

The complaint

Mr and Mrs F's complaint is about their mortgage with Derbyshire Home Loans Limited (DHL). The mortgage is administered by The Mortgage Works (UK) Plc (TMW), which is owned by Nationwide Building Society. Because Mr and Mrs F have done so in their correspondence, I will refer to DHL throughout, to include reference to TMW and Nationwide.

Mr and Mrs F are unhappy about the following matters:

- incorrect information provided to them by DHL about the amount they are required to pay towards their arrears, which differs from the amount they are required to pay under a court order;
- failure to respond to emails and telephone calls in a timely manner;
- DHL's refusal to convert the mortgage from interest-only to capital repayment and to consider a term extension.

To settle the complaint, Mr and Mrs F want DHL to pay compensation of £3,000 for distress and inconvenience.

What happened

This complaint follows an earlier complaint Mr and Mrs F made, which was resolved by an Ombudsman's final decision dated 3 February 2022. That decision was about the amount Mr and Mrs F were required to pay under a court order, which is the current monthly instalment, plus £50. This amount was agreed in 2012 and had been varied by consent from the original amount Mr and Mrs F had been ordered to pay in 2009 (the current monthly instalment plus £156.12).

In June 2023 a new complaint was raised because Mr and Mrs F had been sent correspondence which said DHL would take possession of the property. Mr F made an application to the court about this, and in its final response letter dated 19 June 2023 DHL agreed to reimburse Mr F £428 for legal costs and loss of earnings.

The final response letter also explained that £50 per month wasn't enough to clear the arrears of about £19,000 over the remaining term (which was then eight years). DHL explained that it had looked at Nationwide's Later Life Mortgages previously, but because Mr and Mrs F weren't drawing a pension, they didn't qualify. Nationwide has since withdrawn from offering Later Life mortgages.

DHL also explained that it wasn't able to agree to Mr and Mrs F's request to convert the mortgage from interest-only to capital repayment, as this would increase the monthly repayments, making them unaffordable.

In July 2023 Mr and Mrs F were sent an automated letter saying they'd not made their required payments and therefore the payment arrangement had failed. In a final response letter dated 15 August 2023 DHL apologised and offered compensation of £75.

Dissatisfied with this, Mr and Mrs F complained to our service. Mr F, who has dealt with the complaint throughout, said that he and Mrs F have been caused considerable distress over a period of three years and so a payment of £1,000 per year is appropriate.

Mr F also says that, when he requested copies of annual statements, DHL failed to respond within a reasonable time. He'd requested the statements on 30 January 2024, and again on 5 February 2024. The statements were sent on 8 February 2024.

An Investigator looked at what had happened. She explained that we wouldn't look at the issue about TMW providing incorrect information about the court order, as this had already been subject to an Ombudsman's final decision dated 3 February 2022. Under our rules, the Investigator explained that we are allowed to dismiss a complaint that we've previously considered.

The investigator was satisfied that, in relation to the annual statements, DHL had responded within its service level agreement (SLA) timescale of five working days. Therefore there was no error in relation to this issue.

The Investigator was also satisfied that converting the mortgage to capital repayment would not be affordable, and so didn't think DHL was required to do this, or extend the term to accommodate any increased repayments.

The Investigator thought noted that DHL had paid £75 compensation for the incorrect letter sent in July 2023, but not for the previous letter sent in June 2023. She thought DHL should pay an additional £75, bringing total compensation to £150.

DHL agreed to this, but Mr F did not. He said that the Financial Ombudsman Service guidelines state that we can award up to £1,500 where substantial distress and inconvenience has been caused.

Mr F asked for an Ombudsman to review the complaint. He said that, if the outcome wasn't in his favour, he'd pursue the matter through the courts, and would at the same time would be *"asking the Magistrate to investigate your blatant breach of the FOS's own published guidelines"*.

Between Mr F's request for an Ombudsman's decision and the complaint coming to me for a decision, Mr F received further correspondence from Nationwide saying that the payment arrangement had come to an end.

Mr F referred the matter to the court, as he believed DHL was in contempt of court. Mr F said to the Investigator that *"your view is that a company that is probably in breach of UK Law and in Contempt of Court should only receive a fine of £170. Unless your decision is overturned, I will take this matter up with my MP for investigation..."* [sic]

Mr F also said *"Unless I receive a positive outcome from the FOS, I will refer yourselves to the court as well – I would suggest for the sake of your own career that you attempt to prosecute this case correctly, since you have summarily failed to do so to date, even ignoring the FOS's own guidelines"*.

Mr F has since told us that his application to hold DHL in contempt of court was not successful, but said that DHL was warned by the judge that any further letters stating the payment arrangement had been broken would be referred to the Attorney General.

Mr F also confirmed that he's issued a further application for contempt of court, because he says DHL is refusing to sign a form from the Department of Work & Pensions in relation to Support for Mortgage Interest.

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'll start with some general observations. We're not the regulator of financial businesses, and we don't "police" their internal processes and systems, or how they operate generally; that's the role of the Financial Conduct Authority (FCA). We deal with individual disputes between businesses and their customers.

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, but in doing so, we have to work within the rules of the Financial Ombudsman Service and the remit those rules give us.

We have no power to sanction, punish or fine businesses – that's the role of the FCA. Nor do we have the authority to determine whether or not a business has breached legislation, broken the law, or is in breach of contract, and we don't award damages – all of those matters fall within the remit of the courts.

I have to reach my decision based on the evidence, without fear or favour. Therefore I have to put aside the threat of repercussions in relation to the legal action Mr F has said he will take if he doesn't get the outcome he wants, and look at what is fair and reasonable in all the circumstances of the case.

I confirm that I will not be looking at any issues covered by the Ombudsman in his decision dated 3 February 2022. Under our rules, specifically DISP 3.3.4A(5), we can decline to reconsider an issue that's already been determined by our service.

Therefore, whilst I note Mr F's claim for compensation going back to 2021, an Ombudsman has already issued a decision on historic issues, and so it is only matters arising after 3 February 2022 that are relevant to this complaint.

Converting the mortgage to capital repayment: I'm satisfied that DHL isn't required to do this. A capital repayment mortgage would cost substantially more each month than an interest-only mortgage. Given that there is only seven years left on the mortgage term, this would not be affordable. Similarly, there is no obligation to extend the mortgage term. The maximum mortgage lending age limit is 75 for DHL's parent company, and so it would be necessary to extend the mortgage term by a further nine years from its current end date, increasing the term to 16 years if it was to end by Mr and Mrs F's 75th birthdays. It would only be appropriate for a mortgage term to be extended if there is evidence of sufficient income into retirement to support the mortgage repayments.

If Mr and Mrs F are able to provide documented evidence of sufficient retirement income to cover the cost of a repayment mortgage over an extended term, I would expect DHL to give this fair consideration. However, without such evidence, there is no obligation on DHL to agree to a term extension, or a conversion of the mortgage from interest-only to capital repayment.

Delay in sending statements: Mr F requested these on 30 January 2024 (a Tuesday) and again on 5 February 2024 (a Monday). They were sent on 8 February 2024. DHL's SLA is

that it will respond within five working days. This meant that by the time Mr F sent his second request on 5 February 2024, the SLA timescale for his 30 January 2024 request had not yet expired. DHL sent the statements within the SLA timescale for the request made on 5 February 2024.

Whilst it's clear Mr F is dissatisfied that DHL has a SLA timescale of five working days, I can't tell DHL how to run its business. Mr and Mrs F have suffered no loss, distress or inconvenience by not receiving an immediate response to the request, and it was sent within the SLA timescale.

Compensation for incorrect correspondence: It's clear DHL made an error when it sent two letters in June and July 2023. DHL offered Mr and Mrs F compensation of £75 in relation to the second letter, but, although it reimbursed Mr F's court costs and loss of earnings in relation to the June 2023 letter, it didn't offer anything for distress and inconvenience.

I've noted what Mr F has said about why he believes additional compensation is warranted. But the issue in relation to the June 2023 error was resolved quickly – albeit Mr F had already decided to refer the matter to the court. I think the additional £75 the Investigator recommended is fair, reasonable and proportionate.

I'm also satisfied that the £75 offered for the incorrect letter sent in July 2023 is fair in all the circumstances. DHL was able to resolve the matter quickly, and so the impact was not sustained or ongoing.

Given this, I'm not going to order DHL to pay any additional compensation.

Other matters

I see that Mr F has issued further court proceedings against DHL in relation to what he says is a failure to complete SMI forms. As this is a matter which is before the court, I can't comment on it.

But I must explain that Mr F cannot bring complaints to our service about matters that he has already taken to court, or that are pending before the courts. Mr F can either pursue legal action against DHL or refer his complaints about those matters to our service – but he can't do both. This is because our rules at DISP 3.3.4A(4) states that we can dismiss a complaint without considering its merits if the subject matter of the complaint is the subject of current court proceedings, unless the proceedings are stayed by agreement of all parties or order of the court so that the Financial Ombudsman Service can consider the matter.

Mr F is, of course, free to raise new complaint issues with our service if he is unable to resolve those matters directly with DHL, and where they have not been raised with the court. I'm explaining this because I don't want Mr F to be under any misunderstanding that, if he doesn't get the outcome he wants in court, he will then be able to bring new complaints about the same matters to our service. He will not be able to do that. Our rules say that we don't have to look at something a court has already considered.

I can see that Mr F has had quick responses from the court to his applications. Although we try to prioritise cases where appropriate (for example, if there is an immediate threat of repossession where a bailiff's warrant has been issued), we can't do so in every case, as our resources are finite.

The mortgage term on this interest-only mortgage is due to end in seven years' time. I think it might be helpful for Mr and Mrs F to speak to an independent financial adviser about what

their options are to repay this mortgage at the end of the term. They can find details of a financial adviser convenient to them on the FCA website at <https://www.fca.org.uk>.

I must also remind DHL that Mr and Mrs F's arrangement is that they will pay the current monthly instalment on their mortgage plus £50 per month. DHL should take steps to ensure that, while this arrangement remains in place and Mr and Mrs F are in compliance with it, no letters should be sent claiming the arrangement has been broken.

Putting things right

In addition to the £75 compensation already offered, Derbyshire Home Loans Limited must pay Mr and Mrs F a further £75 compensation for distress and inconvenience, making a total of £150.

I know this isn't the outcome Mr and Mrs F wanted. They don't have to accept my decision if they disagree with it, which will leave them free to pursue their grievances against DHL through the courts. Mr and Mrs F might want to take advice from a solicitor before taking any legal action.

My final decision

My decision is that I partly uphold this complaint. I direct Derbyshire Home Loans Limited to settle the complaint as detailed above. I make no other order or award.

This final decision concludes the Financial Ombudsman Service's review of this complaint. This means that we are unable to consider the complaint any further, nor enter into any discussion about it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs F to accept or reject my decision before 1 July 2024.

Jan O'Leary
Ombudsman