

## **The complaint**

Ms K's complaint is about a commercial buy-to-let (BTL) mortgage she holds with Fleet Mortgages Ltd. Ms K is unhappy about the contact she's received from Fleet about payment of mortgage arrears. Ms K says she considers Fleet's actions to be harassment. Ms K also says that Fleet is failing to take into account that she has been a victim of fraud.

Ms K is represented in the complaint by a third party, but for clarity I will refer to Ms K throughout.

## **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 Ms K being identified.

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.

In September 2017 Ms K took out a BTL mortgage with Fleet, borrowing approximately £500,000 on an interest-only basis. The mortgage is in arrears of about £30,000.

Ms K is unhappy about the contact from Fleet, which she considers to be harassment. Ms K has told Fleet she is a victim of financial abuse and that she shouldn't be held responsible for the mortgage.

On 5 December 2024 I issued a decision in which I explained that this service is unable to consider Ms K's complaint that the mortgage was taken out by her as a result of coercion by third parties. Given this, whilst I note Ms K's detailed comments about this aspect of her complaint, I will make no further comment on it, except where necessary to do so in order to provide context to the complaint about harassment by Fleet.

In his letter dated 6 September 2024 the Investigator gave a detailed chronology of what's happened since payments on the mortgage started to be missed from July 2022 onwards. Since that date, payments have been erratic, with Ms K telling Fleet that her former partner was promising to repay the mortgage, or that the property was going to be sold.

Ms K complained to Fleet about the tone and amount of contact and correspondence she'd had about payment of arrears. Fleet didn't uphold the complaint, so Ms K raised it with our service. An Investigator looked at what had happened, but overall didn't think Fleet had acted unreasonably. He explained that this is a BTL mortgage and is considered to be a commercial investment. As such, Fleet wasn't expected to put in place the type of long-term forbearance that lenders are required to consider for residential mortgage customers.

The Investigator was satisfied, however, that Fleet had not started any recovery action, nor had it appointed receivers, as it was allowed to do under the mortgage terms and conditions. Instead Fleet had given Ms K the opportunity to try to resolve the matter herself, as she'd made numerous proposals about how her former partner would be paying off the mortgage in full.

Ms K didn't agree with the Investigator's findings and asked for an Ombudsman to review the complaint.

### **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 will explain first that the Financial Ombudsman Service is independent of both consumers and the businesses they are complaining about. This means that we don't act for consumers, nor do we take instructions either from consumers or businesses, or allow either party to direct the course of our investigations; were we to do so, it would compromise our independence and impartiality. It's up to us to determine what evidence we need in order to investigate a complaint. So although I've noted the questions which Ms K would like answered about what's happened, it's not my role to put those questions to Fleet or act as a representative or go-between on this case.

I must also explain that the Financial Ombudsman Service has no power to investigate allegations of criminal behaviour against third parties. I also note that Ms K has instigated civil legal action in the High Court against third parties in relation to her claim that the mortgage was taken out by coercion, but there has been no determination by the court in relation to that matter. Ms K has also reported her former partner to the police in relation to her allegations of controlling and coercive behaviour, but there has as yet been no criminal trial in which that party has been found guilty.

The two parties who are the defendants in the civil claim Ms K has made are not parties to this complaint, and so I don't have any power to compel those parties to provide evidence or co-operate with this service.

I'm explaining this because I think it is important that Ms K is aware of the limitations of our powers. I would not want her to have unrealistic expectations of the extent to which the Financial Ombudsman Service is able to become involved in matters that involve third parties, or any investigations into allegations about the conduct of those third parties by the police or the courts.

I will also reiterate that I am unable to consider Ms K's complaint that the mortgage was taken out as a result of coercion by third parties, for the reasons given in my decision dated 5 December 2024.

Finally, as I've stated above, I don't need to set out the history of the matter, as this was detailed by the Investigator in his correspondence.

In the circumstances, I have to consider this complaint on the basis of how things stand at the present time, which is that, on the face of it, Ms K is responsible for the mortgage taken out with Fleet in 2017.

The crux of this complaint is that Ms K says pressure was put on her by Fleet to make payments towards this mortgage.

This is an unregulated BTL mortgage, and as such is considered to be a commercial mortgage, for investment purposes. Therefore the forbearance measures that lenders are required to put in place for residential mortgage borrowers with regulated mortgages don't apply to this mortgage. However, Fleet is still under an obligation to treat Ms K fairly and reasonably.

After reviewing the evidence, I'm not persuaded Fleet has either acted unreasonably or, as Ms K has alleged, put her under undue pressure or harassed her.

I note that since July 2022 Ms K has told Fleet on several occasions that her former partner will be paying the mortgage off in full. In reliance on what Ms K said, Fleet allowed Ms K time for this plan to be put in place.

Ms K has placed great weight on a telephone call she had on 29 December 2023 with Fleet. Ms K explained to Fleet during that call that she'd received a payment of £13,000 from agents managing the tenancy, which Fleet said would have been enough to clear the arrears, which were then under £4,000. However, Ms K told Fleet that she did not intend to use the £13,000 towards the mortgage because she had other expenses to pay that she intended to prioritise, including a £10,000 court fee.

(Most of what Ms K said to Fleet during that call relates to Ms K's grievances against her former partner, which, as I've explained, I'm unable to consider.)

Ms K complained during that call that, by expecting payment of the mortgage, Fleet was putting unreasonable pressure on her. However, I disagree that Fleet was harassing Ms K, acting unreasonably or that its treatment of Ms K was unfair.

A lender is entitled to expect that a borrower will make the mortgage payments on a BTL mortgage, particularly where, as in this case, there was evidence that the agents managing the tenancy had passed on a substantial sum of money to Ms K – specifically rental income from the mortgaged property. It was Ms K's decision to use those funds for alternative purposes, but that was her choice. As a consequence, Fleet was entitled to continue to contact Ms K about non-payment of the mortgage.

I think Fleet has shown considerable forbearance in relation to this mortgage. Under the terms and conditions, it's open to Fleet to appoint receivers to manage the property. This is usually a last resort, where mortgage payments are not being maintained, notwithstanding that rent is being paid by the tenant, or where the borrower deliberately leaves the property untenanted.

Fleet has held back from taking action on the basis that it was told repeatedly that the mortgage was due to be repaid, either by her former partner, or by a sale of the property. I think Fleet has acted fairly in all the circumstances, given the current level of arrears on the mortgage.

Fleet is aware of the allegations Ms K has made against her former partner and another third party, and of the criminal investigation that is taking place. However, neither of these matters are compelling reasons why Fleet is under any obligation to allow the mortgage debt to continue to increase, particularly if rental income is being received. I would not expect Fleet to wait until any civil claim or criminal case have been finalised through the courts – which might take several years – before considering further action, and at the same time allow the mortgage debt to increase.

I can see how important this matter is to Ms K. I've read everything she's sent us and listened to her conversation with Fleet on 29 December 2023. As I explained in my decision of 5 December 2024, I can't consider her complaint that the mortgage was taken out due to coercion by a third party, but I can see that it underpins her belief that Fleet is acting unreasonably in expecting the mortgage to be paid.

Within the constraints of what I am able to consider in this complaint – which is whether Fleet's actions in pressing Ms K for payment of the mortgage have been unfair or amount to harassment – I don't think Fleet has done anything wrong. I think Fleet has given Ms K time to allow for reasonable repayment plans to be put in place, which have not come to fruition. Ms K is now pursuing a civil claim against third parties, but that does not mean that Fleet is not entitled to payment of the mortgage while Ms K's civil claim is pending in the courts.

### **My final decision**

My final decision is that I don't uphold this complaint.

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 Ms K to accept or reject my decision before 6 January 2025.

Jan O'Leary  
**Ombudsman**