

## **The complaint**

This complaint is about a buy-to-let (BTL) mortgage held with Vida Bank Limited trading as Vida Homeloans by a limited company I'll call Z. Z's current directors are Mrs V and Mr S; our dealing have been with Mr U, a third party authorised to act for Z in its dealings with Vida, and to bring the complaint on the company's behalf. The essence of the complaint is that Vida misled Mr U about the process for transferring ownership of Z from Mrs V to Mr S, causing delay, disruption and substantial financial losses.

## **What happened**

The broad circumstances of this complaint are known to all parties. I'm also aware that the investigator issued a detailed response to the complaint, a copy of which has been sent to both parties, and so I don't need to repeat all the details here. Our decisions are published, and it's important that I don't include any information that might result in Z, Mrs V, Mr S or Mr U being identified.

Instead I'll give a brief summary of the key events and then focus on giving the reasons for my decision. If I don't mention something, it won't be because I've ignored it. It'll be because I didn't think it was material to the outcome of the complaint.

In the summer of 2023, Mrs V was Z's sole director, but was planning to sell the company to Mr S, the intention being that he would replace her as director. Around the same time, the fixed rate on Z's BTL mortgage was approaching its expiry date. Mr U, as authorised third party, had a succession of phone conversations with Vida about the process for the transfer of ownership and control of Z from Mrs V to Mr S.

It was a long and drawn out process, during which Vida failed to mention in any of the phone conversations that a change of ownership and control would require the existing mortgage to be repaid and a new one taken out. In the meantime, however, Z had taken a new fixed rate product on the mortgage, which would have resulted in a substantial early repayment charge (ERC) being levied if the mortgage was repaid within the fixed rate period.

When Z complained, Vida offered a workaround in which Mr S became a director and shareholder alongside Mrs V, enabling the mortgage to continue. This went ahead; meanwhile, Vida offered £750 compensation in a final response dated 20 November 2023, and a further £250 in a follow up response dated 12 April 2024. Vida also made an offer of £100 to settle a separate complaint brought by Mr S individually.

When the case came to us, our investigator assessed Vida's actions to resolve the complaint as being fair. She noted that whilst Vida hadn't informed Mr U properly in the phone conversations, it had set out the correct position in writing in the offer for the new interest rate product. Mr U asked for the complaint to be reviewed by an ombudsman, saying that Vida's mistakes had caused additional financial losses.

In his initial response to the investigator's view, Mr U assessed the losses as being in the region of £45,000. In a more recent submission, he's revised the claim upwards to a little

over £52,000. The investigator wasn't persuaded the claim for further losses should be met by Vida, and so the case has been referred to me for review.

### **What I've decided – and why**

I'll start with some general observations. We're not the regulator of financial businesses, and we don't "police" their internal processes or how they operate generally. That's the job of the Financial Conduct Authority (FCA). We deal with individual disputes between businesses and their customers. In doing that, we work within the rules of the ombudsman service and the remit those rules give us. We don't replicate the work of the courts.

We're impartial, and we don't take either side's instructions on how we investigate a complaint. We conduct our investigations and reach our conclusions without interference from anyone else.

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The first point I need to make here is that the eligible complainant isn't the directors Mrs V or Mr S. Nor is it Mr U, even though it is clear from his comments that he sees very much it as his complaint. The eligible complainant here is the limited company Z. Mr U presents the complaint on the company's behalf, having been authorised to do so by the directors.

That means that when deciding how the complaint should fairly be settled, I can only take account of how Vida's acts and/or omissions have impacted on the company. I've no doubt Mr U has spent a lot of his own time and money dealing with this, but it's not his mortgage and it's not his complaint. So I can't order Vida to compensate him for his time, trouble and personal outlay in this regard.

This isn't a case where I have to decide fault; Vida's accepted its handling of the process, and in particular the information it gave over the telephone, wasn't good enough. It's apologised and offered compensation; my remit here is to decide if Vida has done enough or whether a fair outcome requires it to provide further redress to Z.

The investigator considered that the offer of redress already made went far enough; having considered everything that both parties have said and provided, including Mr U's email of 21 December 2024, I've come to much the same conclusion, and for broadly the same reasons.

It's important to remember that the mortgage, as a BTL is unregulated; it's a commercial transaction between two corporate entities. A business engaging in commercial activity, such as Z is doing here, is held to a higher standard than a private individual borrowing money in their own right and is not covered by the regulatory protections that apply to residential mortgage borrowers. Notwithstanding the shortcomings in Vida's phone conversations with Mr U personally, I'm satisfied that by virtue of the new interest rate product transfer offer, dated 15 September 2023, Z was on formal and documented notice that the appointment of a new director needed Vida's *written* consent.

(The italics are mine)

In my view, it should have been apparent to Mrs V (the sole director at that point) and/or Mr U as her authorised representative, that written consent hadn't yet been given. At the very least, it would have been commercially prudent to hold off committing Z to a new fixed rate deal until Vida had agreed to the change of director in writing and/or set out the conditions for doing so. The critical condition here is that for a change of director to be

approved, the existing loan must be repaid and a new one taken out. That's part of the underlying loan contract that Z agreed to be bound by when it took the mortgage out.

Given the contractual position, Vida could have insisted on the existing loan being repaid (ERC included) and a new one taken out. Instead, as a reflection of the shortcomings in its phone dealings with Mr U, Vida agreed a workaround that enabled Mr S to join the company as shareholder and director and the existing loan to continue. In my view, that was a practical and pragmatic suggestion which, when combined with the offer of £1,000 aggregate compensation – for inconvenience and disruption to the business, not to the individuals – resulted in a fair and reasonable outcome.

Even if Vida hadn't set out the correct position in writing, I'm still not convinced that would render it liable to meet the claim for additional losses Mr U has outlined. Looking closely at the items he's claiming, I can immediately disregard those costs the incurred by Mr U personally, for all of the reasons set out above.

The lost rental income that forms the main part of the claim, arises from a decision Z made to end an existing tenancy in anticipation of the change of ownership and control. Vida played no part in that decision and couldn't reasonably have foreseen Z making it. The remaining components of the claim are costs that, in my view, would most likely have occurred in any event, and aren't solely and directly attributable to the shortcomings on Vida's part.

### **My final decision**

My final decision is that this complaint should be resolved by Vida Bank Limited trading as Vida Homeloans, if it has not already done so, paying Z the £1,000 already offered in full and final settlement.

My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further consideration or discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Z to accept or reject my decision before 5 February 2025.

Jeff Parrington  
**Ombudsman**