

The complaint

This complaint is about a portfolio of four buy-to-let (BTL) mortgages Mr B holds with Mortgage Express (ME). The mortgages were taken out in 2006, jointly with Mr B's then wife. In 2017 as a consequence of Mr B getting divorced, the mortgages were transferred to his sole name. The dispute here is about when the mortgages should be due for repayment. ME believes they're all due for repayment at various dates in 2023; Mr B has variously argued that the mortgages should be due for repayment in 2024, or in 2031.

What happened

By way of a provisional decision dated 12 June 2023, I set out my provisional conclusions on this complaint. The following is an extract from the provisional decision.

"The events leading up to, and arising out of, the complaint are complex and the evidence in the case is detailed, running to nearly 800 pages of documents. I've read everything, and it's apparent that there are also a lot of duplicated documents and repetition of arguments.

In what follows, I have set out events in rather less detail than they have been presented. No discourtesy's intended by that. It's a reflection of the informal service we provide, and 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. This approach is consistent with what our enabling legislation requires of me.

It allows me to focus on the issues on which I consider a fair outcome will turn, and not be side-tracked by matters which, although presented as material, are, in my opinion peripheral or, in some instances, have little or no impact on the broader outcome.

Our decisions are published and it's important that I don't include any information that might result in Mr B being identified. Instead I'll give a summary in my own words (and rounding the figures where relevant) and then focus on giving the reasons for my decision.

The mortgage were all taken out in 2006, secured on properties I'll refer to as 2PG, 10PG, 5HG and 17BM. In all four cases, the original mortgage term was given as 25 years, meaning they'd all be due for repayment in 2031. In 2016, as part of divorce proceedings, Mr B and ME discussed the mortgages being transferred to his sole name. ME was agreeable to this, but wanted the mortgage terms to be reduced. An amendment deed was drawn up specifying the following mortgage term end dates:

- 2PG: 5 May 2023;
- 10PG 23 November 2023;
- 5HG 16 June 2023;
- 17BM 11 September 2023.

The amendment deed document I have seen isn't dated (it isn't signed either) but based on other documentation that was issued later, I estimate that it was drawn up around April 2016.

The transfers didn't proceed immediately; it wasn't until April 2017 that ME issued formal offers for the four transfers of equity. The offers were each accompanied by an illustration setting out the expected duration of the amended mortgage. These were as follows:

- 2PG: six years, one month;
- 10PG: six years, seven months;
- 5HG: six years, two months;
- 17BM: six years, five months.

Each mortgage offer also included the following clause:

“Term (secured amount)

The term shall be the same as the remaining term of the existing loan as at the date of completion of the transaction (as defined at paragraph 12).”

Paragraph 12 of the offer says:

“Completion shall be deemed to take place when your conveyancer/solicitor completes the Transfer Deed (or if the Property is in Scotland, the Deed of Variation.”

On 4 October 2017, Mr B's solicitor wrote to ME to confirm the transfers were ready to execute but specified they should not be sealed until ME had first confirmed that once it had completed *“the term will revert to the agreed 7 years”*. In an email dated 24 October 2017, ME confirmed that once all paperwork had been executed, *“The Mortgage Terms will be amended to remaining 7 years as agreed”*.

In 2022, Mr B complained that ME had set the mortgage terms up wrongly; in a final response dated 19 June 2022, ME agreed that the original terms had been for 25 years from 2006, but that as a condition of the transfers to his name in 2017, he had agreed to reduced terms as follows:

- 2PG: 1 June 2023;
- 10PG 1 December 2023;
- 5HG 1 July 2023;
- 17BM 1 October 2023.

When Mr B referred the complaint to us, he said he had been expecting the mortgages to run until the end of the original terms agreed in 2006, i.e. until 2031. When we drew his attention to his solicitor's letters of October 2017 asking for confirmation that the terms would be set at seven years, Mr B said he hadn't seen those previously. But he then adopted that position, arguing that the terms should be for seven years, running from the date the transfers to his sole name took effect. His solicitor had told him this was 12 December 2017, so Mr B's position became that the mortgages should all run until 12 December 2024.

Assembling all of the evidence in this case was painstaking and difficult. Even when it was all to hand, faced with so much conflicting and contradictory information, our

investigator was genuinely unsure about how she should recommend it be resolved. Each time she proposed what she considered to be a fair outcome, one or other of the parties would say something that hadn't been said before, or send something that hadn't been sent before.

Eventually after weighing everything up, the investigator issued an updated view of the case on 27 April 2023. In this, she proposed a compromise whereby the terms of the mortgages should be as specified in the illustrations that accompanied the mortgage offers of 5 April 2017, and should run from 12 December 2017. This would produce new mortgage end dates as follows:

- 2PG: 12 January 2024;
- 10PG 12 July 2024;
- 5HG 12 February 2024;
- 17BM 12 May 2024.

The investigator also said ME should pay Mr B £200 for the inconvenience caused by having misled him.

ME agreed to pay Mr B the £200 but argued that the current mortgage end dates were already correct because they ran from the dates of the illustrations. After further consideration, ME said it was willing to accept the investigator's recommendation, and proposed to amend the mortgage end dates as follows:

- 2PG: 1 January 2024;
- 10PG 1 July 2024;
- 5HG 1 March 2024;
- 17BM 1 May 2024.

Mr B said all four mortgages should run for seven years from 12 December 2017, in accordance with what his solicitor agreed with ME, which would mean all four ending on 12 December 2024. With no sign of the parties being able to reach common ground, the case has come to me to review.

What I've provisionally decided – and why

I'll start with some general observations. Although I've read and considered the whole file, I'll keep my comments to what I think is relevant. If I don't comment on any specific point it's not because I've failed to consider it but because I don't think I need to comment on it in order to reach what I think is the right outcome in the wider context. My remit is to take an overview and decide what's fair "in the round".

If the available evidence is incomplete and/or contradictory (or simply disputed) we reach our findings on what we consider is most likely to have happened, on the balance of probabilities. That's broadly the same test that the courts use in civil cases.

It's for us to assess the reliability of evidence, from both sides, and decide how much weight should be attached to it. When doing that, we don't just consider individual documents in isolation. We consider everything together to form a broader opinion on the whole picture. In this case, I've largely discounted what was said in the various telephone conversations between ME and Mr B from time to time. In my view, the written material carries more weight, notwithstanding the contradictory nature of it.

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. That means I don't have to address every individual question or issue that's been raised if I don't think it affects the outcome.

In reaching my decision, I will have regard for the law and good industry practice where relevant, but my overarching responsibility is to decide what is fair and reasonable in the circumstances. That can sometime mean reaching a different outcome from what might prevail in court.

We have no regulatory function; that's the role of the Financial Conduct Authority (FCA); nor are we a consumer protection body. We're an alternative dispute resolution body; an informal alternative to the courts for financial businesses and their customer to resolve their differences. We deal with individual disputes – when we're able to – subject to rules laid down by the FCA (which are known as the DISP Rules). 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, what follows are my provisional conclusions and the reasons for them.

What is ultimately to be decided here is when Mr B's BTL mortgages should end; i.e. when they should fall due for repayment. It may seem obvious, but the end date of a mortgage is, all other things being equal, a function of two things; The start date and the duration.

ME's initial position that all the mortgages end at different dates in 2023 is clearly flawed. That's because it set the mortgage end dates up in its system based on a start date of 5 April 2017, the date the mortgage offers and illustrations were issued. Taking into account what the mortgage offer specifies at clause 12, the start date has to have been 12 December 2017. ME has now accepted that, but it really should have done so as soon as the complaint was raised.

Having established when the start date should be, I've next considered what the duration of the four mortgages should be. I'll deal first with Mr B's argument that it should be seven years. It has a certain superficial appeal, in that it represents the last comment between the parties (or in Mr B's case, the party's representative) before the transfers took effect on 12 December 2017.

However, a seven-year term isn't something that appears in any of the written documentation. I think our investigator was right to characterise it as a generality, not least because the reply from the business includes the qualifier "as agreed", and as I have demonstrated above, it's near-impossible to establish with any confidence exactly what was agreed.

Also, by his own evidence, Mr B was unaware of this exchange until we told him about it, so can't have relied on it or made any plans or decisions based on it. It seems to me that Mr B most likely adopted this new position as a matter of expediency, in that it would improve his situation by giving him more time to repay the debts. Overall, I'm not satisfied there's a persuasive argument to determine the complaint on that basis.

That then takes me to the investigator's recommendation that the mortgage end dates be set by taking the durations from the illustrations that accompanied the offers, and having them run from 12 December 2017. The reasoning behind the

investigator's approach was that the offers included the following narrative, on page two.

"Our Offer is made up of this Offer and the enclosed Mortgage Illustration."

This has far more merit to it than the respective positions claimed by ME and Mr B. However, there's more still to consider. The offers also included the following narrative, on page one.

"The loan amount, loan term, number of instalments and amount of each instalment shown in the attached Mortgage Illustration is correct only for the date on which the Mortgage Illustration was produced."

I've thought very hard indeed about whether it's fair to take the loan term and number of instalments which were quoted on – and only valid for – 5 April 2017 and apply them run from 12 December 2017. If the mortgage offer (including the illustrations) contained no other information about the duration of the mortgages, I'd be inclined to agree that, in the absence of anything else on which to rely, the mortgages starting on 12 December 2017 should run for the durations given in the illustrations.

But in Mr B's case, there is something else on which to rely. In all four cases, the mortgage offer issued on 5 April 2017 said, on page one, under the heading Term (secured amount) that the term *"shall be the same as the remaining term of the existing loan as at the date of completion of the transaction (as defined at paragraph 12)."*

In my view, the primary document is the offer itself; the mortgage illustration is an appendix to it. If the two are in conflict, I consider it fair to attach more weight to what the offer document says. I say that not least because the information in the mortgage illustrations was only valid for the day they were produced, whereas the mortgage offers were valid for six months, i.e. until 5 November 2017.

That being the case, if ME required Mr B to be bound by the mortgage end dates in 2023 it wanted to impose, it should have issued new offers on or very soon after 5 November 2017. Those offers would have needed to be accompanied by a fresh mortgage illustrations specifying amended loan terms and numbers of instalments, and the offers themselves would have to needed to be otherwise silent on the duration of the mortgages.

Insofar as ME didn't do that, it allowed the mortgage to go through on 12 December 2017 based on what was set out in the 5 April 2017 mortgage offers, minus what was said in the 5 April 2017 mortgage illustrations. Put all of the above together, and the conclusion I am currently proposing to reach is that Mr B's four BTL mortgages should all run until the end of the original 25-year terms that began in 2006."

Both parties were given a two-week time frame in which to make their further comments; both have responded, confirming that they accept the 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.

I've considered afresh everything that both parties have said and provided. Having done so, and with no further substantive arguments or evidence to consider, I won't be changing my decision.

My final decision

My final decision is that Mortgage Express must:

- amend the expiry dates of Mr B's BTL mortgage so that they end on the dates in 2031 that mark the 25th anniversaries of the original start dates in 2006; and
- pay Mr B £200 compensation for his 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 B to accept or reject my decision before 24 July 2023.

Jeff Parrington

Ombudsman