DRN-4422929

The complaint

Mr F complains that The Mortgage Works (UK) Plc ("TMW") unfairly declined his application for a term extension on his buy-to-let ("BTL") mortgage.

What happened

Mr F took out a BTL mortgage in 2008 with a previous lender. He borrowed around £147,000 (inclusive of fees) on interest only terms over 12 years. Mr F's mortgage later transferred to TMW.

In 2020 Mr F's mortgage was ending. He wanted to extend the term for up to ten years. TMW considered Mr F's application and said that it could extend his mortgage but only on a maximum loan amount of around £118,000. Meaning Mr F would need to make a capital payment of around £29,000 to qualify for the lending. Mr F was unhappy with this, so he complained to TMW. The complaint wasn't upheld.

In the latter part of 2021, it was agreed that Mr F could re-apply for an extension on his mortgage. TMW said that to consider the application it needed to conduct an up-to-date valuation – at Mr F's expense. As well as the valuation fee paid upfront, TMW needed a completed application form, a copy of the current Assured Shorthold Tenancy agreement (AST) and three months bank statements to consider the application in full.

TMW confirmed in September 2022 that it had received the AST and Mr F's bank statements, but the valuation fee was still outstanding. It explained that to consider a new application, a new up to date valuation would need to be carried out.

Mr F paid the valuation fee in October 2022 and the application (including a new valuation) went ahead. TMW subsequently wrote to Mr F on 17 November 2022 to say that based on the recent affordability assessment it could extend Mr F's mortgage, but only on a maximum loan amount of around £112,000. Meaning Mr F would need to make a capital payment of around £33,000 to qualify for the lending.

Unhappy with the outcome of his recent application, Mr F raised another complaint with TMW. He says that he has not been given a clear reason why his application doesn't meet TMW's affordability criteria.

TMW answered the complaint on 15 February 2023. The complaint wasn't upheld. It said it considered Mr F's application in line with criteria, but his application didn't meet affordability. TMW said that the factors used when deciding affordability have already been explained to Mr F. TMW said that Mr F had until March 2023 to decide whether to proceed with the term extension on the agreed terms or redeem his mortgage

Mr F remained unhappy and continued to raise his concerns with TMW. TMW's response regarding the outcome of Mr F's application remained the same but it subsequently agreed that it hadn't always replied to Mr F's queries in a timely way. In its letter dated 27 July 2023 TMW offered Mr F £340 compensation to acknowledge its mistake.

Mr F contacted our service on 13 August 2023 and asked us to investigate his complaint. An investigator at our service looked into things and said we could only consider part of Mr F's complaint. He said that Mr F's complaint about the declined application in 2020 had been brought too late. The investigator also provided his opinion on Mr F's complaint about the outcome of his recent application for a term extension in 2022. He explained why he didn't think that TMW had acted unfairly when considering Mr F's application and why he thought that TMW's offer to settle this complaint was fair and why it didn't need to do more in the circumstances to put things right.

Mr F didn't accept that we could only consider part of his complaint. I issued a decision explaining why I only have the power to consider his complaint about his recent decline term extension application in 2022. I subsequently issued a provisional decision on this part of the complaint. And extract of my provisional decision is as follows:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The starting point here is that when Mr F borrowed money from his initial lender, he agreed to repay the outstanding capital at the end of the term. So, it's not unreasonable for TMW as the successor, to expect the loan to be repaid as agreed. TMW is under no obligation to automatically agree a term extension. That said, it must give fair and reasonable consideration to a request to extend the term.

When considering an application for a mortgage, TMW carries out an affordability assessment to determine how much its willing to lend in the circumstances. For BTL lending it considers several different factors including:

- *The property value*
- *The current rent*
- *The valuer's estimated rent*
- *The current mortgage interest rate*
- *The current Loan to Value (LTV)*
- *The rate at which the applicant pays tax*

As part of the application process, it was necessary for TMW to carry out an up-to-date valuation of the property. I appreciate Mr F is unhappy that he had to pay for another valuation when one was carried out in 2020. He thinks that TMW delayed things which led to the initial valuation expiring and the need for a new valuation. I don't agree, I'll explain why.

TMW has explained that its valuations are valid for three months. The initial valuation was carried out in 2020. Mr F didn't resubmit his application again until November 2021. So, too much time had passed for TMW to use the previous valuation as a basis for the current application. More importantly, the whole purpose of the new application was to establish a potential increase in Mr F's property value which would positively impact the LTV and the affordability assessment. So, it was always necessary to carry out a new valuation for that reason.

The value of the property (and the LTV) are just part components of the affordability assessment. As I've explained, there are several other factors that form part of the affordability assessment. I've gone on to consider whether TMW has given fair and reasonable consideration to Mr F's application.

In his application form Mr F declared a rental income of £745 a month. He also estimated the property to be worth £200,000. The valuation carried out confirmed the value of the property *to be £200,000 – giving a LTV of around 72%. The current monthly rental income was noted as £675 with a potential of £800. So, I'm satisfied this information was properly verified.*

When reviewing whether an extension would be affordable or not, TMW would need to consider interest rates at the time, including applying a stress test to ensure sustainability of the mortgage commitment.

Mr F doesn't think that TMW properly considered his application or carried out a fair affordability assessment on the basis that it didn't ask him about his income. I agree to an extent, I'll explain why.

Whilst most of the components of the affordability assessment were properly considered (as set out above), I don't think TMW properly considered the last point - relating to Mr F's tax liability – which does ultimately impact the amount of lending.

Firstly, it's important to note that the way a lender conducts its affordability assessments can typically vary between BTL's and residential mortgages. It's the case here that for BTL mortgage applications, as part of its lending decision, TMW considers the rate at which the applicant pays tax to establish their net rental income.

TMW asks for this information on its application form. Mr F left this section of the form blank – so it was unclear to me what information TMW used to complete its affordability assessment. I asked TMW for more information regarding this. It has since told our service that it considered Mr F's application on the assumption that he was a higher rate taxpayer. Based on this, the most TMW was willing to lend was around £112,000. Meaning Mr F would need to make a capital payment of around £33,000 to qualify for the lending.

TMW has accepted that due to an administrative error it failed to request up to date tax information through SA302 forms, in line with its usual process. And so, because TMW omitted to obtain and verify Mr F's tax status, I can't say that his application was fairly considered.

I've considered what, if any, detriment this has caused Mr F. Mr F has told our service that he is unsure of his tax status at the time of application. He says that throughout 2022 he fluctuated between being a basic and higher rate taxpayer. But he thinks he was likely paying a higher rate of tax. So based on this information, it appears likely that TMW's affordability assessment was inadvertently okay, and no detriment has occurred.

That said, for completeness I've considered what the possible impact could have been had Mr F been a lower rate taxpayer. If this were the case then it means TMW's affordability assessment was wrong and having considered the lower tax rate, would have returned a more favourable higher lending amount. TMW says that had it used the basic tax rate in its calculations the maximum it would have lent would have been £130,036, meaning a capital repayment of £15,270 required from Mr F.

Our investigator asked Mr F what the minimum loan amount was that he needed to be able to complete on the term extension. Mr F has confirmed that he required the entire loan amount and the most he could have contributed as a capital repayment was around £5,000. Based on what he's told us, on balance it seems unlikely that he'd pay the £15,270 required.

It's not my role to say what TMW's lending policy should be; that's outside my remit. All I can do is consider whether TMW has applied its lending policy fairly. In these circumstances I can't safely say that it has, because it omitted to properly consider Mr F's tax status during the application process. That said I don't think there has been any detriment to the lending decision made because based on the information I have, it appears TMW inadvertently *reached a fair lending decision. And even if TMW's affordability assessment proved to be wrong – and it should have used the lower tax status – that would have still meant that the lending was unaffordable for Mr F because in the best-case scenario, the most TMW was willing to lend was less £15,000 that the amount Mr F needed to complete on the term extension.*

However overall, I do think that the lack of transparency during the application process has caused a degree of unnecessary distress and inconvenience to Mr F. A large part of his complaint has been centred around his concerns about TMW's assessment of his application – because he says he wasn't asked about his income information. Which has turned out to be broadly true. And so, I think Mr F should be fairly compensated in the circumstances.

When making an award for compensation, I must decide what's fair and reasonable to both sides involved, giving careful consideration to all the circumstances of the case. I also think it's important to explain that, as a service, our awards are designed to compensate consumers - not punish organisations.

TMW has already paid Mr F £340 compensation to acknowledge poor service – more specifically, delayed response times to some of Mr F's queries. This is separate to the award I'm making now, and I think TMW needs to do more to put things right in the circumstances. Mr F wrote to TMW several times trying to get some clarity on how it made its lending decision without asking him about his income. This lasted several months through to at least June 2023 – more than six months after receiving the lending decision from TMW.

TMW has a duty to provide clear, fair and not misleading information. I do feel that the time and effort Mr F spent on trying to get clarity on the lending decision could have been avoided had TMW properly addressed Mr F's concerns sooner. I think an award of £400 is fair and reasonable in the circumstances and reflects the impact suffered in line with our published award bandings. For clarity this is in addition to compensation award of £340 already paid.

My provisional decision

My provisional decision is that I intend to uphold this complaint and direct The Mortgage Works (UK) Plc to pay Mr F a further £400 compensation."

Both parties have responded to my provisional decision in agreement with my findings.

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.

Both parties agree with my provisional decision. I note that neither party has made any new arguments, or provided any new evidence, that I've not already considered when reaching my provisional decision. So, I see no reason to depart from what I provisionally decided.

My final decision

My final decision is that I uphold this complaint and direct The Mortgage Works (UK) Plc to pay Mr F a further £400 compensation in addition to the compensation award of £340 already paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 28 June 2024

Arazu Eid
Ombudsman