

The complaint

Mr K complains that MTF (NH) Limited did not treat him fairly when the term of his bridging loan came to an end.

What happened

On 28 March 2022, Mr K took out a short-term bridging loan with MTF. The loan was due to be repaid on 31 March 2023. When the loan was taken out it was agreed the loan would be repaid by the sale of the mortgaged property.

In March 2023, Mr K told MTF that he would be unable to repay the loan as agreed. He complains that MTF has not treated him fairly. I have read everything Mr K has provided – I won't repeat it all of it here. Mr K said that he considers that MTF has breached various rules and regulations – I won't quote every rule and regulation he was mentioned. But in summary, Mr K complained:

- He considers MTF is in breach of the Financial Conduct Authority's (FCA) high level principles – including the consumer duty – and the Mortgages and Home Finance: Conduct of Business sourcebook (MCOB).
- MTF said it might appoint a receiver. This was unfair as it was his home and because of the likely costs. It would make it impossible for him to refinance. MTF ignored his request for information about the timescales for appointment of a receiver.
- MTF's letters and the tariff of charges state different amounts for a monthly default charge, While MTF clarified the lower of the two figures was correct, it made Mr K question how well organised MTF were – and it was a breach of MCOB.
- It was unfair for MTF to insist that an estate agent confirm the property would sell within any extended term. No estate agent would confirm that. And in any event, a three or six month extension would be too short.
- The cost of a term extension was too high. Good practice would have required MTF to put the account "on hold".
- MTF took advantage of his vulnerability – he said he lacked financial and emotional resilience, lacked knowledge and capability, and feared what MTF might do.
- In April 2023, MTF went back on its offer to consider a term extension. Mr K said if he'd been told that at the outset he could have acted earlier to arrange refinance.
- He was left with no option but to refinance – but that would take time and require an extension. But that would be excessively costly. It is usual practice for lenders to put the accounts of defaulting borrowers on hold.
- MTF belatedly changed the conditions for an extension or payment deferral if he gave evidence of a refinance and agreed a plan to make payments to the loan. If he had

known that MTF might change the conditions for an extension, he would have made an application earlier.

- MTF had not offered support as required under the Mortgage Charter.
- MTF rejected his proposals and said the only option was to take out another bridging loan with MTF. It should have told him that was a possibility at the outset. Again, if he'd been given that information he could have refinanced sooner, before interest rates went up.
- MTF did not offer him any help.
- MTF incorrectly charged interest when he entered into a Debt Respite Scheme (breathing space).

I issued a provisional decision upholding part of the complaint. My provisional findings, which form part of this decision, were:

Our role is to resolve complaints quickly and with the minimum formality. I must take into account relevant law, rules and regulations (amongst other things) in deciding what I consider to be fair and reasonable in the individual circumstances of this complaint. It is not for me to decide if there has been a breach of any rules and regulations – and I would not necessarily uphold the complaint if there had been.

I thank Mr K for the very thorough and comprehensive submissions that he has made – I have read everything that both he and MTF have said and provided. But I won't be responding to every point either side has made. That is not intended to be discourteous. It reflects the informal nature of our service.

Forbearance

Mr K's complaint is that MTF has not treated him fairly when the term of his bridging loan ended. Having considered all of the evidence, I don't consider MTF has acted unfairly or unreasonably. I will explain why.

Mr K entered into a short-term bridging finance agreement with MTF. The loan agreement set out in a clear, fair and not misleading way that the loan was due to be repaid 12 months after it had been drawn down – and that Mr K would repay the loan by selling the property.

Mr K accepted the terms of the loan – and the agreement said he should get independent legal advice before doing so. So he was in breach of contract when he did not repay the loan as agreed. In those circumstances, a lender would be required to treat a borrower fairly and in line with the relevant rules and regulations – and look to tailor support, if possible. But I don't agree with Mr K's interpretation of the rules. In the circumstances, I don't see what further support MTF could reasonably have offered.

MTF is not a signatory to the Mortgage Charter and the charter was not intended to help borrowers in Mr K's situation, where they had reached the end of term of a bridging loan without the means to repay it. In any event, I don't see how the charter would help Mr K – the loan was already interest only. And the charter said that borrowers could extend their term to reduce their payments. But Mr K was not making any payments to the loan. And as I will explain, there are different considerations in extending the term of a bridging loan than for a conventional mortgage.

MCOB 13 sets out what lenders must do when dealing with a customer in payment

difficulties. That includes extending its term, switching its type to interest only, defer payment of interest due, treating the payment shortfall as if it was part of the original amount provided (or capitalising the arrears) and make use of any Government forbearance schemes which the lender chooses to participate.

The loan was already interest only. Bearing in mind the term of the loan had ended and Mr K was not making any payments, deferring interest would not help. Capitalising the arrears was not possible – the whole balance was already due and Mr K was not making any payments to it. I am not aware of any Government forbearance schemes that could have helped Mr K. That left extending the term.

MTF was prepared to consider extending the term of the loan. The difficulty is that is covered by a separate part of MCOB – 11.6.55. That says when considering extending the term of a bridging loan a lender must treat it as if it was a new application – and must consider the impact of the extension on any remaining equity. That reflects that there are very limited circumstances where extending the term of a bridging loan is going to be the right thing to do. So MTF was limited in offering an extension to the loan. It could not do so formally unless it carried out an affordability assessment in line with when the mortgage was originally agreed, with the consideration around the impact of an extension on the equity.

It was reasonable – and in line with good industry practice – for MTF to require evidence of a clear repayment strategy before agreeing a term extension. That is because without a repayment strategy there was a significant chance that both sides would end up in the same position at the end of any agreed extension. That would not be in Mr K's best interests.

MTF said that if Mr K wanted to use the sale of the property as a repayment strategy it would need evidence that the property was being marketed and how long it was expected to take to sell before agreeing any short-term extension. I accept that Mr K was uncomfortable with that, but it was a reasonable request by MTF. It would not be fair for a lender in these circumstances to accept the sale of the property as a repayment strategy without independent evidence to support that it was realistic in the proposed timescales. Again, it reflected that to meet its obligations as a responsible lender it had to be satisfied that there was a realistic possibility the property would sell during any agreed extension.

Just because MTF was prepared to offer a term extension on certain terms to begin with would not prevent it changing the terms on which it was prepared to offer a term extension. Bearing in mind that the interest was eroding the equity, it was not unreasonable for it to request interim payments as a condition of any extension.

Nor do I consider that it was unfair for MTF to only offer a three or six-month extension. I consider that was a reasonable timescale for Mr K to arrange a viable repayment strategy. I don't consider Mr K's points about the economy and the housing market are particularly relevant. And it was open to him to provide evidence from an independent source about the timescales for sale of his property. I would add that the evidence Mr K recently provided to the court from an estate agent said that to achieve the best price it would take around six months – which supports that the length of the term extensions offered by MTF was not unreasonable.

Obviously, if Mr K had not repaid the loan by the end of any extension, then MTF would be required to review things. But, in the circumstances, I can't see any reason why MTF should have offered a longer extension. It was unlikely to be in Mr K's best interests to extend what was intended to be short-term finance for that long.

I don't consider it was unreasonable for MTF to apply a fee for any term extension. That reflects the cost to it of administering the extension and the additional risk of extending the

term. But as far as I can see, Mr K never formally applied to extend the term – so he has not incurred such a fee. While I note the points that Mr K has made about the fair value of the fee, MTF has not charged him a fee – and I note that the consumer duty only applied to events from 31 July 2023 – after MTF had issued its final demand. In the circumstances, I don't consider I need to explore whether the fee offered fair value or not.

I understand that Mr K considers that the cost of the fee was one of the reasons why he did not go ahead with a term extension. But I have not seen any evidence that Mr K could ever have complied with MTF's requirements for it to agree to the term extension. I note that he has not sold his property or arranged refinance to date, despite almost 18 months elapsing. It follows that I could not reasonably find that it was the fee that that was the reason that Mr K did not go ahead with the term extension. There is no evidence that he could ever have met MTF's requirements to have a viable repayment strategy in place.

I am satisfied that MTF took reasonable steps to communicate with Mr K and set out the options available to him and the information it would need to consider a term extension. The information it gave him was clear, fair and not misleading. While the terms on which MTF was prepared to offer an extension were not acceptable to Mr K, it does not follow that they were unfair or unreasonable. And ultimately Mr K made an informed decision not to apply for an extension. That was his choice, but I do not agree that was because MTF put in place unfair or unreasonable barriers or conditions on whether it would offer an extension.

In saying that, Mr K said that MTF did not set out originally that it might be possible to remortgage as a buy-to-let. But I can't see Mr K ever explored that as an option or that it was realistic. I am not persuaded that if MTF had told him about that earlier, that it would have made any real difference to what happened.

MTF told Mr K it would take on average between three to six months to repossession a property. I think that was adequate time for Mr K to either start selling the property or to arrange refinance if that was something that was realistically available to him.

MTF has given Mr K forbearance by explaining what his options were and giving him time. It issued a formal demand in July 2023. That was reasonable bearing in mind no term extension had been agreed and Mr K had not put forward any realistic plans to repay the loan. And that gave Mr K around three months' notice of its intention to take legal action.

Repossession should be a last resort. But it was not in Mr K's best interests for the loan to continue to accrue interest without any viable repayment strategy. That is because the interest will continue to erode the equity in the property. I don't consider that MTF would be required to factor in expectations about how the housing market would perform into that.

MTF would have been entitled to take legal action much sooner than it has. But it agreed to put such action on hold so we could consider the complaint. The Pre-Action Protocol for Possession Claims based on Mortgage or Home Purchase Plan Arrears in Respect of Residential Property says that lenders should consider postponing action where a genuine complaint has been made to us. So it was reasonable for MTF to agree to that.

MTF continued the legal action after the investigator issued his view. As the investigator explained, that is its decision. It may not be unreasonable bearing in mind the loan expired around 18 months ago and the interest is eating into the equity in the property. And Mr K had the opportunity to ask the court to stay proceedings until this complaint was resolved if he wished.

It was reasonable – and in line with the agreement Mr K entered into – for MTF to apply interest until the mortgage was repaid. In my experience it is not standard practice for

secured lenders to put accounts on hold and not apply any interest – and MTF effectively gave Mr K around four months from the term of the loan ending until it issued its formal demand.

Overall though, I don't consider that MTF treated Mr K unfairly. It listened to him, set out what assistance it could offer and gave him time once the term of the loan had ended – that is forbearance. The assistance it could offer was limited because of the nature of the loan – and it was fair and reasonable for it to require evidence of a clear repayment strategy before it agreed any term extension. Mr K has never provided adequate evidence of a repayment strategy – so I can't see what else it could have done. And I would add again that it was not in Mr K's best interests for this loan to continue past the end of its term bearing in mind the cost of that.

I don't consider that MTF caused any unreasonable delays. It was entitled to look for the loan to be repaid as agreed. It was Mr K's decision not to sell his property to repay the loan. I don't agree that it would be required to set out definitively what its plans for enforcement were. That could change depending on a number of factors. But I think the information it gave Mr K was sufficient. I do not agree that the information MTF gave Mr K was the reason that Mr K has not refinanced – that was always something that was in his control.

LPA receivers

It would be unusual and out of line with good industry practice for a lender to appoint an LPA receiver on a property where the borrower lives. So I agree that it was not fair for MTF to suggest that might happen. That has caused Mr K some avoidable worry and inconvenience when he was clearly going through a difficult time – particularly in view of the costs involved. Mr K has clearly devoted some time to addressing this issue specifically – and that would not have been necessary had MTF acted fairly in the first place.

In saying that MTF never appointed receivers. And I have to take into account that while the threat of LPA receivers would have contributed to the stress and inconvenience Mr K suffered – it was clearly not the only source of that. He was already going through a difficult time because he'd reached the end of the loan's term and did not have the means to repay it. In all the circumstances, I consider it would be fair for MTF to pay Mr K £300 to reflect any distress and inconvenience caused by the threat of appointing receivers.

Fees

MTF has applied the fees set out in its tariff of charges when the loan was not repaid as agreed. MCOB allows lenders to charge fees to reflect the additional costs it incurs. In the circumstances here I don't consider it was unreasonable for MTF to apply fees, bearing in mind the additional work it has undertaken because the loan was not repaid as agreed.

I don't think Mr K has lost out because MTF issued incorrect correspondence showing that the monthly fee was higher than it should have been. He has never had to pay the higher fee.

MTF is entitled to pass on any costs it incurs in protecting its security. So it is entitled to pass on its costs to Mr K. The information we have does not support that the legal fees it has passed on were unreasonable – but it should provide up to date figures.

I'd note that Mr K only filed a defence on 16 September 2024 – and that included instructions to market the property that were made on the same date. So MTF was not on notice that Mr K had started to sell his property. I see no reason why it could not continue with the scheduled court hearing on 17 September 2024.

In his argument to the court Mr K said that he believed the time it took me to review his case indicated that it was likely to be successful. For the record, that is not correct. The length of time it took me to review the file reflects the size of the file and the submissions made.

Breathing space

On 22 July 2023, Mr K entered into the Debt Respite Scheme (breathing space). Under the scheme creditors should make sure that it stops, for 60 days:

- *The debtor having to pay certain interest, fees, penalties or charges for that debt during the breathing space.*
- *Any enforcement or recovery action to recover that debt.*
- *Contacting the debtor to request repayment of that debt.*

Breathing space does not apply to secured debts – but it does apply to arrears on secured debts. “Arrears” are defined under the scheme as means “any sum other than capitalised mortgage arrears payable to a creditor by a debtor which has fallen due and which the debtor has not paid at the date of the application for a moratorium in breach of the agreement between the creditor and debtor or in breach of the legislation or rules under which the debtor incurred the debt or liability.”

In this case, the entire balance of the loan had fallen due. So I consider the whole balance was in “arrears” as defined under the scheme. Therefore, MTF should not have applied interest or any fees or charges for 60 days from 22 July 2023.

MTF should remove the interest and fees it applied from 22 July 2023 until 20 September 2023 and re-work the loan balance accordingly.

The fact that MTF did not act in line with the requirements of the breathing space scheme will have added to Mr K’s distress and inconvenience. I consider MTF should pay Mr K £100 for that.

MTF responded to say:

- It did not agree that it had not acted in line with the Breathing Space scheme. It said that its position was that the loan was ineligible for the scheme as a secured debt under Part 1, Regulation 5(4)(a) of the Debt Respite Scheme (Breathing Space Moratorium) Regulations.
- I had said that arrears on secured debt were eligible and that under the scheme “arrears” were defined as “any sum other than capitalised mortgage arrears payable to a creditor by a debtor which has fallen due and which the debtor has not paid at the date of application for a moratorium in breach of the agreement between the creditor and debtor or in breach of the legislation or rules under which the debtor incurred the debt or liability”. But MTF believed that all interest and fees applied to the loan are capitalised and become part of the overall facility. Therefore the entire loan is outside the scope of the Breathing Space scheme. MTF provided a copy of the loan contract and illustration which it considered showed that all of the amounts due had been capitalised.
- It was not its intention to cause Mr K distress by not assuring him it would not appoint an LPA receiver. But it said that it was Mr K that first introduced the topic of a receiver and then repeatedly queried the matter with it. While it could have done more to reassure Mr K, it was not its intention to threaten Mr K.

Mr K did not accept my provisional conclusions. He made a number of points, including:

- MCOB 13 sets out that the list of forbearance options is not exhaustive. MTF should have set out a full range of options including a twelve month bridging loan, a buy-to-let mortgage before or at expiry, payment deferrals and waiving or freezing interest. Legal action was only allowed after all reasonable options have been exhausted and as a last resort. Another twelve month bridging loan was an obvious option that could have resolved things quickly. But it wasn't offered in a timely fashion before or at the loan's expiry, but months later when interest rates had gone up.
- I had not taken into account MCOB 11.6.55(2), which sets out that an affordability test does not apply to rolled up interest mortgages. MCOB 11.6.57 says that only a repayment strategy is required.
- It is only certain specific requirements that only signatories to the Mortgage Charter must provide. But it also says that all lenders should provide "well timed support to help customers plan ahead" and "tailored support for anyone struggling".
- The Breathing Space regulations define "capitalised arrears" as any arrears that have been added to the outstanding balance to be repaid over the duration of the mortgage". At expiry less than 10% of the loan consisted of deferred payment capitalised interest that was added to the loan on a monthly basis. They were never capitalised arrears, but when the loan ended they became "arrears" as defined under the Breathing Space regulations and therefore eligible under the scheme. It was misleading for MTF to say that the full loan was "capitalised arrears" at the end of term when 90% of the loan was the principal that was due and the interest that was added to the loan was not arrears at the time it was added.

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 appreciate that Mr K is dissatisfied with the outcome I proposed in my provisional decision. But I was not aiming to deliver my provisional decision before the October 2024 court hearing as he said. This is a very large file and Mr K has made lengthy submissions. I issued my provisional decision once I had reviewed everything that Mr K and MTF had said and provided.

In considering what is fair and reasonable in all the circumstances of this case I am required to take into account relevant law and regulations, regulators' rules guidance and standards, codes of practice and what I consider to have been good industry practice. I have read everything that both Mr K and MTF have said and provided. But I won't be responding to every point either side has made. That is not intended to be discourteous. It reflects the informal nature of our service.

Mr K has put forward rules and guidance issued by the FCA including MCOB, Mortgages and Coronavirus: Tailored Support Guidance (TSG), the “Dear CEO” letter dated June 2022, the Borrowers in financial difficulty following the coronavirus pandemic final report (BiFiD), the finalised guidance FG23/2: Guidance for firms supporting mortgage borrowers impacted by rising living costs and the Consumer Duty. He’s also mentioned the Mortgage Charter and the FCA’s Principles.

Mr K said that he is concerned that the FCA’s position since the pandemic has not been taken into account and has been missed affecting the outcome of his complaint. I am afraid that is not correct. We are an informal dispute resolution service. It is not for me to set out every law, regulation etc that I have taken into account in determining a complaint. I would note that I did not say that all the various rules and guidance he has referred to do not apply. Rather, I do not agree that a lender acting reasonably would always be required to apply those rules and guidance in practice in the way Mr K believed in the individual circumstances of this complaint – and that overall I considered that MTF had treated Mr K fairly. I am sorry if that was not clear.

Forbearance

Mr K said that the BiFiD report required MTF to write to him before expiry offering a full range of prospective forbearance (as the regulations require) including the option of an extension specifying its length and the prevailing conditions for application that were possible to meet, so that he could make an informed choice what to do.

I do not agree that MTF was required to write to Mr K as set out above. BiFiD said that firms should do more to engage with customers before they miss a payment. But MTF was already engaging with Mr K from the point that he told it he would not be able to repay the loan as agreed. And it tailored its responses to Mr K’s specific circumstances – it set out what it needed from him to consider a term extension. And as I will explain, I consider that was an appropriate thing for it to consider in Mr K’s individual circumstances.

The FCA defines a bridging loan as a regulated mortgage contract with a term of 12 months or less. It defines an interest roll-up mortgage as an interest-only mortgage under which neither capital repayments, nor payment of any of the interest accruing under its terms, are required or anticipated until it comes to an end, whether on expiry of the term (if any), discharge of the mortgage or the happening of some other event.

In view of the above I think Mr K is correct. The mortgage meets the definition of a bridging loan, but also of an interest roll up mortgage. Therefore I was wrong to say in my provisional decision that MTF would be required under MCOB to carry out the same checks as if was granting a new loan. Instead, MCOB says that interest roll up mortgages are a type of interest only mortgage, so other provisions on MCOB relating to interest only mortgages would apply.

I don’t consider the above makes a great deal of difference to my assessment of what is fair and reasonable in the circumstances of this complaint. That is because for a mortgage lender to assess whether a certain form of forbearance is in a borrower’s best interests and to treat them fairly in some cases - and depending on the type of forbearance being considered – it would need to make similar considerations about the sustainability of any proposed arrangement as it would for a new borrower.

I say that as there is an overriding requirement for a lender to pay due regard to the interests of its customers and treat them fairly. It would not be in Mr K’s interests for an arrangement

to be reached that did not put him in a better position overall and that just pushed the problem – that he did not have the means to repay the mortgage and had not put in place any steps to repay the mortgage as agreed – down the road.

Much of the guidance Mr K has referred to is largely intended to set out how lenders can help borrowers who were affected by the impact of the pandemic and/or the cost of living crisis who had traditional mortgages and who might struggle to meet their monthly payment. Mr K had a bridging loan where all of the capital and interest was due at the end of term. While I accept that the wider financial environment might have had some impact on Mr K's ability to repay the loan, the various guidance and rules was largely intended to provide support to borrowers to help with meeting their contractual monthly payments. But I agree and accept that MTF had a duty to treat Mr K fairly when he could not repay the loan as agreed and that it should tailor appropriate forbearance to Mr K's circumstances

I do not agree that the consumer duty was intended to ensure that "*firms do no harm to consumers*". There is an obligation to prevent foreseeable harm, but PRIN 2A.2.13G says "*Avoiding foreseeable harm to retail customers does not mean a firm has to prevent all harm.*" It goes on to give an example of risks that inherent to a product including that a mortgage carries a risk of repossession. And I am satisfied the mortgage illustration and loan contract set out that repossession was an option if the loan was not repaid as agreed.

In saying that, a lender would have a degree of flexibility in how it assessed whether to offer a certain concession or not. But, for example, if a lender were to consider extending the term of a bridging loan, which was intended to be short term, then it would be reasonable for it to consider how much of the equity would be eroded by the extended term and whether there was a realistic and achievable plan to repay the principal balance and all of the rolled up interest at the end of the term.

So in many cases, in practice, the checks required to agree such a concession would be very similar to those required when granting a new loan or a formal extension. Usually, it would not be reasonable for a lender to approve a term extension just because that is what the borrower wanted. Acting reasonably, it would need to understand how the loan would be repaid at the end of the extended term.

Mr K is also correct that repossession should be a last resort. But it does not follow that in circumstances such as his, where he reached the end of the term of his bridging loan and had not repaid it – and had not taken any steps to put in place the agreed repayment strategy – that a lender must offer some form of concession. It will depend very much on the individual circumstances of each case. It is a two-way street – a lender can only fully consider whether a concession or forbearance is appropriate if the borrower meaningfully engages with it.

MTF was clear that it wanted Mr K to repay the loan either by refinancing or by selling the property. That was reasonable. It was what Mr K agreed to when he took out the loan. Mr K told MTF that he was looking into his options and that it would likely take around two months to arrange a refinance or six months to sell the property. And MTF said it would work with him providing he had an exit strategy that repaid the loan in full.

Mr K knew that the term of the bridging loan was due to end. It was reasonable for a lender in those circumstances to expect a borrower to have taken steps before the expiry of the loan to put in place their repayment strategy. When Mr K took out the loan he told MTF he would repay it by selling his property. MTF sent a number of reminders to Mr K asking him to confirm that his repayment strategy was in place to repay the loan by 31 March 2023. It also set out that Mr K could apply for an extension to the term of the loan. But I understand Mr K did not respond.

Mr K contacted MTF on 14 March 2023 before the loan was due to end. There followed an exchange of emails between Mr K and MTF. Mr K said that he hadn't put the property on the market because of the property market and the wider economic environment, and that he would like an extension or other forbearance. MTF told Mr K it would only agree an extension if Mr K had a viable repayment strategy. That would be the property on the market and an email from an estate agent saying the extension period was sufficient to market the property, or if refinancing a copy of an offer or decision in principle and confirmation the extension is sufficient to complete the refinance.

Those were reasonable conditions for MTF to place on Mr K before agreeing an extension. It was fair and reasonable for a lender to impose such requirements before agreeing an extension whether formally or as forbearance. I say that as this was always meant to be a short-term loan. Mr K had entered into an agreement to repay the loan after twelve months.

Of course, borrower's circumstances and the wider financial environment can change between a loan being agreed and it being due to be repaid. And a lender should take those things into account in deciding what help it can offer a borrower whose term has ended without it being repaid. But I don't think either of those things would prevent a lender who had entered into a short-term loan such as this to look for a viable exit strategy before agreeing anything else. And of course, if Mr K had been able to set out a viable plan to repay the loan, then it might have been reasonable for MTF to consider an extension by way of forbearance, depending on what his proposals were. But as a first step, it wasn't unreasonable for MTF to consider a formal extension, with a fee and interest rates based on the market at the time.

I do not consider the requirements that MTF set out to consider an extension were unreasonable or out of line with good industry practice. I say that as it is not unusual for a lender where the loan has reached the end of term and the borrower intends to sell a property to ask for evidence from an estate agent as to how long that would take. I could see the argument that an estate agent might not want to confirm a property would sell within a certain time. But in my experience they often do – and even if they could not provide the assurance specifically asked for by MTF, it is not unusual to provide an estimated time to sell the property – and indeed a local estate agent would usually be well placed to be able to do that. A lender could take that information into account in deciding whether the length of an extension or forbearance was appropriate. Or indeed whether it might not be in a borrower's best interests to extend the term.

Ultimately, I don't think that matters. I say that as there were two parts to that requirement. Mr K needed to put the property on the market and the estate agents should then confirm how long the property would take to sell. Mr K did not put the property on the market. And I am not persuaded that even if MTF had set out its requirements in a different way – for example that it needed to understand how long the property would take to market and whether the property was being marketed at a price that was realistic and achievable in a reasonable timescale – that Mr K would have put his property on the market.

I say that because despite the sale of the property being the intended repayment vehicle and despite MTF taking action to recover the debt, Mr K did not put the property up for sale until shortly before a possession hearing, several months later. And bearing in mind what he has said about his views about the impact of the pandemic, the cost of living crisis and the mini budget amongst other things, it seems these factors and the potential impact on the ability to sell the property meant that Mr K would not have put the property up for sale even if MTF had explained differently what it needed from an estate agent.

The other option was refinancing. It was reasonable for MTF to ask for a decision in principle or offer as evidence that Mr K could refinance. Anything less than that would not really show that there was a viable way for Mr K to refinance.

I don't agree that there was any obligation for MTF to offer a new bridging loan at the outset bearing in mind the nature of the discussions that it was having with Mr K – it was reasonable for it to understand that Mr K was still exploring options to refinance. And the interest rates were outside MTF's control.

Again, even if MTF had communicated differently, I am not persuaded that it would have made any difference here. I say that for similar reasons to above. For MTF to give Mr K more time – whether as forbearance or through a formal term extension – it would need details of a viable plan as to how the mortgage would be repaid. That depended on Mr K taking action and the evidence supports he did not take that action despite knowing that it would be required for MTF to be able to offer an extension. I am not persuaded that he would have done so had he received a better or earlier explanation of what MTF could offer him.

Mr K said the Mortgage Charter required all lenders to provide well timed information to help customers plan ahead. I consider that MTF did enough to contact Mr K before the loan expired and ask how he was going to repay it. And it had a reasonable expectation that he would have put in place the agreed plan to repay the loan. I don't agree the cost of living crisis meant that Mr K could not follow through with his plan to sell the property or refinance. It might have meant that it would be more difficult to sell his home or that he might not receive as much as he expected. Or it might have meant it was more expensive to refinance. But that is an inherent risk with this type of loan. And there was no guarantee that the position would have improved if the term was extended. That is one reason why it was reasonable for MTF to look for a viable exit strategy with evidence from Mr K.

Of course, if Mr K had taken those steps then it would have been reasonable for MTF to take that into account in the approach it took. But Mr K told MTF that he was exploring refinancing from March to July 2023. Despite that he did not appear to have made any real progress. I don't consider in those circumstances it would necessarily be unreasonable for a lender to consider that refinancing was not realistic.

I agree that MCOB 13 is not exhaustive. But I can't see there was any concession that a lender could reasonably be required to offer to Mr K in the circumstances here. The loan was already interest only and all of the capital and interest formed part of the balance, so capitalisation was not an option.

Under the terms of Mr K's loan all the payments were deferred until the end of the term. By extending the term the payments would effectively be deferred further. But I've already explained why it was reasonable for MTF to require evidence to show how Mr K would repay the loan if the term was extended and the considerations would be largely the same for a deferral.

I do not consider waiving or freezing the interest were concessions that MTF could reasonably have been required to offer in the circumstances here. While they are options that a lender should consider in certain circumstances, I don't consider that waiving or freezing interest was reasonable here. Putting aside that the options for forbearance in MCOB were not exhaustive, MCOB did not change to specifically include waiving or reducing interest as concessions for lenders to consider until November 2024. And the FCA said in PS24/2 that there was no entitlement for borrowers to have interest waived. Rather it added to the existing options available for lenders to offer support. An example it gave was

where the mortgage balance was escalating unreasonably while a firm supports a customer to exit home ownership.

In this case, the estimated value of Mr K's home was in excess of the mortgage balance. Mr K accepts there was "plenty of equity left" in his home. I can't see any reason why MTF had any reason to believe that he could not afford to pay the market rates if he extended the term of the loan – and bearing in mind I've found it was fair and reasonable for MTF to continue to apply interest until the debt was repaid. And a term extension of some sort was likely to be appropriate to manage the position that Mr K was in.

MTF has explained that it offers buy-to-let mortgages – but only through a broker not directly. It was for Mr K to decide whether to do make an application for such a mortgage or not. I do not consider that it was unreasonable for MTF not to put that forward as an option for Mr K at an earlier point.

Overall, Mr K was in breach of contract when he did not repay the loan as agreed. The only option that MTF could reasonably offer in the circumstances was extending the term either temporarily as forbearance or formally. But for either of those options it was reasonable for MTF to require evidence that Mr K had refinancing in place or that he was selling his property before agreeing an extension or deciding what tailored support it could offer.

I am satisfied that MTF set out what it needed from Mr K clearly. It would not be in his best interests to allow the term of the loan to continue without a clear and viable repayment strategy in place – and for that to be in the short-term bearing in mind this was always intended to be a short-term loan.

As the term of the loan had ended and Mr K had not put forward any viable plans to repay the loan supported by evidence, it was reasonable for MTF to take the action it did. If Mr K was unwilling to or unable to provide evidence to support that he was selling his home or that he could refinance then it was reasonable for MTF to conclude that extending the borrowing was unlikely to improve Mr K's position. And I can't see there was any other course of action that would have been appropriate at that point.

In the circumstances, I consider that MTF gave Mr K reasonable time to explore his options for repaying the loan. It was clear from what he told MTF that he'd not had any success in arranging refinance. And it was not clear what other options were realistically available to him bearing in mind what he'd told MTF. Mr K did not put forward any firm plans to repay the loan supported by evidence. In the individual circumstances of this case, I don't think it was unfair for MTF to conclude that there was no viable way for Mr K to repay the loan – and therefore it was reasonable for it to start legal action.

If Mr K considers that MTF has not complied with the Pre-Action Protocol for Possession Claims based on Mortgage or Home Purchase Plan Arrears in Respect of Residential Property then that is something that would be better dealt with in court.

Mr K did not pay the fee for extending the loan. So I do not consider that I need to look into that. And as I've set out above, in any event, Mr K was unable or unwilling to meet the other requirements for MTF to agree an extension, so I am not persuaded the level of the fee was the main reason he did not agree an extension.

Breathing space

I've thought carefully about what the Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020 (the scheme) say.

Secured debts which do not amount to arrears in respect of the secured debt are non-eligible debts under the scheme. But “arrears” on a secured debt is a qualifying debt. The scheme defines arrears as “any sum other than capitalised mortgage arrears payable to a creditor by a debtor which has fallen due and which the debtor has not paid at the date of the application for a moratorium in breach of the agreement between the creditor and debtor or in breach of the legislation or rules under which the debtor incurred the debt or liability.”

The scheme defines “capitalised mortgage arrears” as “any arrears in relation to a mortgage that have been added to the outstanding balance to be paid over the duration of the mortgage.”

MTF believed that all interest and fees applied to the loan are capitalised and become part of the overall facility. Therefore the entire loan is outside the scope of the scheme.

I agree that MTF capitalised all of the interest and fees over the life of the loan. But none of those interest or fees was ever arrears at the point they were added to the principal balance – they were not due to be paid at that point. I think it would be difficult for me to say that any part of the loan constituted a capitalised arrears balance as defined under the scheme.

The full balance only became due when the term of loan ended. Mr K did not pay the balance when it was due – and it remained outstanding at the time of his application to the scheme. I consider it likely that Mr K did qualify for a moratorium under the scheme. Therefore, MTF did not treat him fairly when it applied interest.

I see no reason to reach a different outcome than I did in my provisional decision. MTF should pay Mr K £100 for any distress and inconvenience caused by not dealing with his breathing space application fairly.

Receivers

I don't think it makes any difference if it was Mr K who first asked about the likelihood of receivers being appointed. It was wrong for MTF to say it was “very likely” it would appoint receivers. That was not in line with good practice for a property the borrower lived in. And that has clearly upset Mr K.

But after carefully considering what Mr K has said about the impact on him, I see no reason to reach a different outcome than I did in my provisional decision. I consider £300 is a fair amount to reflect the distress and inconvenience caused to Mr K by MTF unfairly leading him to believe it was very likely to appoint receivers.

Fees

I've already explained why I think it was reasonable in the circumstances for MTF to begin legal action. The loan terms and conditions allow MTF to add its legal fees to the loan balance. I've not seen to suggest the legal fees added are unreasonable in this particular case. And I note that some of the fees were applied after this complaint was referred to us. But it is open to Mr K to dispute MTF's costs in court as part of the resolution of the legal proceedings.

My final decision

My final decision is that MTF (NH) Limited should:

- Remove any interest and fees it charged on the loan from 22 July 2023 until 20 September 2023 – and re-work the loan accordingly.
- Pay Mr K £400 directly.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 17 June 2025.

Ken Rose
Ombudsman