

The complaint

Mr and Mrs G have complained about the administration of one of their buy-to-let (BTL) mortgage accounts held with The Mortgage Works (UK) Plc (TMW). Mr and Mrs G are unhappy at the length of time taken to secure a new interest rate product. They had chosen a rate of 3.14%, but because of delays and rises in interest rates, they ended up with a rate of 3.74%.

Mr and Mrs G have also complained about difficulty in contacting TMW, and that they had to chase TMW for a response to their complaint.

To settle the complaint, Mr and Mrs G want TMW to switch their mortgage to the 3.14% rate.

What happened

I do not need to set out the full background to the complaint. This is because the history of the matter is set out in the correspondence between the parties and our service, so there is no need for me to repeat the details here. In addition, our decisions are published, so it's important I don't include any information that might lead to Mr and Mrs G being identified. So for these reasons, I will instead concentrate on giving the reasons for my decision. If I don't mention something, it won't be because I've ignored it; rather, it'll be because I didn't think it was material to the outcome of the complaint.

Mr and Mrs G have a BTL mortgage with TMW. In the summer of 2022 their interest rate product was about to expire. However, they weren't able to select a new product online. This is because TMW had received a letter from the local authority (LA) in 2019 saying that the property was being used as a House of Multiple Occupation (HMO), which was in breach of the mortgage conditions.

Mr and Mrs G said this wasn't the case, but TMW needed a copy of the tenancy agreement, which was received on 20 June 2022. This wasn't reviewed until 1 August 2022, at which time TMW noticed that there was a page missing. Once this was received, TMW agreed to back-date the new interest rate product of 3.78% to 1 September 2022. TMW also paid compensation of £175 for inconvenience.

Mr and Mrs G weren't happy with this. They brought their complaint to our service. Mr and Mrs G said that between 23 May 2022 and 15 June 2022 neither they nor their broker had been able to get through to TMW on the phone, as a result of which they lost out on a lower interest rate product. They also said that the property wasn't being used as a HMO, and that if TMW had asked about this in 2019, they would have been able to clarify that they weren't in breach of the mortgage conditions.

An investigator looked at what had happened. He noted that on 15 June 2022 TMW had told Mr and Mrs G that it would take five days to assess their paperwork. As a result, the investigator thought TMW could have dealt with it in time for a new rate to be applied from July 2022 onwards. He asked TMW to backdate the mortgage, putting it on a lower rate than 3.74% if one had been available. The investigator thought the compensation offered by

TMW for distress and inconvenience was fair (although he incorrectly said this was £125, rather than the £175 TMW had actually paid).

TMW confirmed that the five-year 3.74% rate was the lowest available in July 2022 and agreed to backdate this to 1 July 2022.

Mr and Mrs G didn't accept this and asked for an ombudsman to review the complaint. Mr G, who has dealt with the complaint throughout, has made a number of points, which I summarise below:

- he expects *“the standards that the Financial Ombudsman Service would be imposing upon a mortgage lender would be significantly higher than a buy to let lender. A mortgage lender is regulated, professional and will have high levels of requirements placed upon them by the various supervisory authorities...”*;
- he has reiterated his previous points about not being in breach of the mortgage because the property was not being used as a HMO;
- TMW never showed him the letter it had received from the LA, nor referred to any specific clause prohibiting the use of the property as a HMO;
- TMW should stress test its systems so it is able to answer the telephone at busy times;
- he provided the information TMW wanted by 20 June 2022, and so the five-day turn around should have taken it to 27 June 2022;
- he doesn't have any records of calls he tried to make to TMW between 23 May 2022 and 15 June 2022.
- he feels it would be sensible to split the difference for this period, being 4 June 2022, assuming a four-day timescale for TMW to be in receipt of the paperwork and five working days from then, the end date would be 15 June 2022;
- therefore he would have been able to obtain the lower interest rate of 3.14% which should now be put in place to run from 1 June 2022.

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 noted what Mr G has said about the standards he believes the Financial Ombudsman Service should impose on TMW. However, we aren't a regulator and have no power to supervise or “police” TMW. In any event, this is a BTL mortgage and so the regulations that apply to residential mortgages are not applicable here, even where the lender itself is regulated.

I note that the Special Conditions attached to the mortgage offer dated 27 April 2017 state that the property must not be subject to licensing requirements of the Housing Act 2004 for HMOs. In addition, Clause 31 of the Mortgage Terms and Conditions state that the property must only be let on a single Assured Shorthold Tenancy and that HMOs are not acceptable. I'm therefore not persuaded that Mr and Mrs G were never told of this. As BTL landlords it's up to Mr and Mrs G to ensure they are familiar with the terms and conditions of their BTL mortgage. TMW isn't under any obligation to offer Mr and Mrs G advice about this.

I've also seen the letter and documentation provided from the LA, which shows that an application was made by Mr G for a HMO Licence. (I understand Mr G has now also received a copy of this.) Although Mr G says the property was never being used as a HMO, I'm satisfied TMW was entitled to treat this document as legitimate. If Mr G disputes the accuracy of the letter and accompanying documentation, he'll need to take that up with the LA.

Because TMW had recorded that there might be a breach of the mortgage conditions, it wasn't possible to apply for a product switch online. I find that to be reasonable, as TMW is entitled to make enquiries about the use of the property where it's been told by the LA it is being used as a HMO.

TMW has accepted that in late May/early June 2022 it was coping with a large volume of calls. Mr G hasn't provided evidence that he and/or his broker were trying multiple times a day between 23 May 2022 and 15 June 2022 to speak to TMW. But there's no obligation on TMW to have, as Mr G has suggested, contingent staff on hand in case of increased call volumes. I can't tell TMW how to run its business, and it's up to TMW to decide on its staffing levels.

But I'm not persuaded, even if Mr G had been able to speak to TMW on 23 May 2022, that the new product would have been put in place in time to start on 1 June 2022. A product switch is implemented in the month following a successful application. So a product applied for in June would always take effect from July. Assuming Mr G had sent on 23 May 2022 the paperwork he later supplied in June 2022 (which had a missing page), this still would not have been dealt with in time for a new product to be put in place to start on 1 June 2022.

I say this because if it had taken four days for the paperwork to arrive, this would have been 27 May 2022 (a Friday). In 2022 there was no late May Bank Holiday, but there were Bank Holidays on 2 and 3 June 2022 (because of the Queen's Platinum Jubilee) so it would have been 7 June at the earliest that TMW could have looked at the paperwork, and then asked for the missing page. So the product switch could never have been put in place by the end of May 2022, and so could never have taken effect from 1 June 2022.

TMW has acknowledged that there was a delay in dealing with the paperwork sent in by Mr G (which, in any event, was incomplete). Overall, I am satisfied that TMW should backdate the new product to 1 July 2022, because if it had dealt with it within five working days, it could have sorted everything out before the end of June 2022, for the new product to start the following month.

TMW has confirmed that the 3.74% rate was the lowest available five-year fixed rate, and this is the rate the mortgage was transferred onto in September 2022.

Mr and Mrs G have also complained about having to chase TMW about their complaint. However, complaint-handling doesn't fall within the scope of a regulated activity, nor is it an activity that is ancillary to regulated activity (such as account or payment administration or arrears-handling). Therefore this issue isn't covered by our rules and so I am unable to comment on it.

Putting things right

In order to resolve this complaint, I direct The Mortgage Works (UK) Plc to do the following:

- backdate the five-year fixed rate 3.74% interest rate product to 1 July 2022;

- refund any overpayment made while the mortgage reverted to Standard Variable Rate to Mr and Mrs G, either by way of capital reduction or by a refund direct to them. Mr and Mrs G should tell TMW which option they require.
- if Mr and Mrs G opt for a refund direct to them, TMW must pay simple interest of 8% per annum on the refund from the date of each overpayment to the date of settlement.*

I am satisfied that the £175 already paid for distress and inconvenience is fair and reasonable and I am not ordering TMW to pay anything more.

* If TMW considers that it is required by HM Revenue & Customs to withhold income tax from any interest, it should tell Mr and Mrs G how much it has taken off. TMW should also give Mr and Mrs G a tax deduction certificate if requested, so the tax can be reclaimed from HM Revenue & Customs if appropriate.

My final decision

My final decision is that I uphold this complaint. In full and final settlement I direct The Mortgage Works (UK) Plc to settle the complaint as detailed above.

This final decision concludes the Financial Ombudsman Service's review of this complaint. This means that we are unable to consider the complaint any further, nor enter into any correspondence about the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G and Mrs G to accept or reject my decision before 6 December 2023.

Jan O'Leary
Ombudsman