

## **The complaint**

Miss L complains that The Mortgage Works (UK) plc (TMW) has failed to treat her fairly when she asked for information about her buy-to-let mortgage.

## **What happened**

The background to this complaint is well known to both Miss L and TMW and I don't intend to set it out in detail. But Miss L has a number of concerns with how TMW has supported her with her buy-to-let mortgage.

Miss L's mortgage is currently charged interest at TMW's Managed Variable Rate (MVR) and it's been on this rate since February 2022. Miss L has asked whether she can change to a new product with a fixed rate at different points since February but has been unable to make changes. TMW has said this is because she has been operating the mortgage in breach of its terms and this has meant it is unable to offer a product transfer. Ultimately, Miss L feels errors made by TMW have resulted in her losing out in the ability to fix the interest rate on her mortgage and she's paid more than she should have over a number of months because of this.

Our investigator looked at Miss L's complaint and felt TMW acted fairly when it said it couldn't offer a new product. She said when Miss L asked to fix her mortgage rate, TMW had correctly said this wasn't an option because the mortgage was in breach of its terms. She set out a timeline of what happened when Miss L spoke with TMW at different points and felt it had given Miss L information on what she needed to provide to allow the consent to be considered.

But she felt TMW could have done more with how it responded to Miss L. She felt it could have offered better service by having conversations with Miss L and explaining what was needed sooner. And after Miss L had explained the difficult circumstances she was facing in September and October, its delayed response added to the distress and inconvenience which compiled a very difficult time for Miss L and it was right that TMW recognised the impact of this with a payment of £300.

Miss L didn't think this was fair. She highlighted the financial impact of TMW not confirming if it would consent to the tenant was far greater than this. She said her personal circumstances had been severely impacted by this situation and this needs to be considered. Miss L feels TMW would never have approved the tenant she has in place for her property and it should have informed her of this in April 2022 when she first asked whether they were suitable. The failure to tell her this at the time has meant the matter has been drawn out for many months and cost her a significant amount in additional interest paid as the MVR has continued to increase.

Our investigator looked at the complaint again but said her opinion didn't change. She explained why she still believed TMW acted fairly when it said the mortgage was in breach of its terms and couldn't offer a product.

Overall our investigator maintained that TMW should pay £300 for the distress and

inconvenience caused when it wasn't as clear as it could have been about what Miss L needed to provide. She also recommends that TMW contact Miss L to discuss what fixed rate products it could offer if there wasn't a restriction in place. This would allow Miss L to make an informed choice about whether the tenancy should be extended.

Miss L still disagrees with the outcome and because of this, the complaint has been passed to me for 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.

I've decided to uphold this complaint for much the same reasons as our investigator. I know Miss L will be disappointed by this as it stops some way short of the outcome she is hoping for, but I'll explain why I think this is fair.

I understand Miss L has raised some broader concerns about TMW and how it has treated her for a number of years after it provided consent for her to temporarily reside in her property. But the focus of this complaint and what was addressed by TMW in its response, is on the actions taken by TMW when Miss L called to discuss her mortgage in April 2022 and its subsequent treatment of her.

When Miss L spoke with TMW in April 2022, she was doing so because she wanted to ensure the potential tenant her estate agent had found was suitable to take on the tenancy inline with her mortgage. This tenant was a company who intended to use the rented property to provide staff accommodation as and when its employees needed it.

Miss L believes TMW should have been aware at the point she made her initial enquiry that her tenant was not suitable. When it didn't tell her this, she feels it has caused her to lose out. I appreciate the feeling Miss L has in reference to this, but I don't agree it was clear from her initial enquiry that her tenant was not suitable. The terms and conditions for Miss L's mortgage confirm that approval must be sought from TMW to any tenancy. When Miss L called and spoke with TMW, she was told what she needed to do to obtain this approval and that it would generally take two weeks for the team who needed to consider this to provide a response.

Unfortunately it was clear Miss L didn't have two weeks to wait, she said she needed an answer as soon as possible as the tenant was keen to secure the property. And she explained she didn't want to lose the tenant as she viewed them as a good option. So Miss L said that she would have to accept the tenancy without confirmation of consent from TMW and hope this would be provided. But she followed the instructions of the agent she spoke with and sent her enquiry to the relevant team for TMW to consider.

TMW didn't respond to Miss L until 3 May 2022 – so around 2 weeks after her initial enquiry. In this, it explained what it would need to see to be able to consider the consent for the tenancy and Miss L sent this information to it on 6 June. There was no response from TMW to Miss L until 29 June where it confirmed it needed some more information from Miss L before it could consent to the tenancy. It asked that Miss L provide the following:

1. An amendment to the tenancy agreement to make it clear that schedule 5 of this relates to the TMW mortgage held on the property.
2. To see a copy of the licence that the tenants grant its employees to stay in the property to confirm they are not being given security of tenure.

Miss L spoke with her estate agent about this request to see if they could assist with providing the information. There was confusion over what TMW meant when asking for a licence. She responded to TMW on the same day to explain there is no licence but that the tenant allows its employees to stay in the property when needed.

TMW responded on 15 July to clarify what it still needed. It said it expected the tenant to be able to demonstrate that it has a formal agreement with its employees where it grants permission to stay. It needed to see a copy of this and asked to see a copy of an updated tenancy agreement which confirmed the property is subject to TMW's mortgage. Miss L responded to this and asked whether TMW could provide specific wording in regard to the amendments it wanted making to the tenancy agreement for schedule 5. Miss L made it clear that she was frustrated with the process and didn't want to upset her tenant by going back and asking for information from them, but she'd do what she could to get the information TMW needed.

TMW sent further information to Miss L on 7 August and included wording it said could be used to amend the contract.

It wasn't until the end of August 2022 Miss L asked if her mortgage could be moved to a fixed rate product as soon as possible. Prior to this, I think it is fair to say that she'd been focussing on trying to fulfil TMW's requests for information for the consent.

Miss L said she believed she'd been overpaying when on the MVR, she asked for TMW to make an offer on what it could do to get the mortgage straight and if this wasn't provided, she'd look for a new mortgage with another lender. Miss L also asked further questions about the information needed by TMW in relation to the tenancy contract.

TMW responded to Miss L and said until the consent for the tenancy was provided, it couldn't offer a product transfer. Without the consent, the mortgage was in breach of its terms and this meant it was unable to move Miss L to a new product with a fixed rate. It reiterated what it needed to see and pass on to the credit underwriters for the consent to be considered again. I don't think TMW acted unfairly when it explained this to Miss L. The terms of the mortgage set out that consent needs to be obtained from TMW for any tenancy with the property and TMW had asked for information to help determine if this consent could be provided from June 2022. I understand that Miss L was not clear on exactly what was required and this caused frustration, but I think TMW clarified this and for the most part, responded to Miss L in a reasonable time.

Miss L has, at a number of different points, explained to TMW her personal circumstances and the difficult time she has been experiencing. I think it could have done more to recognise the impact it's delays in responding would likely have on her. So although I don't think it provided Miss L with incorrect or misleading information, it is reasonable to see that its actions will have added to the distress and inconvenience Miss L was experiencing and it should have recognised this and done more to support her.

Miss L may feel that £300 is not fair compensation for the distress she was feeling or that it covers the financial loss she feels she has experienced. But I agree with our investigator that this is a fair award to recognise the impact of TMW's actions. I know Miss L has been facing a very difficult time and I'm sorry to read this. But the compensation is for the impact of TMW's delays in response and failure to recognise that it could have gone further and responded sooner. And I think £300 for this is fair.

Previously, Miss L asked for consent to reside in her property and TMW granted this. When this happened it increased the interest rate which meant Miss L's monthly payments increase for six months. TMW said when it reviewed this agreement it refunded the

difference in what Miss L paid for this period and Miss L has referenced this refund herself previously.

Miss L still believes she has been paying too much for her mortgage when on the MVR and TMW should compensate her for these overpayments. But as I've said above, the mortgage moved to MVR after the fixed rate it was on previously expired. When Miss L asked to move to a new rate in August 2022, this wasn't an option because of the lack of consent and I think TMW acted fairly when it said this couldn't be done. It explained what Miss L needed to provide so it could consider this again, but from what I've seen, this has not been submitted in full as there has been no amended tenancy agreement supplied. So TMW hasn't been able to reconsider this request.

I agree that TMW should work with Miss L to help her understand what her options are with her mortgage now. She is not on a fixed rate product and it is likely there is no early repayment charge if she looked to move her mortgage to another provider. This would allow Miss L the opportunity to find a new provider on a buy to let, or she may want to look to move the property back to a residential mortgage. These are all things she will need to consider and from the information she has provided, are all options I believe she would like to explore. And it is right that TMW provide her with the information she needs so she can make an informed choice about her options.

### **Putting things right**

To recognise the distress and inconvenience caused in this complaint, TMW should pay Miss L £300.

It should also offer Miss L an appointment with an adviser to look at the options available to Miss L now based on the tenancy she has in place (if one currently exists) so she can make an informed choice about her mortgage.

### **My final decision**

For the reasons I've explained above, I uphold Miss L's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss L to accept or reject my decision before 14 July 2023.

Thomas Brissenden  
**Ombudsman**