

The complaint

Mr M1 and Mr M2's complaint is about a buy-to-let mortgage (account ending 516) they have in their personal names with The Mortgage Works (UK) Plc ('TMW'). They have complained:

1. They asked in February 2023 for information needed to be able to change the mortgage from interest-only to repayment, but there were delays in it being provided and this did not happen until early June 2023.
2. They are unhappy TMW forwarded an internal email to Mr M1 in June 2023 in answer to a query he raised, and how Mr M1 was referred to in that email.
3. TMW declined mortgage applications on new properties and so they could not port existing interest rate products to them. As such, they asked that the early repayment charges (ERC) be waived, but TMW said no.
4. They were given incorrect information about the overpayment allowance in a letter of 11 June 2023, following an overpayment being made on 5 June 2023.
5. TMW said they exceeded the overpayment allowance and so they incurred an ERC.
6. TMW considers that the business relationship with them and their limited company is such that it should be ended. As such, it will not be granting new interest rate products when existing ones expire. They consider that if TMW doesn't wish to continue the business relationship with them, it should waive the ERC so they can move their borrowing immediately.
7. They are unhappy with the information received in response to a subject access request (SAR). This is because they asked for all emails etc, but they were not provided. They have confirmed they have referred this matter to the Information Commissioners Office (ICO), but also want us to consider it.

What happened

During 2023 Mr M1 and Mr M2 raised a number of complaints with TMW about its administration of their mortgages, both in relation to the mortgage subject to this complaint and those held in the name of a limited company of which they are the directors. This decision only deals with the mortgage and complaint points relating to the mortgage in their personal names, and so I will only detail information relating to that mortgage below.

On 14 June 2023 TMW responded to a complaint about the time it took to provide information to Mr M1 and Mr M2 that would allow them to change their mortgage accounts from an interest-only to a repayment basis – complaint point 1. TMW didn't agree that there had been any delay as the request had only been made at the beginning of June 2023, not in February 2023. The information had been provided in the telephone call the request was made in, and quotes that were sent out the following day. The final response letter also covered the matter of an internal email being forwarded to Mr M1 – complaint point 2. TMW apologised for the email having been forwarded rather than a new email drafted addressed

to Mr M1. However, it didn't think anything in the email trail was derogatory and it was sent to expedite the matter.

On 11 July 2023 TMW said, in relation to complaint point 4, that the overpayment made in June 2023 had been incorrectly applied. The payment had been made two days before the end of the mortgage year and so should have been applied for the 2022/23 mortgage year, but it was applied for the following mortgage year. So, when TMW subsequently confirmed the overpayment allowance for the 2023/24 year, it incorrectly deducted the June 2023 payment from it. TMW apologised for the mistake, confirmed what the correct overpayment allowance was for the 2023/24 year and paid Mr M1 and Mr M2 £150 compensation for the inconvenience this caused them.

Included in the 11 July 2023 letter, TMW also commented on the business relationship it had with Mr M1 and Mr M2 in both the form of them as individual mortgagors and as directors of the limited company that held mortgages with it. It apologised for the administrative errors that had occurred, but it concluded from their communications over the previous months that they were very dissatisfied with the service it had been providing. TMW didn't see how, given Mr M1 and Mr M2's dissatisfaction with it, the business relationship could continue. As such, TMW said that it had withdrawn the product switch facility from the mortgages and so when the then current mortgage products ended, no new products would be available. Mr M1 and Mr M2 would be able to refinance elsewhere without incurring an ERC. This is complaint point 6 above.

On 17 August 2023 TMW responded to complaint point 5. TMW waived the ERC and recalculated the account from September 2023. It also paid Mr M1 and Mr M2 £100 for any inconvenience they had suffered.

Mr M1 and Mr M2 were not happy with the responses to their complaints and asked this Service to consider them.

One of our Investigators looked into Mr M1 and Mr M2's complaint points. She concluded that we should not consider the matter of the ERC being charged (point 3) as it had been included in an earlier complaint we had considered. In relation to the merits of the remainder of the complaint points, the Investigator was satisfied that some points had rightly been upheld by TMW and that it had offered appropriate redress. She didn't recommend any of the other complaint points were upheld.

Mr M1 and Mr M2 didn't accept the Investigators conclusions and said that they had told her that her review of the case would be a waste of their time. They also said that it was clear we all work for the banks. Mr M1 and Mr M2 asked that the complaint be referred to an Ombudsman.

I issued a provisional decision on 10 May 2024 in which I set out my conclusions and reasons for reaching them. Below is an excerpt.

'As I have said above, Mr M1 and Mr M2 have a number of mortgages with TMW, but the others are held by a limited company, of which they are directors. As that limited company is a separate legal entity, I am only able to consider under this complaint matters relating to the mortgage in their personal names. As such, I will not be commenting on complaint point 3 above, as that related to mortgages in the limited company's name. In addition, we have already considered that complaint and an Ombudsman colleague has already issued a final decision on the matter.

As for complaint point 7, I note that this point has also been referred to the ICO by Mr M1 and Mr M2. I would make two comments on this issue. The first being that a SAR entitles a

customer to personal data and will not necessarily lead to them receiving all of the information they expect to. Furthermore, the ICO is the appropriate body to assess whether the rules surrounding SARs have been complied with. As the subject matter of this complaint point has already been referred to the ICO, I won't comment further.

Mr M1 and Mr M2 have said they asked TMW for information about switching the mortgage to a repayment basis in February 2023 and so it took many months for their request to be actioned. If it were the case that it took from February to June 2023 for this information to be provided, I would agree that it took too long. However, TMW's records show the request was made shortly before the information was provided, and I haven't seen any evidence that supports the request having been made months earlier. As such, I am unable to uphold this complaint point.

TMW has explained that the email chain that was forwarded to Mr M1 in June 2023 was done to expedite the matter in hand, however, it has said that shouldn't have happened. This means that I don't need to consider whether TMW did anything wrong, but simply consider if it needs to do anything to put things right. I have considered the content of the email trail and I am not persuaded that it was rude or derogatory about Mr M1 and so I consider the apology offered by TMW was sufficient in the circumstances.

Complaint points 4 and 5 have also been upheld by TMW and compensation for the inconvenience offered. In relation to point 4, Mr M1 and Mr M2 didn't suffer a financial loss and so the only issue for me to consider is any compensation due for any inconvenience they may have suffered by having been provided with incorrect information and having to query it. I have considered the amount of compensation TMW has awarded for this mistake. If it had not offered the £150 I would not have asked it to pay Mr M1 and Mr M2 more.

In relation to complaint point 5, TMW waived the ERC and placed the mortgage account in the position it would have been in if it had not been charged in the first place. When we make an award for financial loss, we aim to place a consumer in the same financial position as they would have been in, but for the mistake by the financial business. I am satisfied that the actions TMW took placed Mr M1 and Mr M2 in the appropriate financial position. I also consider the £100 compensation TMW offered for this mistake is appropriate and proportionate in the circumstances.

I now turn to the final complaint point regarding TMW having removed the option for Mr M1 and Mr M2 to arrange new interest rate products for this mortgage in the future. TMW has said that this is because it considers the business relationship has broken down to a point where it is not recoverable and needs to end. Having reviewed everything that has happened, including issues outside of this complaint, and the correspondence exchanged, it is very clear that Mr M1 and Mr M2 are unhappy with TMW in general. However, I would comment, in the case of this mortgage, that unhappiness is not entirely without merit. Whether the relationship has broken down to a point that it cannot recover or not, TMW is required to treat all its customers fairly, whether they are commercial customers as Mr M1 and Mr M2 are, or whether they are consumers.

So while TMW is allowed to exercise its commercial discretion when making decisions about the mortgage involved in this case, it has to ensure those decisions are fair. In this case TMW has said it will stop Mr M1 and Mr M2 having any further interest rate products in order to 'encourage' them to re-mortgage elsewhere in 2026. In doing this, TMW are treating Mr M1 and Mr M2 differently to its other commercial customers with similar mortgages and so I don't consider it could be deemed to be treating them fairly. In light of this, if Mr M1 and Mr M2 maintain the mortgage subject to this complaint (account ending in 516) until the interest rate product expires, and TMW is at that time making new products available to its other BTL customers with similar mortgages, it should also make products available for this

mortgage. I would highlight that this doesn't guarantee a new rate will be granted, as any application for a new product Mr M1 and Mr M2 make would be subject to TMW's usual assessment of such applications and compliance with its lending criteria.

Mr M1 and Mr M2 have said that if TMW wants to end the business relationship with them, it should allow them to exit the mortgage without paying an ERC. As I have said above, I would expect a lender to apply its policies fairly to all customers with similar mortgages. If I were to tell TMW to waive the ERC for Mr M1 and Mr M2, that would place them in a better position to TMW's other BTL customers, which would not be appropriate.'

Mr M1 and Mr M2 didn't comment on my findings, but sent in a copy of an email dated 6 February 2023, which included the question 'Also can we transfer the mortgage on to repayment?' Mr M1 said that their IT people would be able to provide a read-receipt if needed.

TMW confirmed that the compensation it had offered had already been paid. It also confirmed that it had no record of receiving the email of 6 February 2023 that Mr M1 had provided. When asked, TMW confirmed that the email address Mr M1 sent the February 2023 email to doesn't provide read receipts and so I decided not to waste Mr M1 and Mr M2's resources in trying to find such a message. However, TMW confirmed that had the email been received, its system would have sent Mr M1 an automated acknowledgement.

In addition, TMW provided some clarification about the wording it used in its final response regarding Mr M1 and Mr M2 having the rate switch facility withdrawn. It confirmed that there was no such facility in the mortgage terms and conditions. Rather interest rate products were provided on the basis that the mortgage would revert to a reversion rate when the term ended. When a rate ended, it would be at its discretion whether new products were available and whether any application would be accepted. TMW said it considered Mr M1 and Mr M2's communications and behaviours were disproportionate to the issues complained about. As they had indicated a preference to leave TMW, it considered the business relationship was incapable of repair and should end as soon as possible. However, it was not willing to waive the ERC in order to facilitate Mr M1 and Mr M2's wish to close their mortgage account.

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.

Mr M1 provided a copy of an email from February 2023 to evidence that they requested information about changing their mortgage to repayment several months earlier than TMW provided that information. It doesn't appear that TMW received it, as it has no record on its system of it and had it been received, Mr M1 would have received an acknowledgement, a copy of which I am sure would have been provided at some point in our investigation if it existed. Nor does it appear that Mr M1 or Mr M2 chased the provision of that information, including not mentioning that it had previously been requested in the telephone call of 5 June 2023. As such, I am unable to change my conclusions about this aspect of the complaint.

In relation to the product switch facility being removed, TMW has said about Mr M1 and Mr M2's ability to switch products in the future was badly explained in the final response letter. Having read the explanation, that does appear to be the case. However, that does not alter the concept I set out in my provisional decision that TMW needs to continue to treat Mr M1 and Mr M2 in relation to switching interest rate products fairly going forward. If Mr M1 and Mr M2 decide at the end of the existing product term not to remortgage to a different lender, and so apply for a new product for the mortgage, TMW would need to assess that

application as it would any other made by comparable mortgage customers in a similar position to Mr M1 and Mr M2.

I understand what TMW has said about the business relationship. It is very clear that Mr M1 and Mr M2 were very unhappy with TMW when it refused to port existing products attached to mortgages held by the limited company. This appears to have affected how they view and react to TMW. I can't disagree that it might be the best thing for the business relationship to end. However, as TMW is not willing to waive the ERC on this mortgage (and nothing I have said should be taken as an implication that I think it should), and Mr M1 and Mr M2 are not willing/able to pay the ERC in order to move to a different lender, it would seem that relationship will have to continue for a time. I believe it would be in both party's interests if they accepted that was going to be the case and draw a line under what has gone before and try to work together in a positive manner going forward.

My final decision

My decision is that I uphold this complaint in part in so far as The Mortgage Works (UK) Plc needs to ensure that it treats Mr M1 and Mr M2 fairly, and in line with how it would treat any other customers with similar profiles, when it comes to any changes they want to make to their mortgage in the future.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr M1 and Mr M2 to accept or reject my decision before 24 July 2024.

Derry Baxter
Ombudsman