

## **The complaint**

This decision follows my decision dated 7 November 2024 in which I explained which parts of the complaint the Financial Ombudsman Service is able to consider.

Miss C's complaint is about advice and customer service provided by BSMART Finance Limited in relation to a residential mortgage application.

To settle the complaint, Miss C wants BSMART to pay £20,000 compensation.

## **What happened**

I won't set out the full background to the complaint. This is because the history of the matter is set out in the correspondence between the parties and our service, so there is no need for me to repeat all the details here. In addition, our decisions are published, so it's important I don't include any information that might lead to Miss C being identified. Finally, BSMART has acknowledged its service failings and has offered compensation. I therefore don't need to analyse all the events in detail to determine if BSMART is at fault; all I need to decide is whether the compensation offered is sufficient, or if there is anything further BSMART needs to do to put things right.

So for these reasons, I will instead concentrate on giving a brief summary of the complaint, followed by the reasons for my decision. If I don't mention something, it won't be because I've ignored it; rather, it'll be because I didn't think it was material to the outcome of the complaint.

Miss C owns two properties. Property One was purchased in 2015 as a buy-to-let (BTL) property with a mortgage from a lender I will call BM. Property Two, purchased a year later with a residential mortgage from a lender I will call NW, was originally Miss C's residence. However, shortly after purchasing it, she obtained Consent to Let (CTL) from NW and has not resided in it since then.

At the relevant time both mortgages were on fixed rates that were due to expire in the summer of 2023. If the mortgages were repaid during the fixed rate period, and early repayment charge (ERC) would apply.

In late 2021/2022 Miss C was living in rented accommodation. Property One became vacant, and Miss C decided to sell it, notwithstanding that she'd incur an ERC. The sale fell through in December 2021. At about this time, the tenants in Property Two left, so both rental properties were empty.

Miss C decided she wanted to refurbish Property One and move into it. She asked BSMART whether she'd be able to port (transfer) her residential mortgage from Property Two onto Property One. BSMART said this wouldn't be possible, because she already owned Property One and porting was only allowed on a new purchase.

BSMART obtained a decision in principle for a residential mortgage from a building society for Property One, and submitted an application in March 2022. This was for a mortgage of

approximately £50,000 more than the existing BTL mortgage on Property One, and would enable Miss C to refurbish the property, cover the ERC on redemption of the BTL mortgage, reduce the mortgage on Property Two and pay off other debts.

In about June 2022, in anticipation of moving into Property One with a new residential mortgage from the building society, Miss C borrowed money from a family member to refurbish Property One. At about this time, she re-let Property Two.

However, the application to the building society had been declined in March 2022. BSMART pushed back to try to get the application approved. Unfortunately BSMART didn't tell Miss C about the decline, and for a considerable time she was led to believe that BSMART was trying to secure the mortgage for her. It wasn't until March 2023 that Miss C learned the application had been declined. Miss C said that she knew at this point that another residential mortgage was unlikely.

Miss C ultimately went on to arrange a new interest rate product on Property One, and re-mortgaged Property Two onto a new BTL mortgage.

Miss C complained to the Financial Ombudsman Service, and the complaint was forwarded to BSMART. In its final response, BSMART acknowledged that the service provided had fallen short of the standard Miss C should have received. As a "*gesture of goodwill*" BSMART offered Miss C compensation of £1,500.

An Investigator looked at what had happened, and thought the offer was fair. She explained that advice about BTL mortgages fell outside the scope of our rules. In relation to the residential mortgage, the Investigator acknowledged the distress that had been caused to Miss C, as a result of the poor service provided by BSMART. She thought £1,500 was at the upper end of the level of compensation that we would award. As a result, she didn't think BSMART needed to do anything further.

Miss C disagreed and asked for an Ombudsman to review the complaint. Miss C said that £1,500 doesn't even cover the cost of the counselling she'll need, and that she thinks £20,000 is a fair amount to pay her.

### **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 am required to review jurisdiction at every stage of a decision. I have reviewed my jurisdiction decision issued on 7 November 2024. Having done so, I confirm the findings reached in that decision, which is that I have no jurisdiction to consider any issues relating to advice on BTL mortgages, as these are unregulated and so don't fall within the scope of our rules.

I confirm I've listened to the telephone conversation between Miss C and the Investigator on 9 July 2024, and I've read everything the parties have provided.

It is clear that the service Miss C was given by BSMART was inadequate. Miss C was led to believe for a long period of time that her mortgage application was being progressed, when it was not. I've noted what BSMART has said about this, and in particular that the adviser was seriously ill and 'took his eye off the ball'. But that is no excuse, and he should, as an experienced mortgage broker, have passed the case to another member of staff once he realised he wasn't able to deal with it.

I've noted what Miss C has said about the implications of the delay for her, and that if she'd known sooner that the mortgage application had been declined in March 2022, she could have sought another residential mortgage through another broker, or sold the property, which she'd tried to do in 2021.

After taking into consideration what Miss C has said, I'm not persuaded that, overall, anything different would have happened. I say this for the following reasons.

Miss C was tied into an early repayment charge (ERC) on her mortgage on Property One until August 2023, and she would have incurred a tax liability on sale of a BTL property, so I'm not persuaded she'd have gone on to sell the property before the ERC expired.

I also note that, before BSMART was instructed, Miss C had been to another broker in relation to a residential mortgage, and that hadn't resulted in a mortgage being sourced for her. That broker could only source a mortgage of £117,500, which was insufficient to repay the BTL mortgage on Property One. That broker then referred Miss C to BSMART.

I'm also not persuaded, looking at the fact-find and letter of advice compiled by BSMART in February 2022, and the mortgage application submitted to the building society, that a mortgage would have been offered. I think it's more likely than not that there would have been questions asked at underwriting stage about the information provided, and, based on what I've seen, I don't think Miss C would have met income and affordability criteria for a new residential mortgage.

I say this because, in addition to basic annual income of about £26,500 from her main profession, it was recorded in the fact-find that Miss C earned £51,250 in rental income. This was also stated on the mortgage application to the building society.

However, Property One had no tenant and so no rent was being generated from that property. The building society was told Miss C was receiving £1,200 per month in rent from Property Two, with a monthly repayment of £1,064 (giving a surplus of £136 per month). In addition, a third rental property was listed (no address was given), mortgaged to another lender, which was generating rent of £1,200, with a monthly mortgage payment of £426, giving a surplus of £774. The two surpluses total £910, or £1,820 per annum.

There are no other rental properties listed (which would be a requirement of the building society) but the application states that Miss C's profit before tax (so after payment of all mortgage and other expenses, but before tax) earned from property rental was £51,250. I think this would have come under scrutiny at underwriting stage. Nothing Miss C has told us suggests she had this level of income from property rentals.

I don't know why the building society turned down the application, and I can see that BSMART did try to push back on this. But, as I've said above, I can't see that Miss C could have met affordability criteria if the application had proceeded to underwriting stage, based on the information provided to the building society about income and the cost of her existing mortgages on Property Two and the third property.

Given this, I'm not persuaded that Miss C's position would have been any different if she'd known earlier that her residential mortgage application had been declined. I think it's likely that any broker would have struggled to source a residential mortgage for Miss C at any point. Given this, what Miss C has suffered is a loss of expectation, because she was led to believe by BSMART that the mortgage application was still progressing. But, for the reasons I've given above, I think any broker would have struggled to find a residential mortgage for Miss C, based on the figures.

And as I've said above, given the ERCs and tax implications if she'd sold Properties One and Two, I'm also not persuaded Miss C would have taken this course of action either.

In the circumstances, whilst I acknowledge Miss C's strength of feeling, I don't think her position would have been any different had she known about the mortgage application being declined in March 2022.

However, I am entirely satisfied that Miss C was strung along and lied to by BSMART. I've noted what BSMART has said in mitigation, and I acknowledge that the broker Miss C was dealing with was ill. However, this does not excuse the poor service provided to Miss C. I will now go on to consider the issue of compensation.

### **Putting things right**

BSMART has made an offer of £1,500 which it says is "*a gesture of goodwill*". I must make it abundantly clear to BSMART that, where the customer service failings are as serious as they are in this case, I would expect a business to make an offer of compensation, rather than couch this as "*a gesture of goodwill*".

I've noted what Miss C has said about borrowing money from a family member to refurbish Property One, on the expectation of her residential mortgage being approved. But I can't hold BSMART responsible for this. Any improvement works carried out are likely to have enhanced the value of the property in any event. Miss C says she's unable to sell this property because the lease has only 92 years left to run.

Miss C also says she can't sell Property Two either, because of the length of the lease, which Miss C sways is 85 years.

However, looking at UK Finance's Handbook for Conveyancers, a remaining lease term of 92 or 85 years falls within the criteria of every lender listed. Most lenders require either 80 or 85 years remaining on the lease, or, alternatively, the mortgage term plus 30 or 35 years. Some lenders will accept much shorter leases. I'm therefore not persuaded that there is any basis on which Miss C should be compensated for not being able to sell either of her rental properties as a result of any act or omission on the part of BSMART.

Miss C was misinformed by the broker for a year before she was told her residential mortgage application had been declined – and she found this out herself from the building society. I'm satisfied that during this period Miss C was caused considerable stress. I'm satisfied that a payment of £1,500 is appropriate for this. As I said above, this is an award of compensation for the distress and inconvenience caused by BSMART's poor service, not "*a gesture of goodwill*".

### **My final decision**

My final decision is that I uphold this complaint. I direct BSMART Finance Limited to pay Miss C compensation of £1,500 for distress and inconvenience. I make no other order or award.

This final decision concludes the Financial Ombudsman Service's review of this complaint. This means that we are unable to consider the complaint any further, nor enter into any discussion about it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 6 December 2024.

Jan O'Leary  
**Ombudsman**