

The complaint

Mr and Mrs H's complaint relates to two buy-to-let mortgages they had with Capital Home Loans Limited trading as CHL Mortgages. They are unhappy with how CHL dealt with them after the mortgage terms ended and that it unnecessarily sold one of the properties, which has resulted in them suffering a loss.

Mr and Mrs H are represented in their complaint, but for ease I will refer to all comments as theirs.

What happened

In March 2021 Mr and Mrs H had three interest-only buy-to-let (BTL) mortgages with CHL that were due to be repaid that month. I will refer to the properties as H, M and S. Mr and Mrs H were unable to repay the mortgages at that time and CHL had already declined to extend the terms. However, it gave Mr and Mrs H until 31 October 2021 to repay the mortgages. Mr and Mrs H started making monthly overpayments to each of the mortgages.

On 20 September 2021 Mrs H discussed repayment of the mortgage on property H, which was subsequently repaid. She repeated their wish to continue to make overpayments until the mortgages on properties M and S were repaid. CHL repeated that it would not extend the term of the mortgages. It also advised her to seek independent advice and, if that resulted in the conclusion that they had no options for repaying the mortgages, Mr and Mrs H could come back to CHL and it would see if it could do something.

On 30 September 2021 CHL wrote to Mr and Mrs H to remind them they had to repay the mortgages by 31 October 2021. It said that if their repayment strategy was not on track to repay the mortgage on time, they needed to contact it. It said if they provided documentary evidence of their repayment strategy, it could work with them beyond 31 October 2021. If that didn't happen, it would consider taking legal action to repossess the property.

On several occasions in October 2021 Mrs H again asked CHL if it would allow them to continue to make monthly overpayments to the mortgages on properties M and S, anticipating they would be repaid around July 2023. CHL confirmed on each occasion that it would not extend the terms of the mortgages and she needed to seek independent advice.

In November 2021 CHL spoke to Mrs H about the overpayments that had been being made to the mortgages and some more payments she wanted to make. It explained that due to the amount that had been being paid off the mortgages, under money laundering regulations it needed to check the source of the funds being paid. It said that it was not stopping her making the payments, it just needed to know where the money had come from. Mrs H was very unhappy about this and accused CHL of harassing her.

Mr and Mrs H raised a complaint about having to provide information about the source of the funds they were paying off the mortgages. The complaint also included an allegation of a member of staff being rude and unprofessional when speaking to Mrs H. CHL rejected the complaint in a letter of 18 January 2022.

On 15 December 2021 Mr and Mrs H wrote to CHL again asking to extend the terms of both mortgages to July 2023. On 10 January 2022 CHL again confirmed it would not and explained that it only extended mortgage terms under exceptional circumstances. However, it gave them until 21 February 2022 to repay the mortgages. CHL went on to say if the mortgages were not repaid by then, it would look at either the appointment of Receivers of Rent or Power of Sale. Information about both of those processes was provided.

Mr and Mrs H's financial adviser called CHL (with Mrs H's permission) a week after the new repayment deadline passed to discuss the mortgages on properties M and S. It said that in its opinion the best option for Mr and Mrs H was for CHL to extend the terms of the mortgages and allow them to overpay until July 2023. CHL explained that it was no longer lending and so unless there were no other options than more time being provided for repayment, what Mr and Mrs H wanted was not an option. CHL asked if Mr and Mrs H had looked into re-mortgaging or selling the properties. This question doesn't appear to have been answered and the IFA repeated that the best option for Mr and Mrs H was for the term to be extended. A further explanation about the need for source of funds information was given to the financial adviser.

The mortgages on properties M and S were not repaid by the deadline CHL set and so it decided to take legal action to recover the money it was owed. Mrs H informed CHL in April 2022 that she would not allow it access to the properties as relatives were living in them.

At the beginning of May 2022 CHL wrote to Mr and Mrs H telling them that it was intending to take action to have the mortgages repaid. It set out the options available to it for dealing with the matter and explained which one they would take would depend on whether Mr and Mrs H would allow them access to the properties. Mr and Mrs H didn't respond and so CHL took it to mean that they would not allow access to the properties. In light of this CHL decided to move forward using the Power of Sale option available to it. In addition, the lack of access to the properties would prevent traditional marketing of the properties, which meant CHL decided they would have to be sold at auction.

On 9 June 2022 CHL received an email from a mortgage broker's email address but signed in Mr and Mrs H's name. The content of the email was a complaint about CHL having not responded to Mr and Mrs H's repayment proposal made in February 2022. It was also alleged that telephone calls made to Mrs H had been of a bullying nature. In addition, the issue of Mr and Mrs H needing to evidence the source of lump sum payments was raised again. It was said that Mr and Mrs H felt CHL had put in place unreasonable barriers to them paying off or reducing debt. They were also unhappy about being threatened with legal action. The mortgage broker and Mr and Mrs H were told that for CHL to deal with the broker, a letter of authority signed by both mortgagors would need to be provided. No responses were received.

Mrs H called CHL on 13 June 2022. She reiterated that they wanted to continue to make payments as they had been. CHL highlighted to Mrs H that it had already told her the proposal was not acceptable. She asked that this decision be reconsidered. Mrs H also repeated her concerns about the requirement to provide evidence of the source of funds for lump sum payments to the mortgage.

Mrs H complained in June 2022 about the fact that a letter of 4 February 2022 with their payment proposals had not been responded to. Mrs H also called again later in July to reiterate the repayment proposal she and Mr H wanted CHL to agree to, but it repeated its previous declination of the proposal. Mrs H complained that they were being harassed and expressed unhappiness that CHL would not allow them to pay the mortgages off on a monthly basis like other lenders would have.

Final demand letters were sent to Mr and Mrs H on 14 July 2022. As the mortgages were not repaid within 14 days, CHL started the process to sell both properties under the power of sale. As CHL was still unable to access the properties, they were placed in an auction scheduled for 22 September 2022. Mr and Mrs H were informed.

At the beginning of August 2022 Mrs H told CHL they had a buyer for property M. On 4 August 2022 CHL emailed Mrs H and confirmed that in order to stop the sale of property M, it would need proof of the sale from Mr and Mrs H's solicitors with confirmation of the timescales for redemption. This message was repeated in a telephone call on 8 August 2022. The necessary confirmation from the solicitors was received on 19 August 2022.

CHL agreed in a letter of 26 August 2022 that Mr and Mrs H's sale of property M could complete and so it was withdrawn from the auction. The property deeds were sent to Mr and Mrs H's solicitors by recorded delivery the following working day. CHL confirmed the sale needed to complete within three months of the date of its letter. It was highlighted in the same letter that as no repayment strategy for property S had been provided, it would still be sold in the auction.

On 1 September 2022 Mr and Mrs H's solicitors emailed CHL and told it that the mortgage on property S would be repaid using the surplus funds from the sale of property M. The solicitors also asked for a redemption figure for property M assuming the mortgage would be repaid on 21 September 2022. When CHL called the solicitors it confirmed the redemption of 21 September 2022 was dependent on when the deeds for property M were received by it.

Mrs H called CHL the following day. She again told it that the mortgage on property S would be repaid from the sale proceeds from property M. It was suggested by CHL that if Mrs H would agree to it having access to property S to value it, it would remove the property from the auction later that month and start the process to market the property via an estate agent. This would delay the sale of property S and allow more time for Mr and Mrs H to repay it. Mrs H said they remained unwilling to allow access to the property. CHL confirmed property S was still going to auction and to stop that CHL would need to be provided with evidence contracts on the sale of property M had been exchanged and so the funds to repay the mortgage on property S were secure. Mrs H also said CHL had been rude to her in a telephone call two days after her mother's death, with the call handler being aggressive and shouting at her.

On 21 September 2022 Mrs H told CHL contracts had been exchanged on the sale of property M and it was expected to complete in five to six days. CHL asked her to get her solicitors to email to confirm this information; without it CHL would not remove property S from the auction the following day. The solicitors did not do so as the contract was not signed until several days later.

Property S was sold at auction on 22 September 2022. The sale completed on 18 October 2022. CHL then passed the difference on to its solicitors in November 2022 to be forwarded to Mr and Mrs H. Mr and Mrs H have confirmed they didn't receive the surplus funds until 7 March 2022.

The sale of property M completed, and the mortgage was repaid on 28 September 2022.

CHL responded to the complaint in a letter dated 3 November 2022. It set out what had happened and stated it was satisfied it hadn't done anything wrong in relation to what happened after the end of the term of the mortgages and the points the properties were sold. In relation to how Mrs H was spoken to in July 2022, it only had a recording on one of the two calls and hadn't found it had done anything wrong.

Mr and Mrs H weren't satisfied with CHL's response and they referred their complaint to the Financial Ombudsman Service.

One of our Investigators considered the complaint. He was not persuaded CHL had acted inappropriately in relation to the sale of the properties, or the proposals Mr and Mrs H had made for repayment. However, the Investigator considered it took too long for the surplus funds from the sale of property S to be passed on to Mr and Mrs H. He recommended CHL pay them 8% interest from 24 November 2022 to the date the refund was sent through the banking system. In addition, he considered £400 compensation was merited given the timescales involved.

CHL accepted the Investigator's recommendation and confirmed the interest would amount to £1,358.97 on top of the £400 compensation.

Mr and Mrs H didn't accept the Investigator's conclusions. They highlighted that CHL was aware that the sale of property M would provide enough funds to repay the mortgage on property S. They questioned why, knowing this, the sale of property S happened. In addition, they reiterated their comments about them having put forward repayment plans and those plans being reasonable. They highlighted that CHL did not explicitly say that it would not accept overpayments. Mr and Mrs H said that if CHL had made its position clearer earlier, they would have sold property M sooner.

In addition, Mr and Mrs H said that throughout the entire process CHL had resorted to telephoning Mrs H without warning so that she could not prepare for the conversations. This had resulted in Mrs H being caught off guard, verbal misunderstandings and information not being recorded accurately. They said this struck them as being akin to the actions of a credit control or arrears department. They commented on the decision CHL made in relation to removing the two properties from the auction and didn't think it made sense.

Mr and Mrs H said they had spoken to solicitors, and it was confirmed that in the region the properties in question were located, there was a tendency for contracts to be signed very late. This is due to solicitors being reluctant to release contracts until all of the title enquiries have been done and the searches and property certificates are in place. As such, they consider CHL were looking for a legal position that could not have existed, so that it could sell property S. The dates the parties signed the contract were confirmed, both of which were after the date of the auction. They also said Mrs H had spoken to CHL's solicitors and it had said it had been told not to send the deeds when it had originally been asked for them, but to wait until 30 August 2022. Mr and Mrs H said this meant there was little time for the sale on property M to complete.

The Investigator responded to Mr and Mrs H's further submissions, but they didn't change his conclusions about the outcome of the complaint. Mr and Mrs H remained unhappy and asked that the complaint be referred to an Ombudsman.

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 would firstly explain that no-one is entitled to borrow money and whether to provide borrowing is a commercial decision on the part of the lender. That applies whether the individuals have borrowed before or not. This includes a borrower wanting to extend the term of their borrowing.

At the core of Mr and Mrs H's complaint is the fact they are unhappy that CHL would not extend the term of their mortgages. I can understand why they wanted that to happen, but CHL was under no obligation to do so. In the situation where a business is no longer an active lender we would not expect it in most situations to extend the term of a mortgage. I would also comment that a lender is entitled to expect borrowers to fulfil their side of the mortgage contract and repay it at the end of the term. That is especially so in relation to a commercial mortgage like the ones Mr and Mrs H had taken out.

As commercial borrowers with a portfolio of properties Mr and Mrs H would be expected to be aware of their obligations under the mortgage contract and to have put in place plans to fulfil those obligations, including repaying the mortgage at the end of the term. Unfortunately, it doesn't appear Mr and Mrs H did so in relation to properties M and S. As such, CHL allowed them until February 2022 to sort out a way of repaying the mortgage in full. Again, they didn't do that. While Mr and Mrs H believe they put forward reasonable repayment plans, given those plans would not repay the mortgages when CHL required them to be repaid, CHL didn't agree with them or to their plans. CHL was entitled to make that decision. In the circumstances, it was not unreasonable for CHL to take legal action to enable the mortgages to be repaid in full. It was also within its rights to pursue the method of sale it did.

Mr and Mrs H have said that in not specifically saying it would not allow the mortgages to be repaid by them making overpayments CHL was ambiguous in its communications. I don't agree. CHL made it very clear that it would not extend the terms of the mortgages. In other words, it would not allow them more time beyond February 2022 to repay the mortgages. It had also very clearly told them their proposals to make monthly payments into 2023 were not acceptable. This was both before and after Mr and Mrs H put those proposals in writing in February 2022. While I appreciate these answers were not the ones Mr and Mrs H had wanted to hear and they continued to press to be allowed additional time to repay the mortgages, I can't agree that CHL was ambiguous in its answers.

When Mr and Mrs H had an offer to purchase property M and had proven they did, CHL agreed to allow them to pursue the private sale as I would have expected it to. Mr and Mrs H have said it delayed providing the deeds, which led to the sale not completing in time to prevent the sale of property S. I have considered this and while Mr and Mrs H's solicitors may have asked for the deeds earlier than they were provided, a lender would not be expected to hand over deeds for a property in these circumstances until the sale had been evidenced. Once it was, CHL considered the documentation and agreed that Mr and Mrs H should be allowed to pursue the sale. As such, the deeds were sent to their solicitors the following working day. I don't consider CHL caused any delays in this process.

I have considered whether CHL was reasonable in requiring some form of certainty of the mortgage on property S being repaid as a condition of it removing it from the auction. Mr and Mrs H have highlighted that there was no guarantee that the mortgage on property M would be repaid when the purchase offer was received, but CHL removed that property from the auction. That is true, but CHL had the choice to take the risk that one mortgage might not be paid off and it might have to start the process to sell it again, or the risk of having to do that with two properties. It chose to take the lesser of those risks. That was a commercial decision, and I can't find it was wrong.

It has been highlighted that Mr and Mrs H only needed a little more time to be able to complete on the sale of property M and avoid property S being sold. That is the case and I note on 2 September 2022 CHL made a suggestion that would delay the sale of property S slightly and potentially give Mr and Mrs H the additional time they wanted. They rejected the suggestion. I note that they have said this was because the suggestion was put forward in a telephone conversation, with the assumption Mrs H had been called unexpectedly by CHL. That was not the case; she called CHL and from the records of the conversation, it appears

that she was fully aware of what was being suggested as she explained why she was rejecting the suggestion. As for Mr and Mrs H's comment about CHL calling her and its behaviour being akin to an arrears department. While the mortgage accounts were not in traditional arrears, Mr and Mrs H were months overdue in making the payment needed to redeem the mortgage under the contract they entered into. In that situation a lender would want to keep in touch in order to move forward the repayment of the debt owed. I can't find that it was wrong to call Mrs H as it did. I have also seen no evidence supporting Mrs H's suggestion that CHL was rude to her or shouted at her in those calls.

It was highlighted by our Investigator that the service Mr and Mrs H received in relation to the surplus funds from the sale of property S was not what it should be. I agree with that conclusion and with the recommended redress for both the financial loss they suffered and the upset not having the money for so long caused them, in an already distressing situation.

My final decision

My final decision is that I uphold this complaint in part. I order Capital Home Loans Limited trading as CHL Mortgages to pay Mr and Mrs H:

- 8% simple interest on the surplus funds from the sale of property S from 24 November 2022 to the date its solicitors transferred the funds through the banking system.

If Capital Home Loans Limited considers that it's required by HM Revenue & Customs to deduct income tax from any interest due to Mr and Mrs H, it should tell them how much it's taken off. It should also give Mr and Mrs H documentation showing this if they ask for it, so they can reclaim the tax from HM Revenue & Customs if appropriate.

- £400 compensation for the upset the delay in paying Mr and Mrs H caused.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs H to accept or reject my decision before 8 March 2024.

Derry Baxter
Ombudsman