

The complaint

Mr S complains that The Mortgage Business Plc (TMB) kept him a “mortgage prisoner” for many years because it repeatedly refused to offer him a new interest rate product on his buy-to-let mortgage. He says this has had significant repercussions for him and he seeks compensation.

What happened

Mr S and his wife took out a buy-to-let (BTL) mortgage with TMB in 2006. In 2007 they took a new product with a fixed interest rate of 6.09% until June 2009. From 1 June 2009, the interest rate reverted to TMB’s standard variable rate (SVR).

The mortgage remained on TMB’s SVR until the mortgaged property was sold in September 2023. Mr S says he has been a ‘mortgage prisoner’ since 2009. He says he tried many times to get a new interest rate product but TMB refused to agree to one or to help him switch. He has made multiple complaints about this over the years.

In 2020, Mr S and his wife got divorced. TMB had by then been a ‘closed book’ lender for some time, not offering mortgages to new customers or new interest rate products to existing customers. Existing customers could move their mortgage to Bank of Scotland (BOS), a lender in the same group as TMB, in certain circumstances, and in 2021 Mr S applied to BOS for a new interest rate product, as well as to transfer the mortgage into his sole name and extend the term. BOS declined his application. He later applied to TMB to remove his wife’s name from the mortgage but TMB declined that application.

In September 2023, Mr S sold the mortgaged property. He says he was left with no choice but to do so because he couldn’t afford the mortgage payments on the SVR and he was unable to remove his ex-wife’s name from the mortgage – which he was required to do as part of the divorce settlement. He considers TMB to blame for the situation, having refused to help him and offer a lower interest rate, and says he had to sell the property for over £75,000 less than it was worth. He complains that TMB has caused him significant financial loss as well as distress and upset over many years.

Another ombudsman issued a decision setting out which parts of Mr S’s complaint we could and could not consider. She said we could consider parts of this complaint we had not considered before and which were referred to us in time. She found we could consider:

- TMB’s response to any requests Mr S made for a new interest rate product and his complaint that it failed to support him to switch to a new product since 4 April 2018.
- The complaint that TMB wrongly considered Mr S to be a Consumer Buy to Let (CBTL) borrower and as a result wrongly refused to offer him a new interest rate product in November 2017.
- Impact to Mr S’s credit file after 10 May 2021.
- Early Repayment Charges (ERC) being waived while in an interest rate product.

- The decline of the application made by Mr S in January 2023.
- The impact of all the above, including Mr S's complaint that he had to sell the mortgaged property for less than it was worth and the wider financial and personal repercussions he has described as part of the complaint.

The investigator did not think the complaint should be upheld.

Mr S did not accept what the investigator said. He made a number of points, including:

- TMB was profiteering from the fact he was a mortgage prisoner.
- The investigator had failed to review the key communication with TMB where it accepted that he had been blocked from moving to a new rate as it had incorrectly classed him as a CBTL borrower.
- If at the earliest opportunity TMB had not incorrectly deemed him to be a CBTL borrower, then he would have been transferred to the best product in the group. This was confirmed by TMB in December 2023/January 2024. It said, *"to transfer within the group via the specialist team is not subject to a new application or credit checks."* As such a decision in principle was offered in 2023.
- TMB accepted it made a mistake in classing him as a CBTL borrower – and it reopened that part of the complaint so we could look at it.
- If the mistake had been corrected in 2014, the mortgage would have moved to the best rate offered by TMB at a time when the Bank of England base rate was very low.
- The cumulative impact of the error has had significant financial implications for him. He's had to pay the SVR, which has meant he has struggled to meet his outgoings and that has impacted his credit file. He was also unable to pay down the mortgage as quickly as he otherwise would have. All of that led to the forced sale of the property after his application for a new product was declined in 2023 – even though the rental income more than covered the proposed mortgage payment.

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.

CBTL and new interest rate product in November 2017.

I will address this point first as it is clearly the most important point for Mr S. I've read TMB's responses on this matter. I'm afraid I don't agree with Mr S's interpretation of what it said. He is basing his opinion on the way a member of staff dealt with his more recent requests to change his product. But that does not necessarily fully reflect the correct position.,

TMB has told us:

"The call that you refer to in your email was on the 21 November 2017 and this has now been listened to. The content was as you documented in your email. At this particular time the colleague that you spoke to followed the correct process so therefore no error was

made. In 2017, we were unable to offer you a new product as you'd previously lived in the property. Based on this, you fell into the category of a CBTL, which isn't a scheme we offer products for. Policies and processes are continually changing this is why we are now in a position to support you with a product transfer on a business buy to let basis. I understand you have an appointment to discuss this with Angela Lees and I'd like to take this opportunity to wish you all the best moving forward."

I do not consider that TMB said that it incorrectly classed Mr S as a CBTL borrower. Rather, it said it followed the correct process in 2017 as he was a CBTL borrower.

CBTL was introduced in 2016. The purpose of CBTL was to provide more protection to "accidental landlords". And looking at the FCA register, TMB was not authorised to carry out CBTL activities.

Based on the information it had, it was reasonable for TMB to understand that Mr S used to live in the mortgaged property. Therefore it was reasonable for TMB to treat him as a CBTL borrower – the property was not originally purchased with the intention to let it.

I've already found that it was reasonable for TMB to class Mr S as a CBTL borrower. And I am satisfied at the time in question it did not offer new products to those customers. So I do not consider it treated Mr S unfairly. When Mr S took out the mortgage the offer said it would revert to the SVR after the concessionary rate ended and that is what happened. I can't see that TMB ever guaranteed that it would offer Mr S a new interest rate product.

TMB has later allowed Mr S to apply for a buy-to-let mortgage through another lender in the same group. It doesn't follow that it meant it acted unfairly or made a mistake by not allowing Mr S to apply for such a mortgage before. TMB has explained its policy has changed, that Mr S had not lived in the property for some years and did not intend to move back in, so at that point it was prepared to consider an application for a non-consumer buy-to-let mortgage. That is a reasonable explanation.

Requests Mr S made for a new interest rate product since 4 April 2018

There was no requirement for TMB to offer new products to Mr S. When he took out the mortgage TMB said the mortgage would revert to its SVR at the end of the initial tracker rate. And that is how the mortgage has operated.

From 2014, TMB offered what it called a "specialist remortgage". That allowed certain TMB borrowers to switch to a new rate with another lender in the group on a like for like basis. But it did not apply to CBTL mortgages.

The evidence we have shows that Mr S requested a new interest rate products in his sole name in November 2021, December 2022/January 2023 and March 2023. Those applications are dealt with elsewhere. But there is no evidence that Mr S made any other applications to TMB since 4 April 2018.

A further difficulty here is that the mortgage was in joint names with Mr S's now ex-wife. Even if TMB was prepared to consider a specialist remortgage (and the evidence we have does not support that such an option was available), for any application to have gone ahead would have required his ex-wife's consent. Bearing in mind their dispute (from at least April 2020), it seems unlikely that she would have agreed to such a switch going ahead.

Mr S has applied for new mortgages in his sole name. Those applications were declined. But they were not like for like switches – a borrower was being removed. We've already considered the November 2021 decision to decline an application. That decision was not

made by TMB and I will not be reconsidering it here. There is no evidence that any earlier applications not made on a like for like basis would have been approved.

Impact to Mr S's credit file after 10 May 2021

I've not found that TMB treated Mr S unfairly. As far as I can see, the information it has recorded to his credit file is a true and accurate reflection of how the mortgage was conducted by Mr S. So there is no reason why TMB should amend the information it recorded.

Waiving ERC

There was no requirement for TMB or any lender to waive the ERC is a new interest rate product was taken out – even in the circumstances here. The ERC usually reflects the costs to a lender of the mortgage being repaid early.

January 2023 declined application

The January 2023 application was not made to TMB – it was made to another lender in the same group. TMB is separately authorised by the FCA – and for our purposes is a different entity to the other lender. So I can't hold TMB responsible for the decision made by the other lender to decline the application.

I would note that lenders have a lot of discretion in deciding whether to lend or not or who to lend to. And based on the evidence available to me I can't see that the application was declined unfairly or unreasonably.

The impact of all the above, including Mr S's complaint that he had to sell the mortgaged property for less than it was worth and the wider financial and personal repercussions he has described as part of the complaint

I can't see that TMB has treated Mr S unfairly or unreasonably. While I sympathise with the difficulties that Mr S has faced, I can't say that TMB is responsible for what happened or any of the losses he is claiming.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 11 November 2024.

Ken Rose
Ombudsman