

The complaint and what happened

Mrs C complains that The Mortgage Works (UK) Plc's conveyancer made a catalogue of mistakes in its handling of her re-mortgage during the summer of 2021 which cost her both money and extreme stress and inconvenience. Whilst originally she had raised concerns around the cancelling of a direct debit to another business, and difficulties that has caused her, she has now confirmed that does not form part of this complaint.

As The Mortgage Works is responsible for its conveyancer's actions, I will simply refer throughout this decision to "TMW" when talking about the business against which this complaint is brought.

I've included relevant sections of my provisional decision from May 2023, which form part of this final decision. In my provisional decision I set out the reasons why I was planning to uphold this complaint. In brief that was because I didn't think TMW had compensated Mrs C for the delays it had caused in this transaction.

I asked both Mrs C and TMW to let me have any more information they wanted me to consider. TMW has accepted my provisional decision and its findings. Mrs C has responded in some detail, and believes that TMW should be required to pay more than I had set out in my provisional decision.

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.

Having done so, I'm upholding it, and I'll reiterate why, but first I've included here the relevant sections of my provisional decision:

"What happened

I will only provide a brief summary of events in this section, as a detailed timeline is not necessary to reach and explain my findings, and would indeed be unhelpfully lengthy.

Having opened a prospective file at the end of June 2021, on 6 July 2021 TMW made Mrs C an offer of a buy-to-let mortgage and its conveyancer began the necessary work to conclude the transfer from the existing lender at that time ('Business B').

During a phone call from Mrs C on 2 August 2021, a TMW agent told her that they were waiting for the redemption statement from Business B, and would chase it. Mrs C asks whether she will be making her August mortgage repayment to TMW, rather than Business B, and the agent says she will. But the agent also advises Mrs C not to cancel her direct debit to Business B, and discusses how she will get a refund if ultimately she has paid too much after completion.

It's clear there were a few queries which led to some delays, notably around the address of the property on the title deeds. In fact, it appears to have taken over a month for those queries to be satisfactorily resolved. But once that happened, it would appear that TMW

in fact requested a redemption statement from Business B on 8 September 2021. Not before 2 August 2021 as Mrs C had been advised on the phone.

Following multiple contacts by Mrs C and her financial adviser, Business B provided Mrs C with a redemption statement which she forwarded to TMW on 23 September 2021.

It would seem that TMW didn't immediately explain to Mrs C that it would be unable to use and rely upon that redemption statement, as it needed one sent directly to it by Business B. Ultimately TMW contacted Business B again on 30 September 2021, and apparently received the necessary redemption statement (dated 30 September 2021) on 4 October 2021. On 5 October 2021 TMW explained to Mrs C why it hadn't been able to use the redemption statement forwarded by her on 23 September 2021.

On 6 October 2021 TMW requested £1,338.71 from Mrs C to complete the mortgage transfer. She says both she and her financial advisor believed the amount requested was incorrect and so requested clarification from TMW. She says that the breakdown received from TMW was inaccurate and that she queried it, but ultimately paid the £1,338.71 on 8 October 2021 in order to prevent further delays. On that same day TMW requested a further £137.90 from Mrs C, in order to cover daily interest for an additional week to allow for completion. She made a second payment on that day, and says that she had to borrow money in order to do so.

The mortgage completed on 13 October 2021, and Mrs C was advised by TMW that she was due a refund of £675.92. Ultimately TMW refunded Mrs C what she was owed.

On receiving Mrs C's complaint, TMW accepted that it had, "...caused delays by not requesting or chasing the redemption statement as proactively..." as it ought. It also agreed that its, "...level of response to [Mrs C's] requests for information and return calls [had] fallen below..." its own expectations. Consequently it paid her £100 as "...part of the apology and a gesture of goodwill..."

Unhappy with this response, Mrs C came to our service. The investigator looked at the evidence and thought TMW didn't need to do anything more. Mrs C disagreed and asked an Ombudsman to look at her complaint.

To be clear, I am only able to comment on the actions of TMW within this complaint. Mrs C has already received a final decision from another Ombudsman in relation to a complaint she raised against Business B.

What I've provisionally 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.

Having done so, I'm currently planning to uphold it, and I'll explain why.

When considering the potential loss to and impact on Mrs C, and the key points of her complaint, I think it is easiest to think about three distinct issues, which I will deal with in turn.

Did TMW mislead Mrs C into believing it was OK to cancel her direct debit to Business B at the start of August 2021?

In short, no, I don't believe I can reasonably hold TMW to account for Mrs C's action in cancelling that direct debit.

I accept that on the call on 2 August 2021 the TMW agent said that the transfer was in hand; the redemption certificate awaited; and that Mrs C would be making her August mortgage payment to TMW and not Business B. None of that transpired to be accurate information.

However, the TMW agent also told Mrs C that they advise customers to, "...never cancel a direct debit...", before completion of the transfer, and that instead Mrs C should anticipate a refund from Business B post-completion.

Whether Mrs C relied on advice from any other businesses in making her decision to cancel her direct debit I can't comment on. However, I think it's clear that TMW advised her not to do so, despite its false optimism about the timeline for completion. So I can't hold it responsible for her decision and its ramifications.

How long were the delays caused by TMW, and what was the financial loss associated with those delays?

During the course of this investigation, TMW has accepted that it delayed the completion of this transaction for five days. Those days are 3-8 September 2021, a period of time during which it says it should have requested the redemption statement from Business B, but didn't.

It has identified that Mrs C's mortgage with Business B came with an interest charge to her of £27.58 per day, and that the new mortgage with TMW was much cheaper at £15.22 per day. The difference between the two therefore being £12.36 per day. If Mrs C disputes those calculations, I invite her to let me know in response to this provisional decision.

I don't accept that TMW's errors and omissions led only to a delay of five days across this transaction. As set out in the "what happened" section of this decision, there were multiple occasions when TMW failed to promptly chase the redemption statement, along with failing to give Mrs C the accurate information she needed to potentially expedite things herself.

TMW itself accepts that it would normally expect the statement to have been requested by Friday 3 September 2021 at the latest. A reasonable estimate of turnaround time would be around five working days, meaning that, had things gone as they should have, I would have expected TMW to chase Business B on Monday 13 September 2021 when it wasn't received. In fact, it didn't do so for 17 days. So I find it is fair and reasonable to hold TMW accountable for 17 days of delay, and the additional interest paid by Mrs C over that timeframe. Subject to any further comments on the daily interest calculations set out above, I estimate that amount to be around £210.

I have also thought carefully about what happened between TMW receiving the redemption statement on 4 October 2021 and the re-mortgage actually completing on 13 October 2021. But at this stage I haven't seen evidence of unreasonable or unfair delays in that time period. It is normal for funds to be requested from the borrower at this stage in order to secure the completion, and although Mrs C didn't accept TMW's breakdown of the funds requested, I don't think TMW are responsible for delaying matters at this point.

Did TMW make a mistake in the funds it requested from Mrs C at the start of October 2021?

It's clear that both Mrs C and her financial advisor were surprised at the amounts requested by TMW on 6 and 8 October 2021. It is worth highlighting that such requests at this point in this type of transaction are always based on estimates, as the exact date of completion cannot be accurately predicted and so the sums payable to various parties cannot be confirmed in advance.

Mrs C and her financial advisor believed the breakdown of the amount provided by TMW was incorrect. Although how they could have been certain of that is not clear to me, based on the inevitable estimates involved. As previously mentioned, TMW refunded Mrs C £675.92 on 27 October 2021. I don't have clear evidence to say whether, therefore, TMW made a clear and egregious mistake in the amounts it requested at the start of October 2021, or whether it acted reasonably in its estimates, and both the requests and the refund were fair. If it did make an egregious mistake, the most likely remedy I would direct would be for TMW to pay Mrs C 8% simple interest on the difference (i.e. £675.92) for the 19 days (8-27 October) of which she was deprived of that amount. I estimate that remedy to be less than £3.00.

The only circumstance under which I might direct anything different is if Mrs C could provide clear evidence that she had to borrow £675.92 in order to pay the incorrect amounts to TMW, and that she was charged more than 8% simple interest for the relevant 19 days. And that remedy could only be applicable if there was also clear evidence that TMW had acted unreasonably and made a mistake when requesting those amounts.

Therefore I invite both parties to provide any further evidence and submissions on this point before I write my final decision. But as I don't at this point have clear evidence of a mistake on TMW's part here, I'm not provisionally directing any redress."

Mrs C has raised several points in response to the provisional decision, which I will deal with in turn.

Mrs C emphasises that she believes she was repeatedly lied to by TMW, and the emotional impact that had on her. I don't have sufficient evidence to conclude it lied deliberately, but as already set out, it is clear that it gave her misinformation at times. And that misinformation prevented her from understanding the true picture of progress with the transaction, and limited her ability to ask the right questions in an attempt to expedite things. I consider that poor service to have been remediated by the £100 compensation awarded by TMW.

Far more important is the extent to which mistakes by TMW caused a delay to the completion of the re-mortgage, as this is where Mrs C's potential financial losses lie. Mrs C characterises that delay as being about three months – from the start of July 2021 when she received the mortgage offer, to 13 October 2021 when it was completed. I don't agree. Such transactions are never instantaneous and moving to a new mortgage lender will always entail a large amount of administration, which is not uncommonly protracted as a result of the large sums involved and the concomitant checks. Such checks and processes typically take longer with leasehold properties, such as Mrs C's, due to complexities arising from the lease.

Mrs C highlights that she was repeatedly told by TMW that it had requested the redemption statement from Business B from the end of July onwards. I am satisfied based on the available evidence that it is more likely than not that TMW did not request it until 8 September 2021, and accept that Mrs C was misinformed on this point. I say that despite a letter written to Mrs C by Business B on 22 September 2021 stating that, "...no formal request has been received...up until 21st September 2021..." which I think is most likely a mistake. That's because in the recording of Mrs C's call with Business B on 21 September 2021, the agent discusses at some length that the request for the redemption statement was received by them on 8 September 2021 and forwarded to a specialist team who did not seem to have actioned it.

Therefore I continue to conclude that TMW requested the redemption statement from Business B on 8 September 2021, no earlier or later. But that doesn't necessarily mean that TMW *ought* to have requested it at the end of July, or in August, and that therefore this in itself caused delays. TMW accepts it ought to have requested the redemption statement by 3 September 2021, a date which Mrs C queries. To clarify, as discussed in my provisional decision, TMW has set out that the queries about the address of the property on the title deeds caused a delay. It has provided dates evidencing that this was first raised with Mrs C on 30 June 2021, and that in fact it was not until 1 September 2021 that the relevant sign off was obtained from the underwriter to proceed. It appears to me that for much of July 2021 TMW was gathering and/or waiting for information from Mrs C on this issue, and that for much of August 2021 TMW was liaising with the underwriters to get confirmation that it was OK to proceed based on that information. So I don't think it is unreasonable that TMW would expect its staff to have requested the redemption statement from Business B within two working days of that final sign off being obtained on 1 September 2021. That brings things

to 3 September 2021.

So I don't agree with Mrs C's assertion that TMW delayed matters by three months and cost her thousands in additional mortgage interest. The transaction took three and a half months, and was very stressful: but not all of that was as a result of mistakes by TMW. Indeed, I was sorry to hear of a range of other difficulties in Mrs C's life around the time in question, which undoubtedly made dealing with this transaction even more trying. But those difficulties are unrelated to TMW and its actions. Mrs C has offered no new evidence which dissuades me from my provisional findings, for the reasons set out therein, namely that it is fair to attribute a delay of 17 days to TMW's failings.

Mrs C has raised the question of her existing mortgage deal, which is due to expire at the end of July this year. She feels it is fair that it is extended to reflect the length of time it took for this transaction to conclude. However, this is not something that I am directing. To clarify, fixed term mortgage products such as this one have a fixed end date for all customers – so some may, in fact, apply for the rate at the very start of its launch and end up benefiting from it for slightly more than the nominal term (two years here). And some will apply later and benefit from it for slightly less. The completion date of the mortgage has no bearing on the end date of the fixed term product. As already established, the evidence leads me to the conclusion that Mrs C ought to have benefited from this fixed term product 17 days earlier than she did. And as a result, I have directed that TMW must compensate her for the additional interest she paid over those 17 days. The fixed rate product cannot be extended, and the losses attributable to TMW's actions have been dealt with as described.

Mrs C hasn't provided any fresh evidence in relation to the sums requested from her by TMW in early October 2021. She says that the fact that she ultimately received a refund of nearly £700 proves that she didn't need to pay as much as she did to TMW. That is true, and is pretty much always the case, because the final amount needed can only be estimated until the day of completion. Therefore it is not uncommon for refunds to be due, as conveyancers need to ensure that they have enough funds to complete the mortgage. So, the question is whether there is evidence that TMW made a mistake and/or acted unfairly or unreasonably in the sums it asked for. Or whether those requests were a reasonable estimation of the amounts it expected to have to pay to various parties in order to complete the transaction. I continue to have no evidence of TMW making a mistake, as opposed to a reasonable estimate. So I have no basis on which to make an award in respect of that.

Having reconsidered all the evidence provided by both parties, for the reasons explained, it follows that I uphold this complaint on the basis set out in my provisional decision

Putting things right

In order to put Mrs C back in the position she would have been in but for its mistakes, I direct TMW to do the following:

A) Pay Mrs C the difference in interest between her mortgage with Business B and the mortgage with TMW to cover a delay of 17 days.

B) Make a payment of 8% simple interest* on the amount in A), calculated from 26 September 2021 to the date of settlement. 26 September 2021 represents a reasonable estimate of when this mortgage would have completed, but for the 17 delays caused by TMW.

*HM Revenue & Customs requires TMW to deduct tax from this interest. It should give Mrs C a certificate showing how much tax it's deducted, if she asks for one.

For clarity, this award is in addition to the £100 TMW has already paid to Mrs C. Although it has more recently said that the £100 included five days' worth of additional interest, it didn't say that at the time of its response to the complaint. It described the amount as an "apology" and a "goodwill gesture", and given the stress and inconvenience caused to Mrs C by TMW's mistakes, I consider £100 to have been a reasonable amount to compensate her for that

My final decision

For the reasons I've explained, I uphold this complaint and The Mortgage Works (UK) Plc must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 29 June 2023.

Siobhan McBride

Ombudsman