

## The complaint

This complaint is about a buy-to-let (BTL) mortgage portfolio Mrs and Mr B used to hold with The Mortgage Works (TMW). Mrs and Mr B are unhappy with how TMW dealt with their attempts to change from having a single mortgage covering their entire mortgage portfolio to having individual mortgages over each individual property.

## What happened

By way of a provisional decision dated 21 February 2023, I set out my provisional conclusions on this complaint. The following is an extract from the provisional decision.

“The broad circumstances of this complaint are known to Mrs and Mr B and TMW, and not in dispute. So I don’t need to repeat all of the details here.

Our decisions are published, and it’s important that I don’t include any information that might result in Mrs and Mr B appropriate, and then focus on giving the reasons for my decision. If I don’t mention something, it won’t be because I’ve ignored it. It’ll be because I didn’t think it was material to the outcome of the complaint.

In 2020, Mrs and Mr B complained about the mortgage having been set up on a portfolio basis in the first place. That complaint was referred to this service, and was the subject of a final decision in February 2021.

In the meantime, various release of property (ROP) requests were initiated but not completed, until in late 2020, it was decided Mrs and Mr B would replace the portfolio mortgage with three individual mortgages, one on each of the BTL properties. This required all three mortgages to complete simultaneously so that the portfolio mortgage could be redeemed in a single transaction. Two of the new mortgage offers were issued in December 2020, but the third didn’t materialise until February 2021. Meantime, in a phone conversation with TMW in January 2021, Mrs and Mr B say they were told they’d need to make another ROP request.

Mrs and Mr B complained again; they were unhappy with the valuations, the redemption amounts quoted, and with the actions of TMW’s appointed solicitor, who apparently also told them an ROP would be needed for the property on which the offer had seemingly been delayed. TMW addressed the complaint in a final response dated 5 March 2021. In this TMW referenced the two earlier complaints but didn’t revisit them, instead reminding Mrs and Mr B those matters had already been addressed in previous final responses.

In August 2021, Mrs and Mr B contacted us and asked us to investigate; they told us they’d eventually re-mortgaged elsewhere because they’d lost confidence with TMW. Mrs and Mr B said that if they’d been allowed to re-mortgage separately in 2019, they’d have saved in the region of £13,000. Our investigator didn’t think TMW had done anything wrong, so didn’t recommend the complaint be upheld. Mrs and Mr B asked for it to be reviewed by an ombudsman.

The case came to me, and in a jurisdiction decision in July 2022, I concluded that the Financial Ombudsman Service's power under its rules to consider this complaint was confined to how TMW administered the attempt during late 2020 and early 2021 to replace the portfolio mortgage with three individual mortgages. This decision deals with the merits of that subject.

At the same time as I issued my jurisdiction decision, I took the view that it would be necessary to see the file from the solicitors engaged in the re-mortgage transaction. The delay in reaching this stage, for which I apologise, has been caused by the amount of time it has taken to get that file.

### **What I've provisionally decided – and why**

I'll start with some general observations. We're not the regulator of financial businesses, and we don't "police" their internal processes or how they operate generally. That's the job of the Financial Conduct Authority. We deal with individual disputes between businesses and their customers. In doing that, we don't replicate the work of the courts.

We're impartial, and we don't take either side's instructions on how we investigate a complaint. We conduct our investigations and reach our conclusions without interference from anyone else. But in doing so, we have to work within the rules of the ombudsman service, and the remit those rules give us.

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've reached a different conclusion from the investigator. This provisional decision allows the parties to make further comments, assuming they wish to, before my decision is finalised.

The key to this transaction proceeding smoothly was that all three new mortgages needed to complete simultaneously, and all three components of the existing portfolio needed to be redeemed simultaneously. For that to happen, there needed to be three new mortgage offers in place, and three redemption statements needed to be requested. As I said in my earlier summary, that didn't happen; two offers were issued in December 2020, and the third wasn't issued until February 2021. Meantime, redemption statements were requested separately, which is what triggered the ROP process that irked Mrs and Mr B so much.

The main reason our investigator didn't recommend the complaint be upheld was that he took the view that the solicitors acting in the transaction had mistakenly asked for three separate redemption statements instead of one collective one. Mrs and Mr B argued that the solicitor received their instructions from TMW. They are right on that point, TMW did instruct the solicitors, but that doesn't mean TMW is responsible for everything the solicitors did. It's a bit more nuanced than that, which is partly why I needed to see the solicitor's file.

As a starting point, the Financial Ombudsman Service has no direct jurisdiction over the activities of a firm of solicitors. The exception is where a solicitor is carrying out one or more of the tasks listed above as being on behalf of the lender. Where that's the case, the solicitor is acting as the lender's agent, in which such acts or omissions do come within our remit.

Normally, in a purchase and mortgage transaction, solicitors have two clients, the purchaser and the lender. There are two discrete roles the solicitors carry out. For the lender, the solicitors have to ensure that the title is suitable security for the mortgage. They will arrange signature of the mortgage deed, prepare the report on title for the lender, obtain any undertakings (binding promises) from the seller's solicitors to safeguard the lender's position, they'll transfer the funds over on completion and register the lender's charge.

In this transaction, however, Mrs and Mr B already owned the properties. With no purchase involved, even though the solicitors received their instructions from TMW, the solicitors' duties on TMW's behalf were reduced, and requesting redemption statements, either separately or collectively, wasn't one of them.

That said, I have considered whether TMW's instructions, in this instance, were clear enough at the outset about the need for all three elements to proceed simultaneously. I think TMW's letter to the solicitors dated 26 February 2021 went some way towards doing this, but in my view, that clarification could have been provided sooner. The solicitors needed to know in December 2020, when the first two new offers were issued, that all three new offers needed to be in place, and that once they were, an aggregate redemption statement should be requested for the whole of the existing portfolio.

If that had happened, a great deal of confusion and debate over redemption shortfalls and valuations could have been avoided. And of course it's possible Mrs and Mr B might then have stayed with TMW rather than move to a different lender altogether. That doesn't mean I consider it fair that TMW should compensate Mrs and Mr B the financial impact of moving lenders. Ultimately, the choice to do that was theirs, and they must accept the consequences, financial and/or otherwise, of doing so. Also, I don't think TMW could reasonably have foreseen them taking that action.

That said, I do think some financial redress is warranted for the time, trouble and upset Mrs and Mr B have experienced. In all the circumstances, taking into account the commercial nature of the transaction and that at no time was Mrs and Mr B's home at risk, I'm minded to award £300."

I gave the parties two weeks to reply to the provisional decision; both have done so. TMW agreed to pay the compensation I was proposing. Mrs and Mr B said they probably would have stayed with TMW if they could have got things straightened out, but felt they had no option but to re-mortgage due to the communication problems.

### **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.

I've considered afresh everything that both parties have said and provided. Having done so, and with neither party saying anything new, I don't depart from my provisional conclusions.

### **My final decision**

My final decision is that I uphold this complaint in part by ordering The Mortgage Works to pay Mrs and Mr B £300 compensation for their time, trouble and upset.

My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further consideration or discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs B to accept or reject my decision before 4 April 2023.

Jeff Parrington

**Ombudsman**