

## **The complaint**

Ms F and Mr M complain that The Mortgage Works (UK) Plc didn't fairly handle an application to remove Mr M from their jointly held buy to let mortgage.

## **What happened**

Ms F and Mr M, who are brother and sister, jointly held a buy to let mortgage with TMW. Mr M decided to move abroad for family reasons, and they agreed that Ms F would buy out his share of the property and take the mortgage over in her sole name.

Ms F therefore applied to TMW to transfer the mortgage. At the same time she notified TMW of a change to her name and address due to recent marriage. She first made the application in May 2022. But the application wasn't approved until October 2022. Because of the delay, the transfer didn't go ahead. But then following a further application it did complete in August 2023.

Ms F complained. She said that TMW had taken far too long to process the application. It had repeatedly asked for further information and for documents to be sent in again. It hadn't responded to her when she'd asked for updates. The delay meant that the interest rate – and the monthly payments – had increased because they couldn't take a new fixed rate until the application had been approved. And she said the long delay had caused great difficulty in the relationship between her and Mr M. Following the transfer Ms F finally took a new interest rate in October 2023.

TMW initially said it had considered the application fairly and in a reasonable time. It had asked for further information only when needed, and it had needed Ms F to send new identity documents again because she hadn't sent certified copies the first time. But it offered £75 compensation for failing to recognise quickly enough that she'd made a complaint. On further review, it offered an additional £75 compensation – saying it had received correct identity documents on 31 May 2022, but hadn't updated its system until 1 August 2022. This delayed the start of the mortgage transfer application as it needed to update Ms F's name first. The first payment of £75 was paid to Mr M – even though it was Ms F who complained – because the mortgage was being paid from Mr M's account. But the second payment was paid to Ms F.

Ms F wasn't happy with that and brought her complaint to us, where it was joined by Mr M. One of our investigators didn't think that TMW had acted fairly and had unreasonably delayed in considering the application to transfer the mortgage. She didn't think it would be fair to require it to compensate them for not taking an interest rate until October 2023 when the transfer could have gone ahead in October 2022. But she said that TMW should pay Ms F and Mr M £375 compensation each. Ms F wasn't happy with that, and asked for the complaint to be reviewed by an ombudsman.

I came to a different conclusion, so I issued a provisional decision setting out my thoughts on the complaint and inviting the parties to respond.

## **My provisional decision**

I said:

"I'm sorry to hear about all the difficulties both Ms F and Mr M have faced. I can see this has been a worrying time for both their families.

I've looked carefully at everything that happened and I do think that TMW didn't handle the applications to change Ms F's name and to transfer the mortgage to her sole name fairly. There were periods of delay when TMW took no action – particularly between the end of May 2022 and the start of August 2022. And I agree with Ms F that further delay was caused because TMW didn't clearly set out what information it would need, and in what format, from the start. This resulted in Ms F having to provide information in a piecemeal way, and sometimes several times. Much of what was needed was standard in a relatively routine application like this one, so I see no good reason why it couldn't have been set out at the beginning.

Had that happened, I think TMW could reasonably have ensured that both applications were processed and completed within two months – so by early July 2022. But they weren't in fact completed until October 2022. Ms F and Mr M say that this failure caused them serious and lasting consequences, and so I'll focus on what I think it would be fair to ask TMW to do to put matters right.

The existing fixed rate expired at the end of June 2022. At that time, Ms F and Mr M couldn't apply for a new fixed rate, because Mr M needed to realise his share of the property – if the transfer to Ms F couldn't be agreed, the property would need to be sold. If they'd taken a new fixed rate at that time then a sale would trigger an early repayment charge.

I've said that the applications should have completed by early July 2022. Allowing some time for the legal work to be completed to give effect to the transfer, then I think it's fair to say that had nothing gone wrong the mortgage and property would be in Ms F's sole name by the end of July 2022 – at which time she would be able to apply for a new fixed rate to start around the beginning of September 2022.

In fact what happened was that the transfer wasn't approved until October 2022. Ms F and Mr M didn't go ahead with it at that time, preventing Mr M accessing the equity he needed to support his own family. Ms F says that by then the relationship between them had begun to break down because of the delay. And she says that by then she had complained to TMW and was expecting it to put matters right as part of dealing with that complaint – but it caused further delay in responding to her complaint. She also says that the agreement between her and Mr M was called off because of the rising costs of mortgage borrowing around this time.

Over the following months the mortgage became more and more expensive. Ms F and Mr M made a large overpayment to reduce the balance and so the monthly payments, but even so the mortgage payments overtook the rents received. When their tenants left the property in August 2023 Mr M put it on the market, so Ms F asked TMW to re-open the transfer application (which had by then expired) and it finally went through at the end of August, with Ms F taking a new fixed interest rate from October 2023.

Ms F therefore says that TMW should compensate them for the difference in interest paid until October 2023, on the basis that if TMW had dealt with the application fairly, a new fixed rate could have been in place before rates started to rise substantially in 2022, the transfer could have gone ahead, and they wouldn't have faced all the difficulties they'd had to deal with – both financially and in terms of the wider impact –

later in 2022 and in 2023.

I agree that TMW should fairly have allowed the transfer to complete. Had it done so, I'm persuaded that Ms F and Mr M would have completed the transfer and Ms F would have taken a new fixed rate at that time, from around September 2022.

However, I don't think it would be fair to hold TMW wholly responsible for the losses Ms F and Mr M experienced over the period from then to October 2023. The fact is that TMW did approve the transfer application in October 2022, so it could have gone ahead at that time. I appreciate the delay had caused difficulties, both practically and in the relationship between Ms F and Mr M. But there was still a need for the situation to be resolved, and for Mr M to access his share of the equity. I appreciate that mortgages had become more expensive by then – but any fixed rate Ms F could have taken at this time would still have been lower than the standard variable rate (SVR) they were paying by then.

I think Ms F and Mr M ought reasonably to have mitigated their losses by completing the mortgage transfer with Ms F then taking a new interest rate in 2022, rather than waiting until 2023. I'm mindful of the fact that, as Ms F says, had TMW acted fairly in the first place the situation would never have arisen at all. But I also think there is a responsibility on Ms F and Mr M, faced with a difficult situation, to take steps to mitigate the impact of it on themselves.

I don't think waiting for TMW to respond to the complaint was enough. Nor do I think deciding not to go ahead because rates were more expensive in October 2022 than they had been a few months earlier was enough.

I think it's fair and reasonable to take this into account. In all the circumstances, I'm satisfied that a fair outcome to this complaint is to require TMW to pay half of the financial loss that Ms F and Mr M incurred – recognising that it was the ultimate author of what went wrong, but wasn't solely responsible for the extent of it.

Ms F ended up taking a two year fixed rate in October 2023. To put matters right, therefore, TMW should identify the equivalent two year fixed rate that would have been available on 1 August 2022, and apply it to the mortgage – in place of the October 2023 rate – with effect from 1 September 2022. That rate would have expired around now, so it should allow Ms F to select a new interest rate from its current range to follow on from the September 2022 rate.

TMW should then calculate the difference between the monthly payments charged since 1 September 2022 based on what was actually paid, and what would have been paid had those rates been in place.

For the period up to the transfer of the mortgage to Ms F on 25 August 2023, it should pay 50% of the difference in each monthly payment to Ms F and Mr M – they will need to decide between them, and let TMW know, what proportion of the total refund is to be paid to each of them.

For the period from 26 August 2023 onwards, when the mortgage was in Ms F's sole name, TMW should pay 50% of the difference in each monthly payment to Ms F alone.

In both cases, TMW should add simple annual interest of 8% to each refunded monthly amount, running from the date the payment was made to the date of refund. It may deduct income tax from the 8% interest element, as required by HMRC, but

should tell Ms F and Mr M what it's deducted so they can reclaim the tax if they're entitled to do so.

Finally, I think TMW should also compensate Ms F and Mr M for the substantial distress and inconvenience the delay caused. I can't compensate their family members for the impact on them – under our rules I can only award compensation to complainants – but I've taken into account the impact on Ms F and Mr M of the wider problems this issue caused in their families. Ms F was caused the greater immediate inconvenience, as it was she who was dealing with the application to TMW – but the delay had a substantial impact on both of them, and in particular delayed Mr M's move abroad with his family. I think compensation of £1,000 is fair and reasonable in the particular circumstances of this complaint, payable as £500 to each of Ms F and Mr M. This is in addition to the £75 it has already paid to each of them.

Ms F also complains that, other than in connection with the transfer application and her complaint, TMW sent all correspondence to Mr M only rather than both of them. I don't uphold this part of the complaint. Although TMW was aware of their separate addresses, it's not unreasonable or unusual for it to have sent all correspondence to one of them in the expectation that it would be shared with the other – I've not seen any evidence that Ms F specifically asked for separate copies of correspondence to be sent to her until her complaint in 2022."

Ms F disagreed with the outcome I reached. She said it wasn't fair to hold her partly responsible for additional costs incurred. She said she tried to progress the application and spent a lot of time chasing TMW and providing documentation. But it didn't respond to her, asked for things in a piecemeal and repetitive way, and caused substantial delay. It was aware that it was risking the agreement between Ms F and Mr M breaking down. And it knew that the fixed rate was about to end and the mortgage would revert to the SVR. Ultimately, it is responsible for everything that happened. It only approved the application in October 2022 because of Ms F's persistence.

Ms F said that it's not fair to have expected the transfer to go ahead once it was approved in October 2022. The mortgage market was very volatile at this time. She considered that it was better to wait for more stability before moving forward. At this time the SVR was 5.74%, but the best fixed rate TMW had available was 6.19% - so remaining on the SVR was the better option. So taking a fixed rate would not have mitigated their losses. TMW also took no steps to assist Ms F and Mr M at this time – even though it knew of their circumstances.

Instead, Ms F and Mr M made a large overpayment to reduce the balance and the monthly payments. This did mitigate their losses, and gave them some breathing space to decide what to do next. However, it was a very difficult time to find such a large sum. As well as the financial implications, Ms F had a young family and was experiencing health problems, which she believes were related to the stress caused by TMW's handling of the situation and its impact. Making this overpayment reduced the monthly payments while TMW considered the complaint, so it's not fair to say that they did not mitigate their losses. It was reasonable to expect that TMW would put things right through the complaints process. It said during the complaints process that it would put things right, and Ms F was entitled to rely on that.

Ms F says she actively tried to get TMW to respond to her complaint, but it delayed further. Ms F has continued to make further overpayments to reduce the balance, further mitigating her losses.

Ms F didn't agree that £500 compensation was enough for the impact on her. She said that both payments of £75 should have been paid to her, but she had only received one (the other being paid to Mr M even though he hadn't complained at that time). The impact in both

financial and non-financial terms has been very significant and long-lasting. The relationship between Ms F and Mr M continues to be affected, and she has spent a huge amount of time trying to resolve this complaint.

Mr M didn't separately reply.

TMW also didn't agree with my provisional decision. It accepted that things had not been handled as well as they should have been and agreed to offer a further £1,000 compensation. But it didn't think it was fair that it should have to pay 50% of the additional interest. It said the transfer was agreed in October 2022, but Ms F and Mr M chose not to proceed with it for another year. They could have chosen a new fixed rate at any time, but didn't do so. And they've said that they were considering selling the property when the transfer didn't go through – which would mean a new fixed rate wouldn't have been appropriate anyway because it would come with an early repayment charge.

### **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've carefully re-considered what I said in my provisional decision, but I haven't changed my mind about the fair way to resolve this complaint.

For all the reasons I gave, I'm satisfied TMW was at fault here in not processing the transfer any sooner. But I can't hold it responsible for Ms F and Mr M's decision to wait a further year before implementing the transfer and taking a new fixed rate. In October 2022 the fixed rates were higher than the SVR – but the SVR rose, and fixed rates fell, every month thereafter. So that doesn't explain why Ms F and Mr M waited a further year. I accept that they reduced the balance to reduce the monthly payments – which mitigated the impact on their outgoings, but it didn't have any effect on the interest rate they were being charged. I don't think taking a new interest rate and pursuing a complaint are mutually exclusive options. Ms F and Mr M could have taken a new interest rate, and included the fact that the rate was higher than it would have been earlier in 2022, as part of their complaint. It wasn't necessary to remain on the higher SVR for a year.

But I don't agree that it wouldn't be fair to require TMW to share responsibility for their losses over this period. None of this would have happened had the transfer request been dealt with properly in the first place – and further delays in dealing with Ms F's complaint also delayed the overall resolution. In all the circumstances, I still think it's fair and reasonable to require TMW to refund half of the additional interest paid.

I've also thought again about the level of compensation. And I've taken careful note of everything Ms F has said about the impact on her and her family. A total award of £1,150 is a substantial award – the Financial Ombudsman Service's guidance on compensation awards says that an award of £750 to £1,500 is appropriate for situations involving substantial distress over a prolonged period, and I think this fairly reflects the impact on both Ms F and Mr M over this time.

### **Putting things right**

To put matters right TMW should identify the equivalent two year fixed rate that would have been available on 1 August 2022, and apply it to the mortgage – in place of the October 2023 rate – with effect from 1 September 2022. That rate would have expired around now, so it should allow Ms F to select a new interest rate from its current range to follow on from the September 2022 rate.

TMW should then calculate the difference between the monthly payments charged since 1 September 2022 based on what was actually paid, and what would have been paid had those rates been in place.

For the period up to the transfer of the mortgage to Ms F on 25 August 2023, it should pay 50% of the difference in each monthly payment to Ms F and Mr M – they will need to decide between them, and let TMW know, what proportion of the total refund is to be paid to each of them.

For the period from 26 August 2023 onwards, when the mortgage was in Ms F's sole name, TMW should pay 50% of the difference in each monthly payment to Ms F alone.

In both cases, TMW should add simple annual interest of 8% to each refunded monthly amount, running from the date the payment was made to the date of refund. It may deduct income tax from the 8% interest element, as required by HMRC, but should tell Ms F and Mr M what it's deducted so they can reclaim the tax if they're entitled to do so.

Finally, TMW should pay an additional £500 compensation to each of Ms F and Mr M.

### **My final decision**

My final decision is that I uphold this complaint and direct The Mortgage Works (UK) Plc to pay compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms F and Mr M to accept or reject my decision before 7 January 2025.

Simon Pugh  
**Ombudsman**