

The complaint

Ms D complains that The Mortgage Works (UK) Plc didn't tell her she wasn't paying enough each month to cover her contractual monthly payment ("CMP") on a Buy To Let ("BTL") mortgage. Instead, it used a credit on her mortgage to cover the difference.

What happened

Ms D told us that in January 2024 TMW got in touch about her mortgage by text. She initially thought the texts were a scam, but when she spoke to TMW, it said that she hadn't been paying her BTL mortgage in full each month.

Ms D said TMW told her that her CMP had increased when a new fixed rate was applied to the account in June 2023. She needed to pay £256.74 to her mortgage each month. But Ms D was paying by standing order at the time, and her standing order remained set at the previous amount, which was less than her new CMP. So Ms D had been underpaying on this mortgage since July 2023.

TMW said because Ms D had previously been overpaying, she had accumulated some credit on her mortgage. It had been using that to make up the shortfall in her payments each month.

Ms D said she hadn't wanted her previous overpayments to be left on the account as a credit. She'd wanted them to be capitalised, which means the amount overpaid is taken off the total debt, so both her debt and her monthly payments would be reduced. She said TMW had never told her that this capitalisation wouldn't be done automatically for smaller overpayments. And Ms D said if her overpayments had been capitalised into her mortgage, she would have realised right away, in July 2023, that her standing order didn't cover the CMP. So Ms D didn't think it was fair that TMW had used up her previous overpayments, and she wanted it to pay that overpayment amount back onto her mortgage.

TMW didn't think it had done anything wrong. It said it had followed its internal process for dealing with overpayments, which was that any payment under £500 won't be capitalised unless the customer calls and requests this. TMW did accept that Ms D wasn't told about this process, either online or in its terms and conditions. But because its own processes had been followed properly, TMW didn't think it had made a mistake by allowing a credit to build up on this mortgage account.

TMW said it was Ms D's responsibility to change the amount of her standing order, when her CMP was increased. And she didn't do that in July 2023.

TWM also didn't think it was a mistake to use this credit to cover the underpayment from Ms D's standing order. It understood she didn't intend for the funds to be used like this, but said its collections team only noticed she wasn't paying enough into this mortgage each month when the credit was used up, there was no longer enough to cover the monthly amount due and the account was about to go into arrears.

Our investigator didn't think this complaint should be upheld. She thought Ms D was

responsible for changing the standing order, and ought to have been aware from previous overpayments she had made, how TMW would treat her overpayments to this mortgage.

Ms D said TMW had previously written to her to say that overpayments were capitalised, so it had changed its approach. And she said there was nowhere that she could have found out payments under £500 wouldn't be capitalised. She also said she didn't get a letter in January 2024 about the shortfall, she just got texts to alert her to this. TMW then shared with us the letter it had sent.

Because no agreement was reached, this case then came to me for a final decision. And I then reached my provisional decision on this case.

My provisional decision

I issued a provisional decision on this complaint and explained why I did propose to uphold it. This is what I said then:

Ms D has more than one BTL mortgage with TMW. Mortgage ending 028 is the subject of this complaint. But in responding to this complaint, TMW has also looked at how Ms D has managed another mortgage with it.

TMW said that it doesn't capitalise overpayments if they are for less than £500. It has accepted that it doesn't tell its customers this, either on its website or in the terms and conditions of the mortgage.

TMW has shown us that Ms D regularly made overpayments to her other mortgage account, ending 420. A number of these were large overpayments, well over £500. And every time a large payment was capitalised, she received a letter about this mortgage telling her that her monthly payment had been reduced.

TMW also showed us that in August 2018, Ms D contacted TMW after receiving her mortgage statements, and realising that some of her payments to account ending 420 hadn't been capitalised. TMW capitalised Ms D's overpayments when she raised this with it, and wrote to her again setting out a new CMP.

So our investigator thought Ms D ought to have been aware of whether TMW had capitalised her payments or not. She thought Ms D would have been aware of how TMW had treated all of her previous payments on her mortgages.

But I've seen the letter that Ms D was sent in 2018, when she asked TMW why it hadn't capitalised some of her overpayments. Setting aside that this happened some time ago, and Ms D may not have recalled this in July 2023, I also think that letter doesn't make clear that what has happened in not capitalising Ms D's arrears back then was anything other than an oversight by TMW. I note this letter says "*please keep in mind that any overpayments can't be refunded or used as credit towards any future monthly payments.*"

I think that suggests overpayments of any size will be capitalised. And I note that the original offer that TMW made to Ms D said this –

If you make an overpayment the amount you owe us will be reduced immediately and the amount of interest you pay will be reduced from the first day of the following month.

The same provision, with exactly the same wording, appears in the offer that TMW made to Ms D in June 2023.

TMW has shown us that it wrote to Ms D in July 2023, to say she needed to increase her monthly payments to £256.74. Ms D doesn't appear to have realised at that time that she was paying this mortgage by standing order.

I do think it was Ms D's responsibility to amend her standing order. I understand she wasn't clear at the time that this mortgage was being paid by standing order, having changed from direct debit some years previously. However, I also think there is some force in her argument that if TMW hadn't allowed a series of small overpayments to accumulate on her account, instead of capitalising those payments, she would have noticed this rather sooner.

I also note that, importantly, all the communications I've seen between TMW and Ms D, would lead her to believe that TMW ought to be capitalising any and all overpayments made to her mortgage. That was part of the original offer TMW made to Ms D, the same provision was reflected in its 2018 letter to her about an ad hoc capitalisation, and the original offer provision is replicated in TMW's 2023 rate switch offer to her. So I don't think the current position is fair and reasonable.

The money that was previously on Ms D's mortgage account as a credit has now been used to pay her mortgage. This is money Ms D owed to TMW, Ms D would always have had to pay her CMP in full, so I don't think TMW simply has to pay the credit she's used up back onto Ms D's mortgage now.

But I do think TMW should allow Ms D to make another overpayment now, if she wishes, to replace the used credit. So if Ms D does accept my final decision, I will provide for her to make one overpayment of up to £550 in the calendar month after this decision is accepted, to replace the credit that has been used up from this mortgage. I will require TMW not to count this towards Ms D's annual overpayment allowance, so no ERC will be charged in respect of that overpayment, if Ms D makes it.

I also think that TMW should pay Ms D some compensation in this case. So I'll ask TMW to pay Ms D £200 now, to say sorry for the mistakes I do think it has made here.

I think that would provide a fair and reasonable outcome to this complaint

I invited the parties to make any final points, if they wanted, before issuing my final decision. Both sides replied.

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.

Ms D thanked me for the provisional decision, which she said took her concerns seriously. She said that she would be happy to go ahead with the overpayment I said she could make, outside of the usual allowance on her mortgage, but she said she wanted that to be taken off her account at the interest rate that the overpayment had been made, not the current rate.

My provisional decision doesn't ask TMW to backdate any overpayment that Ms D would make now. That's because I think this issue wasn't solely TMW's fault. Ms D was responsible for changing the amount of her standing order when the interest rate on her account changed. So I didn't think it would be fair and reasonable to ask TMW to backdate any payment Ms D makes now, and repay interest in this case. But I should also note that because an overpayment is made on top of the monthly payment, which covers the monthly

interest charged, the amount Ms D then overpays isn't used to pay interest. The overpayment is used to reduce her overall debt.

TMW has also agreed to my proposal. And I haven't changed my mind. I'll now make the decision I originally proposed.

My final decision

My final decision is that Ms D may make one overpayment of up to £550 to her mortgage ending 028 held with The Mortgage Works (UK) Plc, in the calendar month after she accepts this decision. The Mortgage Works (UK) Plc may not count this payment towards Ms D's annual overpayment allowance.

My final decision is also that The Mortgage Works (UK) Plc must pay Ms D £200 in compensation.

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

Esther Absalom-Gough
Ombudsman