, they are unhappy about ME's assessment of their application as they consider that it should have detected that it had been '*fraudulently manipulated*' by the submitting broker. This, they consider, resulted in ME '*recklessly*' lending to them. In addition, they are unhappy that they had difficulties obtaining copies of the mortgage documentation when they asked for it in 2008 and 2013. Furthermore, Mr B and Mrs N are unhappy that a legal settlement ME obtained from the solicitors that acted for both parties during the purchase, was not applied to the mortgage when ME received it in 2014. They have said that this has caused problems with their own legal action against the solicitors.

Mr B and Mrs N are also unhappy with some administrative matters and that ME didn't respond to their letters from 2019 in which they tried to open discussions about finding a way forward for the two mortgages.

What happened

What happened Mr B and Mrs N took out mortgage 1 with ME in 2005. Mortgage 2 was arranged when they bought another rental property in 2006. Both mortgages were applied for through independent mortgage brokers.

The terms and conditions of the mortgages set out that if a borrower had more than one unregulated mortgage with ME, it had the right to stop them paying the mortgages off separately, and to insist that they all be paid off at the same time. This enables ME to effectively combine (consolidate) the security provided by each of the mortgaged properties for the combined mortgage debt.

The valuation completed before mortgage 2 was advanced confirmed that the valuer was aware that significant alterations had recently been completed to the property. It completed the valuation on the basis that any necessary statutory permissions were in place. It was also stated that '*If the rent achieved for this type of accommodation were to change, it could have a significant effect on the market value we have reported. The market value would also be influenced by changes in normal investment criteria, or if the property was to revert to owner occupation.*' It would have been the function of the conveyancing solicitor to ensure that the statutory permissions were in place.

ME pursued the conveyancing solicitors in relation to mortgage 2. A confidential settlement agreement was reached in 2014, which involved ME receiving a payment in respect to mortgage 2. Mr B and Mrs N believe this amount should have been credited to their mortgage account at that time. They told us when they referred the complaint, the lack of payment was obstructing their own case against the solicitors, forcing the case to trial, rather than allowing a settlement. That issue appears to have subsequently been resolved, as they

confirmed that they received a settlement from the solicitors. They also believed they had been overcharged interest since 2014.

Mr B and Mrs N complained to ME in 2014 about their information requests not being responded to. It issued a final response letter on 15 May 2014 in which it acknowledged that the information requested in 2013 hadn't been provided. It apologised and offered them £100 compensation. It also confirmed that a subject access request was being actioned.

In 2019 Mr B and Mrs N wrote to ME twice setting out the situation with mortgage 2 and the property it was secured on. They went on to suggest ideas for how the issues could be dealt with. ME didn't respond to these letters. Mr B and Mrs N subsequently complained.

ME issued a final response letter on the complaint on 23 July 2019. ME acknowledged that it hadn't responded to the letters Mr B and Mrs N sent it earlier that year making proposals for dealing with the situation of mortgage 2. It also admitted that it hadn't updated their address, which it had now dealt with as a data breach. £300 was offered as compensation for this poor service. However, ME didn't agree that it had acted incorrectly in relation to the settlement monies it had received from the solicitor. It said that those monies would only be allocated to the mortgage if an actual loss was suffered, which to that point it hadn't been. As for the way forward with mortgage 2, ME confirmed that it was open to negotiate with Mr B and Mrs N to reach a satisfactory conclusion. This might include agreeing a shortfall sale, but it would need specifics before any agreement could be reached. In relation to the complaint about provision of information, it referred them back to the 2014 final response letter.

ME wrote to Mr B and Mrs N in March 2020 following them asking for a redemption statement for mortgage 1. It explained that it had a right to consolidate and insist, if they wanted to pay off one of their mortgages, that they pay off both. It confirmed the outstanding balance on the account and explained that any surplus funds provided at redemption would need to be used to reduce the borrowing on any other mortgages that was outstanding. Mr B and Mrs N complained later that month that ME's proposal to consolidate the debt owed on the two mortgages was unacceptable.

ME responded to the complaint on 21 April 2020. It said that it wouldn't provide a redemption statement as that would undermine the enforcement of its right to consolidate, or any alternatives it might impose. It said that when Mr B and Mrs N decided to repay the mortgage, it would calculate how much would be required to be paid to release the charge. It referred Mr B and Mrs N back to its comments in the July 2019 final response letter about options for the way forward with the mortgages.

In January 2021 ME sent Mr B and Mrs N a further letter regarding consolidation and its rights under regarding the issue set out under the mortgage terms and conditions. This letter was sent in response to a request for a redemption statement. ME has confirmed that it enforced its right to consolidate the two mortgage debts on 13 January 2021.

Mr B and Mrs N referred their complaint to this service. They explained that ME had been warned about the extensive alterations before the mortgage was released. Also that the property had been owned for a short period by the developer. They said that they thought ME should have made further enquiries before agreeing to lend and they'd assumed that it would also have done due diligence on the developer they were buying from.

Following the complaint being referred to this service, ME confirmed that it was willing to allocate the funds it received from the settlement agreement in 2014 to mortgage 2 in full and final settlement of the complaint.

Mr B and Mrs N said they were grateful for the offer, but they considered that the funds should have been allocated in August 2014. As such, they wanted the mortgage account adjusted as though the money had been paid into the account in August 2014. They said that even if ME was willing to back-date the allocation of funds, there would still remain issues to be negotiated. These being that even with the allocation of funds, the property would still be in negative equity and ME was still refusing permission for them to re-mortgage the property on which mortgage 1 was secured.

Mr B and Mrs N subsequently set out a new proposal for dealing with the mortgage 2 situation. They would then make further payments to that account and sell the property sooner rather than later. Mr B and Mrs N also wanted ME to allow them to repay mortgage 1, without any strings attached. This would enable them to continue their rental business in such a way as to protect their future plans.

One of our investigators looked into the complaint, and concluded that we couldn't consider all of it. When Mr B and Mrs N disagreed the complaint was passed to one of my ombudsman colleagues to consider the matter of our jurisdiction. She concluded that we could consider the following aspects of the complaint:

1. ME was reckless to lend to them and it didn't review their application properly. In particular:

(b) Mr B and Mrs N say ME didn't follow up warnings about extensive alterations to one of the properties with questions to the conveyancing solicitors and vendor. They say the property was overvalued by the surveyor appointed by ME. They now have negative equity.

3. ME fabricated records of correspondence and discussions with them to cover up its errors. They said they became aware of this when they received the information they'd asked for (in 2014). This part of the complaint could only be considered from 1 June 2013.

4. ME didn't credit the settlement from the conveyancing solicitors to their mortgage account in October 2014. This hampered their own claim against the solicitors, and meant additional interest was applied to their account.

5. ME was unhelpful and obstructive when they tried to agree a settlement with it for both mortgages. They wanted it to agree not to take legal action to enforce the debt on mortgage 2, and not to consolidate the debts secured on their two properties. As it had declined, they couldn't re-mortgage either property.

6. ME didn't provide good service as it didn't provide a comprehensive reply to their letters of 28 February 2019 and 24 May 2019. Also, it didn't update their address, resulting in a data breach.

7. ME doesn't offer products with competitive interest rates, due to losing its lending licence.

8. ME didn't provide a redemption statement for mortgage 1 in March 2020.

The ombudsman concluded that the following two aspects of the complaint didn't fall within our jurisdiction:

1 (a) ME not having noticed the alterations to the application made by the broker and/or mortgage packager when it was submitted, resulting in the application being accepted when it shouldn't have been.

2 ME not providing information when requested in 2008 and 2013.

In April 2022 an agreement was reached between ME, Mr B and Mrs N regarding complaint point 4. This involved the payment of the settlement being used to reduce the balance on mortgage 2 along with an amount to compensate for the interest paid on that amount of the mortgage since 2014. Subsequently Mr B and Mrs N raised a new complaint about ME not having complied with the agreement.

Our investigator went on to consider the merits of all the issues that fell within our jurisdiction. He didn't recommend that the complaint be upheld.

Mr B and Mrs N didn't accept the investigator's conclusions. They commented on new complaint issues they had raised with ME and disagreed that the situation, which caused ME to decide to consolidate the amounts owed on the two mortgages, was not as bad as ME wanted it to appear. In addition, they said that they accepted that ME was not obligated to accept their proposal to deal with the situation, but it should reasonably have formed a basis for further negotiation. They said they found ME dismissing their proposal out of hand insulting and reprehensible. Mr B and Mrs N stated that there was no doubt in their minds that they had been wronged and that the Financial Ombudsman Service had failed to persuade them otherwise. Further documentation was provided, including a partial and redacted copy of the confidential settlement agreement between ME and the solicitors. In addition, they provided a further copy of what they considered was evidence of ME having fabricated evidence, which was from 2008. They asked that the complaint be referred to an ombudsman.

Our investigator explained to Mr B and Mrs N that we were unable to consider new complaint points about issues that had happened since the complaint was referred to us. He also confirmed the evidence that had been provided regarding their allegation of fabricated evidence was from 2008, and so it was not something we could comment on as it fell outside of our jurisdiction. As Mr B and Mrs N's further comments didn't alter the investigator's conclusions, the complaint was referred for consideration as they had requested.

I issued a provisional decision on 2 November 2022 setting out my conclusions and reasons for reaching them. Below is an excerpt.

'At each stage of our process we considered our jurisdiction to consider a complaint. I have done so and I agree with my ombudsman colleague's findings set out in her decision of 5 November 2021.

For ease, I will address the points using the numerical references my ombudsman colleague used when setting out our jurisdiction. Before I do so, I would confirm that the mortgages involved in this complaint are commercial ones. That means that they are not regulated and ME is not required to apply the same approach to their administration as it would be expected to if mortgages were residential ones. While it still needs to treat the borrowers fairly, that doesn't mean it would be expected to disadvantage itself in order to facilitate the borrowers' plans and preferences.

1. ME was reckless to lend to them and it didn't follow up warnings about extensive alterations to one of the properties with questions to the conveyancing solicitors and vendor.

Lenders are not property experts and so when it comes to determining whether a property is suitable security for a mortgage, it will hire in an independent expert. As long as that expert is appropriately qualified, the lender is entitled to rely on its findings when making a decision to lend and it is not responsible for the conclusions of the expert.

It is clear that the expert in this case – the valuer - was aware of the alterations made to the property when it inspected the property and that these changes were taken into account

when the property was valued. How it became aware of this information is unclear, but it would most likely have been from ME when the valuation was commissioned. The valuer gave a value for the property assuming that the relevant permissions were in place.

It would not have been for the valuer to investigate whether the relevant permissions had been obtained. That was a job for the solicitor acting on behalf of the parties. I haven't seen details of the claims made by ME or Mr B and Mrs N against the solicitor acting in this case, but from what has been said, it appears that it was at this stage of the process that things either weren't done at all, or weren't done properly. The checks that needed to be completed would have been done on behalf of both ME and Mr B and Mrs N, so ME can't be considered entirely responsible for the consequences if the solicitors didn't complete the checks necessary.

That said, both ME and Mr B and Mrs N took legal action against the solicitors and monies were paid in respect to both actions. Mr B and Mrs N received the money from their action directly. In addition, a legal agreement outside of this complaint has been reached between the parties in relation to the funds ME received from the solicitors in 2014. As such, I don't consider that I can require ME to do anything further in relation to this complaint point.

3. ME fabricated records of correspondence and discussions with them after 1 June 2013 to cover up its errors.

Mr B and Mrs N have confirmed that the fabrication they have referred to occurred in 2008. As this is before the point in time we can consider this aspect of the complaint, I consider this complaint point is moot and I will not comment further.

4. ME didn't credit a legal settlement from the conveyancing solicitors to their mortgage account in October 2014.

When the complaint was referred to us, neither party provided a copy of the documentation regarding the claim ME made to the solicitors or the settlement agreement that was reached. This was understandable as Mr B and Mrs N shouldn't have had a copy of the documentation and ME was only allowed to release it with permission of the other party to the agreement. Since then Mr B and Mrs N appear to have obtained part of the documentation relating to the matter, but not all of it, so it doesn't provide a full picture of the situation. As such, I am not persuaded I am able to conclude when the money paid in respect to mortgage 2 should have been paid to the mortgage account.

However, that consideration is irrelevant at this point as an agreement was made between the legal representatives of ME and Mr B and Mrs N. This is a material change from the point the complaint was referred to us, and we were not involved in the agreement nor have we been provided with a copy of the agreement. As such, even if I were provided with all the evidence I would need to reach a conclusions on this aspect of the complaint as it was presented when the complaint was originally referred to us, it would not now be appropriate for me to do so.

6. ME didn't provide good service. It didn't provide a comprehensive reply to their letters of 28 February and 24 May 2019. And it didn't update their address, resulting in a data breach.

5. ME was unhelpful and obstructive when they tried to agree a settlement with it. They wanted it to agree not to take legal action to enforce the debt, and not to consolidate the debt secured on their two properties. As it declined, they couldn't re-mortgage either property.

8. ME didn't provide a redemption statement in March 2020.

I will deal with these three parts of the complaint together as they are linked.

ME accepted that it didn't respond to Mr B and Mrs N's letters when it should. It has also acknowledged that it should have changed their address after the February 2019 letter, and not doing so, resulted in a data breach. I am satisfied that the offer of £300 ME made in this respect was appropriate in the circumstances.

If Mr B and Mrs N are not satisfied with ME acknowledging and reporting the data breach, the appropriate body for them to refer their concerns to would be the Information Commissioner's Office. Our investigator can provide contact details if they want them.

As ME has acknowledged it didn't respond to the 2019 letters, in which Mr B and Mrs N put forward suggestions for resolving the problem with mortgage 2. It is clear that this meant that discussions about the situation didn't start when they could have. However, I am not persuaded that even if they had, the situation would have been any different from what it was.

As I have said above, these were commercial mortgages and ME was not required to enter into any agreement to benefit Mr B and Mrs N that would disadvantage it. They wanted to take certain actions that would protect their rental business, which is understandable. However, those proposals would have led to ME having less security than the amount that was owed to it, which would significantly increase the risk Mr B and Mrs N's borrowing would represent. Put quite simply, ME was also entitled to protect its business when considering whether to accept proposals from its customers. While the proposals included subsequent payments being made to reduce that risk, in the event Mr B and Mrs N had then not fulfilled that part of the proposals for any reason, ME couldn't have done anything about them not doing so.

Furthermore, when Mr B and Mrs N asked for a redemption statement for mortgage 1, I don't consider that ME acted inappropriately. I say this as its position at the time was that it was not willing to allow mortgage 1 to be repaid given the circumstances of mortgage 2. Had a redemption statement been issued it would have potentially misled them about the situation and given the impression that ME was willing to allow mortgage 1 to be repaid at that time, which it was not.

I know that Mr B and Mrs N won't agree with me, but I can't find that ME acted inappropriately when it didn't accept the proposals they made and, in its decision to consolidate the two mortgages. That said, ME did confirm in 2019 that it would consider a shortfall sale and potentially other options, but Mr B and Mrs N would need to provide it with full details of the potential sale/alternatives. I can only find that this was a reasonable response.

7. Doesn't offer products with competitive interest rates, due to losing its lending licence.

The mortgage offers from 2005 and 2006 confirms that mortgage 1 was taken on a three-year fixed interest rate of 5.14% and mortgage 2 was taken on a discounted rate of 1.36% below standard variable rate (SVR). Once these rates ended, the mortgages would revert to ME's SVR. There isn't anything specified in the mortgage offers that say that Mr B and Mrs N would be entitled to another interest rate product once the initial ones expired.

From what I can see, the mortgages have run in line with the terms and conditions. Due to ME's collapse and nationalisation, it is now a closed book lender unable to offer new interest rates to any of its customers, and there is no obligation for it to do so. So all its other customers were in the same position as Mr B and Mrs N.

I appreciate that Mr B and Mrs N feel they could have paid less if they had the option of taking out a product. However, I am satisfied that ME's SVR has been comparable to the SVR and reversion rates that are charged by other similar lenders. I do appreciate and understand that they have been in a difficult situation and they would have preferred their mortgage payments to be lower, but I can't find that ME has treated them unfairly because of the rate they have been asked to pay.'

Mr B and Mrs N didn't accept my conclusions. They reiterated their comments about the events that occurred, what ME had said at various points and our jurisdiction. In particular, they said that they objected strongly to ME having refused to provide a redemption statement and deciding to consolidate the two mortgage debts. In relation to the compensation payment, Mr B and Mrs N said that had ME paid the money from the solicitors to their mortgage account in 2014, that amount would have been appropriate at the time. However, they requested an inflationary uplift to the amount for settlement in 2022.

ME accepted my provisional decision and confirmed it had nothing to add.

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.

Neither party has provided any new evidence or comment, and as such I see no reason to change my conclusions.

My final decision

My decision is that the offer ME made in respect to the poor service it provided Mr B and Mrs N in 2019 is fair in all the circumstances. As such, I require Mortgage Express to pay Mr B and Mrs N £300 in full and final settlement of the complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr B and Mrs N to accept or reject my decision before 9 January 2023.

Derry Baxter
Ombudsman