

## **The complaint**

Mr K and Mr T's complaint relates to a buy-to-let mortgage they have with The Mortgage Business Plc (TMB). They are unhappy that following the direct debit mandate that collected their monthly payment being rejected due to there being insufficient funds in the paying account, that the payment was recorded as having been made late and reported on their credit files. They don't consider this is reasonable as Mr T called TMB when the mortgage payment was due to confirm that there would be insufficient funds and offered to make an ad-hoc payment, but was told that was not necessary as the direct debit mandate would automatically attempt to recollect the money ten days later. This happened, but as it was in the following calendar month, the payment was labelled as being late.

Mr K and Mr T also consider the information contained on TMB's website is misleading. This is because when it explains any unpaid direct debit collections will be re-requested ten days later, it doesn't say that if this is in the next calendar month, the payment will be labelled as having been made late.

In settlement of the complaint, Mr K and Mr T want the late payment/arrears marker removed from their credit files and £5,000 compensation.

## **What happened**

Mr K and Mr T took out their buy-to-let (BTL) mortgage in 2008. By 2023 the mortgage was on a variable interest rate, which meant the monthly payment increased each time the interest rate did. Mr K and Mr T's mortgage payments were due on the first day of each calendar month, but they selected to make the payments toward the end of each calendar month.

A change in the interest rate meant the monthly payment due on 28 June 2023 was around £25 more than it had been in May 2023. TMB applied for the payment through the direct debit system as it usually did, but it bounced – based on Mr T's submissions, this was because there wasn't enough money in the paying bank account.

TMB sent Mr K and Mr T a letter on 29 June 2023 informing them the direct debit paying their mortgage had failed. This letter said that it would try to take the payment again ten days after the date it failed. It also included a warning that if the payment was taken in the month after it was originally due, it could affect their credit score.

TMB's system automatically re-requested the payment and it was collected on 12 July 2023. As the payment was received outside the calendar month it was due, TMB recorded the payment as late, and this fed through to Mr K and Mr T's credit files.

Mr T complained to TMB about the late payment marker on his credit file on 26 July 2023. He said he had called to make a debit card payment on 29 June 2023, but had been told that the payment would be automatically re-collected after ten days. Mr T said he had a portfolio of BTL properties and had never missed a payment, and the missed payment marker on his credit file would have an adverse, detrimental effect on his business and cost him a lot of money.

TMB responded to the complaint in a letter of 17 August 2023. It said it had been unable to locate a call from Mr T on 29 June 2023. As such, it didn't uphold the complaint, although it would search for the call again if Mr T could provide more details, such as the number called from, the time and the duration of the call. In addition, it said that as customers made their contractual payments on different days throughout the month, it didn't advise on the website about potential credit file impacts, as the time between original collection and re-collection wouldn't impact every customer. TMB went on to confirm that as the information on the website was correct, it was unable to uphold that part of the complaint.

Mr K and Mr T were not satisfied with TMB's response and referred their complaint to this Service. When they did so, they said that Mr T had called TMB on 28 June 2023, rather than 29 June 2023 as Mr T originally recollected.

TMB provided evidence it had searched its records for calls from the telephone numbers it had for Mr K and Mr T, for the period 27 June 2023 to 4 July 2023. No calls were identified. It also said that had Mr T called to make a payment, it is highly unlikely it would have discouraged him from doing so and it provided a copy of its procedure for such circumstances. TMB also said that it was unable to locate the information Mr T had referred to having seen on its website.

One of our Investigators considered the complaint, but he didn't recommend that it be upheld. The Investigator said that he had been unable to find any reference on TMB's website to what happened when a direct debit payment failed, and asked Mr K or Mr T to provide more information as to where on the website the information they believe was misleading was located.

Mr K and Mr T didn't accept the Investigator's view of their complaint and didn't provide the information requested. They indicated they thought this Service was biased toward financial businesses and the Service was '*absolutely abhorrent*'. They said that the Investigator had not commented on Mr T having been misled and highlighted their credit files recorded the mortgage as being in arrears and asked if TMB was allowed to record that. Mr K and Mr T considered that we should make TMB go through every call it received on the days Mr T had said his call may have been made.

The complaint was reviewed again by a second Investigator. She also did not recommend the complaint be upheld. She highlighted that when responding to the complaint TMB had simply repeated what Mr T had said about the information on the website – it had not confirmed the information was present, as Mr K and Mr T had interpreted the letter to mean. The Investigator also commented that Mr T had confirmed that there had not been enough money in the paying account to cover the monthly payment in June 2023, and that balance had not been sufficient until the following month.

As agreement could not be reached, it was decided the complaint should be referred to an Ombudsman for consideration.

### **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.

Although this issue makes no difference to the outcome of the complaint, I would initially comment on Mr K and Mr T's concerns about how the late payment was recorded on their credit files – as arrears or a late payment. All lenders that report to credit reference agencies are required to provide accurate information to describe how a mortgage account is being managed. That information will be reported as at the end of each month. How the credit

reference agency then describes that information is not within a lender's control. That said, as the June 2023 payment had not been made within that month, Mr K and Mr T's account was in arrears at the end of that month. It was only after the payment was made up that it would have been described as the payment having been made late, which occurred in the following month.

This is a BTL mortgage, taken out for investment purposes. It is unregulated, and so TMB is not required to provide Mr K and Mr T with advice, or manage their investment for them. As this is considered a commercial mortgage, it's up to Mr K and Mr T to manage the mortgage, including being aware of the date when the monthly payments are due and to ensure that there is sufficient money available to make that payment.

Whilst the mortgage isn't subject to the regulatory protections available to residential mortgage customers, TMB is still required to treat Mr K and Mr T fairly and reasonably. The crux of this complaint is that on either 28 or 29 June 2023 TMB is alleged to have failed to check the date when the mortgage payment was due and highlight to Mr T that if the automated direct debit system was allowed to re-collect the June 2023 monthly payment, it would be considered to have been paid late and would affect his and Mr K's credit files.

TMB has confirmed that there is no record of Mr T calling in June 2023 on the contact logs relating to the mortgage account. While he has been asked to provide detail of the phone call so that TMB can attempt to trace it; telephone number, date, time and a likely duration, he has not been able to provide the detail needed. Mr T has said that this service should make TMB listen to every call around the time he recollects he called on both of the days he thinks the call might have been made. TMB has explained that it receives hundreds of calls each minute, and so Mr T's suggestion would involve listening to thousands of calls. To request it to do this would not be reasonable and might also have data protection implications. So as things stand, there is a lack of evidence to support Mr T's recollections that he called and, if he did, what was discussed. I can't find TMB did something wrong on the basis of the evidence available.

That said, if Mr T did call on either of the suggested dates, the fact that the call was not logged against the mortgage account would indicate that the account details were not provided, and the call was dealt with as a general enquiry. Customers calling to ask for information about policies or procedures on a non-account specific basis is not unusual. If Mr T was given the information he has said he was, then he was given the correct information on a generic basis. Not having access to the mortgage account would mean TMB could not have told him the re-collection would mean the payment would be recorded as missed and then late.

Mr T provided a bank statement for a limited company he is the director of, which he has put forward shows that he could have made the mortgage payment if he had been given the correct information when he called. I note that the limited company in question did not own the mortgaged property and the mortgage was not in its name. That would bring into question whether it would have been possible for the mortgage to be paid from that account. The fact that Mr T has said he was aware in advance there were insufficient funds in the relevant bank account for the mortgage payment, the fact he didn't transfer funds from the limited company account to ensure the payment could be made would indicate the limited company was not in a position to pay the unrelated mortgage payment.

Mr T has said TMB's website contained the same information as he was given orally, and that it didn't contain any warning about implications of the re-collection being made in the following month. TMB has said the website didn't include any information about its procedure for when a direct debit failed. Mr K and Mr T have said this is contradicted in the final response letter. I can understand why they have interpreted the final response letter in the

way they have, as TMB quoted what they had said and didn't clearly contradict it. However, TMB has said the website didn't contain information about bounced direct debits and it didn't when we checked the website as part of our investigation. As Mr T has declined to provide any further comment about where he found the information, I can't uphold this aspect of the complaint. However, as the website provides generic information, I would not expect it to highlight potential issues that would be dependent on the individual details of an account.

Overall, I am not persuaded the evidence supports that Mr T called TMB to make the June 2023 payment on either 28 or 29 June and that it told him not to do so. Nor am I persuaded the evidence Mr K and Mr T have provided indicates that they had the funds to make that payment.

### **My final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr K and Mr T to accept or reject my decision before 4 April 2024.

Derry Baxter  
**Ombudsman**