

## **The complaint**

Mr W complains about how The Mortgage Works (UK) PLC (“TMW”) has managed his Buy To Let (“BTL”) mortgage. Mr W’s concerns centre around TMW’s January 2024 decision to use powers under the terms of this mortgage to instruct receivers operating under the Law of Property Act to manage Mr W’s property.

## **What happened**

Mr W has raised a number of points in his complaint about how TMW has managed his Buy To Let (“BTL”) mortgage. Both parties are aware of the underlying facts, and as my decision below sets out in detail my view of what has happened here, I will only summarise the facts very briefly here.

Mr W’s mortgage had been in arrears for some time, then in early 2024 TMW appointed receivers to manage the property for him. Mr W has a number of concerns about how these arrears, and a large fees balance on his mortgage, were able to accumulate. He’s concerned about TMW’s decision to refer this to receivers, and the support and communications he has received from TMW.

Mr W wanted the receivers to be dis-instructed, and any fees arising from this to be waived. He also wanted TMW to rework his mortgage so that a new interest rate was applied some time ago, when Mr W said he’d asked for this.

TMW saw things differently. It said it could see it had made some smaller errors. It offered Mr W £250 in compensation for two calls where it said its agent’s tone was not as expected; for failing to tell him that it didn’t think its support team could assist him; and for some confusion around whether Mr W was entitled to apply for a new interest rate once his property was being managed by receivers. But overall, it didn’t think it had made a mistake in how it handled Mr W’s mortgage, including the latest referral to receivers.

Our service has previously explained to Mr W that not all of the things he wanted us to consider fell within our jurisdiction. I won’t reopen that decision here.

After this jurisdiction decision was issued, an investigator looked again at this complaint. He thought it should be upheld in part. He thought TMW should pay Mr W £550 in total, and he said he’d recommend that TMW took further steps to send correspondence to Mr W by email, if Mr W had told it he was working away.

TMW said it would make the recommended payment to Mr W, but said it couldn’t action any recommendation about all correspondence being sent manually by email. And Mr W wrote to object on a number of grounds. Mr W also told us the receivers were moving towards selling his property, and he wanted us to get TMW to stop that.

Because no agreement was reached, this case was passed to me for a final decision. And I then reached my provisional decision on this case.

## **My provisional decision**

I issued a provisional decision on this complaint and explained why I only proposed to uphold a small part of Mr W's complaint. This is what I said then:

The core of Mr W's complaint is that TMW has referred his mortgage to receivers, who operate under the Law of Property Act. They are sometimes referred to as "LPA" but I will refer to them here as receivers. Mr W's concerns are that this referral may not have been necessary, if TMW had acted differently.

Matters have moved on since the case was referred to our service, and I understand the receivers may now be taking legal action to gain vacant possession of the property. It's not clear to me that our service would be able to consider the actions of those receivers, they may fall entirely outside of our service's jurisdiction. But I haven't reached any decision on that point here, because it is clear that these more recent events aren't part of the complaint Mr W referred to us in March 2024. So I won't be able to consider those issues here.

I will consider each of Mr W's concerns under its own heading, and in roughly chronological order. Before I do that, I will set out a little of the background to this mortgage. Although our service isn't generally able to consider a complaint about matters which happened some time ago, I do think that some background to this complaint is relevant here.

TMW has told us it has referred Mr W's mortgage to receivers five times previously. In 2011 and 2015, Mr W was able to regain control of his property by paying the arrears on his mortgage. In 2016, 2018 and 2022, Mr W was asked to clear both the arrears and any fees outstanding on his mortgage, to reduce the borrowing down to its original level. Mr W did so in 2016 and 2018, but in 2023 Mr W complained, and TMW accepted it had given him some incorrect information for the 2022 referral, so it agreed that it would accept only payment of the arrears at that time, to stand down receivers.

This complaint centres on the sixth referral, which TMW made in January 2024. After the payments Mr W made in March 2023 to regain control of his property then, between April 2023 and the appointment of receivers in January 2024, Mr W had made payments to his mortgage only two times. When this referral was made, Mr W's mortgage account had arrears of around £2,000, and there was also a much larger amount of outstanding fees.

I'll now look at Mr W's concerns.

#### *Communication by email as well as post*

Mr W has complained that TMW won't communicate with him by email. He says he has asked for this, and told us that at one time TMW did communicate in this way, but then it stopped. Mr W says he works away from home, and so the only way to be sure he received important correspondence promptly would be for TMW to email it to him.

Our investigator said TMW hadn't shown our service why it couldn't manually send copies of letters which are issued to Mr W, by email as well. So he thought that, if Mr W had told TMW he would be away from home, TMW should ensure correspondence that was posted to Mr W was also sent by email.

Neither side agreed to this proposal. Mr W didn't think he should have to contact TMW to tell it he was away from home before it sent correspondence by email. And TMW has shown our service that it would have considerable difficulty forwarding manual copies of

letters which are issued by a bulk mailing service, which includes monthly and quarterly arrears letters, interest rate change letters and annual statements.

I can see Mr W doesn't want to have to contact TMW to ask it to change its correspondence method. And I accept TMW would have difficulties with providing a manual forwarding service for bulk mailing correspondence. So in the light of that, I've looked carefully at the email correspondence between TMW and Mr W, in particular over the second half of 2023 before receivers were last appointed.

I do think TMW attempted numerous times to contact Mr W by email, as well as by phone, before appointing receivers in early 2024. And it doesn't appear to me that the problems which Mr W is experiencing currently with his mortgage, happened either because Mr W missed correspondence sent by letter, or because he was otherwise unaware of the position of the mortgage. Looking back further than this, I can see Mr W said he was working away from home prior to the appointment of receivers in 2022, but it appears that TMW emailed Mr W to bring him up to date on the position of his mortgage as well as writing to him, in September and October 2022 before receivers were instructed in November 2022.

Because it does appear that TMW is already notifying Mr W by email when particularly important correspondence is issued, particularly when there is a risk of receivers being engaged, and as I haven't been able to see that Mr W's recent mortgage difficulties have been caused in whole or in part by TMW failing to keep Mr W informed about the position of his mortgage, I don't think it would be fair and reasonable here for me to make a direction that TMW must take additional steps to send all of its correspondence to Mr W by email, as well as by post.

*Changes to the mortgage, to the interest rate or the mortgage type.*

Mr W rang TMW on 4 December 2023 to discuss his mortgage, which was then in arrears. Mr W asked if it would be possible to change either his interest rate, or his mortgage type. Mr W's mortgage was on a variable interest rate at the time. And, although Mr W has said the property was tenanted, he then expressed an interest in changing this to a residential mortgage.

TMW's agent said she wouldn't be able to help Mr W with either of those things, and suggested he call back during office hours, to speak to the relevant team. I don't think that was unreasonable. Mortgages are a complex product, and only those fully trained on the relevant areas should provide advice and support to customers. I haven't been able to see that Mr W did then pursue this enquiry with TMW.

Mr W has told us he's made a number of requests previously to amend his interest rate, and said if TMW had actioned this earlier, then he wouldn't have built up such arrears.

TMW said that Mr W could only amend his interest rate when his mortgage wasn't in arrears, and it said it couldn't find any request from him to make this change, during the limited times in the last six years that his mortgage has had no arrears.

I do think it's reasonable for TMW to say that a new interest rate deal may not be suitable for Mr W during periods when his account is not up to date. I don't think it would be fair and reasonable for TMW to allow Mr W to tie himself into a new fixed interest rate, which usually includes an early repayment charge, at times when there appeared to be an increased risk that either Mr W, or a receiver acting for him, would consider it was otherwise in his interest to sell the property and pay off this mortgage. If the mortgage did then need to be brought to an end early, an early repayment charge would

become payable, and so a new interest rate deal might end up costing Mr W more overall.

TMW has also said it can't see that Mr W had asked for a new interest rate, during the times that his mortgage was up to date. BTL mortgages are an investment, so I do think it's reasonable for TMW to say Mr W would have to request a new rate, rather than the onus being on TMW to proactively offer this. And I haven't been able to see that Mr W did raise a request for a new rate, during the times since 2 February 2018 when his mortgage was up to date. Our service has provided a separate decision to Mr W, explaining why we cannot look back further than that.

Mr W also said he'd previously asked TMW to reinstate his direct debit. Although I can see that Mr W has discussed this with TMW, I can't see that he's told TMW he wanted a direct debit to be put in place. And I note that this doesn't seem to fit with what Mr W told us about his need to make his payments on a block basis.

### *Block payments*

Mr W has told us that his tenants pay him on a quarterly basis, and he says that TMW has previously agreed that it will accept payment in this way. I haven't seen evidence of that, and I can see that the terms of Mr W's mortgage do require monthly payments. I don't think TMW has to accept block payments for Mr W's mortgage.

However, I also think that this isn't a core part of why Mr W's mortgage was referred to receivers in early 2024. I think that happened not because Mr W made his payments in blocks, but because Mr W didn't make those payments in advance, so his mortgage fell into arrears, and then after two block payments were made in October and December 2023, sizeable arrears remained.

### *Support to Mr W with payment difficulties.*

Mr W said he didn't think TMW had done enough to support him with his payment difficulties. He complained TMW wouldn't allow him to have a payment holiday, before this mortgage was referred to receivers. And he said once it had been referred, TMW wouldn't allow him to set up a payment plan to clear the arrears and fees.

In considering these concerns, I do need to bear in mind that this is a BTL mortgage. So this lending was made to support the ownership of this property as an investment, it's not intended to be Mr W's home. Whilst I would expect TMW to consider reasonable proposals from Mr W for payment, I don't think it had to offer the same forbearance options here that I might expect for a residential mortgage.

After Mr W paid to regain control of the property in March 2023, he then made no further payments until October 2023. I can see that TMW did attempt to contact Mr W during this time. It spoke to him in early May, when he said the missed April payment was an oversight, but no payment was made. It spoke to him again in August, and explained that the arrears were impacting his credit file. Its pre-LPA team then started to contact Mr W, seeking to work with him to get his mortgage back on track.

Although Mr W said he had problems receiving post, contact also appears to have been attempted by email and phone. Mr W did reply to emails, but he didn't engage with TMW's attempts to set up a payment arrangement, and no further payments were made until October.

Mr W asked on the call on 4 December, whether it would be possible to have a payment holiday, or to discuss equity release on the property. Again, these are things the agent said she couldn't assist with, and suggested he call back to speak to the relevant team. And again, I don't think that was unreasonable.

I haven't been able to see that Mr W did then pursue this enquiry with TMW. And I also haven't been able to see that Mr W would have been entitled to a payment break under the terms of his mortgage.

I don't think TMW has failed to offer appropriate support and forbearance in this case. I do think that TMW provided Mr W with sufficient information about the position of his account, and encouragement to get in touch to get his account back on track. When Mr W spoke to TMW in December, he had made a payment, and indicated he would be making another very shortly. So TMW put the account on a two-week hold. But in January, with no payment and no further contact from Mr W, TMW then moved to instruct receivers.

#### *Mr W's original discussion with TMW about a car accident*

When Mr W spoke to TMW on 4 December 2023, he told TMW he'd been involved in a car accident. Mr W said this wasn't a major accident, just an incident, but it had taken up some of his time. I think it was reasonable for TMW to record this, but not to take any further steps at this time, given how Mr W had described the event, and particularly its impact on him.

#### *TMW's decision to instruct receivers*

Mr W says that TMW instructed receivers before it's allowed to. He said his mortgage must be three or more months in arrears before TMW is allowed to involve receivers. TMW has consistently said that this isn't one of its criteria for involving receivers. It also says that for obvious reasons, it won't share that exact policy externally.

TMW has shared its policy with our service, and I'm satisfied it was met in this case. And I note that the terms of Mr W's mortgage also set out that a mortgage can be referred to receivers once he's more than one month late with a payment, and the total overdue amount is more than two monthly payments. So I do think TMW acted within the terms of Mr W's mortgage, and I don't think TMW acted unfairly or unreasonably, on 22 January when it instructed receivers.

#### *What Mr W was told about payments needed to regain control of the property.*

Mr W spoke to TMW twice on 26 January 2024 after he found out that receivers had been instructed. Mr W said TMW didn't tell him on the first call how much he needed to pay to regain control of the property, and he said on the second call he was only told that he had to pay the arrears. I've listened to both of these calls.

On the first call, I can hear the agent confirmed Mr W would need to clear both the arrears balance and any outstanding fees, before he could regain control of the property. The agent offered a number of times on the call to work out the full figure for Mr W, but unfortunately the call ended abruptly, before he was able to do that. Mr W said his battery died.

Mr W then called back, and spoke to another agent. That agent confirmed Mr W's arrears balance, but didn't suggest that payment of this amount would be sufficient for

Mr W to regain control of the property. The referral to receivers wasn't discussed on that call.

I don't think TMW misled Mr W on these calls. And I think it's likely Mr W was aware, from both the call held immediately before this one and from previous referrals to receivers, that TMW was likely to ask him to pay both the arrears and the fees balance, reducing the borrowing to its original level, before it would dis-instruct receivers.

### *The Fees Balance*

Mr W also challenged the fees balance that TMW said was outstanding on his account. He said he hadn't received adequate notice of these fees. But I can see that when fees and charges were applied to Mr W's account, these were noted on Mr W's annual statements. So I don't think TMW failed to keep Mr W informed when fees were added to his mortgage

### *Requiring payment of the fees balance to dis-instruct receivers*

Mr W also said it wasn't fair that TMW should require him to repay not just the arrears on his mortgage, but also the fees balance, reducing his mortgage back to the original balance, before TMW would return this property to him. I do think TMW set out this position clearly for Mr W on the phone. But I can see that the letters Mr W was sent once the receiver was in place, asked Mr W to pay his arrears, and said if he didn't do so, the receiver would continue to manage his property.

I think the letters TMW sent to Mr W ought to have been consistent with the payment request it was actually making, which was for payment of arrears and outstanding fees. I've taken the impact of this into account in assessing compensation in this case. But in doing so, I also note that Mr W did have some prior experience to draw on here. And that the agent on his first call on 26 January had confirmed clearly that TMW would again want Mr W to pay down outstanding fees as well as arrears.

Mr W made a payment of £2,000 on 29 January 2024. Whilst this was enough to cover the arrears carried over from the previous month, it didn't cover the payment which was also due before the end of January. In circumstances where Mr W's account almost immediately fell back into arrears, and a very large fees balance remained outstanding, I don't think it was unfair or unreasonable for TMW to have taken the view that receivers should remain instructed.

### *Request to reduce interest after the receivers were appointed*

Mr W asked TMW again if he could change to a new interest rate, after receivers were appointed. TMW initially suggested this may be possible, before quickly changing its mind, saying Mr W couldn't do that while his account was being managed by receivers.

Once Mr W's property had been handed to receivers, it was up to the receiver, not Mr W, to decide if the property should then be managed as an investment or sold. So I don't think it would have been appropriate for Mr W to be granted a new interest rate on his mortgage while receivers were managing the property. And I also note that Mr W hadn't yet responded to TMW's request to confirm he was no longer living the property himself, so TMW wouldn't have considered granting a new rate until this issue was resolved.

Like our investigator, I do think Mr W's hopes were raised when he was first told he may be able to secure a new interest rate. So I have taken the impact of this on him into account in considering compensation.

#### *Support for Mr W*

On his 26 January calls, Mr W said that his car accident had resulted in a hospital stay. On the second call, he was asked if he needed any support, and the agent undertook to refer his case to TMW's support team. That referral was made, and TMW says it decided the support on offer wasn't appropriate for Mr W, but unfortunately didn't tell TMW that.

I don't think it was unreasonable for TMW to consider that Mr W's account wasn't an appropriate referral for its specialist support team. But I do think Mr W should have been told that. I've taken the impact of this on him into account in deciding compensation here.

#### *An inappropriate passcode given to Mr W*

Mr W complained that when it was dealing with his subject access request, TMW gave him a passcode closely resembling a profanity. I've listened to the call where this happened, and I can hear that the agent spelled out a passcode, and Mr W then expressed concern about it resembling a profanity. The agent expressed her own reservations, said the code had been computer generated, and then she simply replaced it. I do think TMW responded fairly and reasonably here to what was just an unfortunate situation.

#### *Involving Mr W's legal representative*

Mr W said TMW didn't copy all its correspondence to his legal advisors. TMW accepted it hadn't corresponded with them, but said it wasn't even corresponding with Mr W directly at that stage, once receivers had been instructed. But I can see TMW did correspond with Mr W after the appointment of receivers, and I think TMW could have copied all of this correspondence to Mr W's legal advisors.

However, like our investigator, I can hear that Mr W also told TMW he didn't want his representatives to handle all of his correspondence, as he didn't want the advisor too closely involved in his personal affairs. So although I've taken TMW's failure to keep Mr W's legal advisors informed into account in considering compensation here, I have also considered Mr W didn't express a clear and consistent wish for them to be sighted on all correspondence.

I would expect in future that TMW's LPA team will copy Mr W's legal team into any future correspondence it sends to him, if Mr W makes a clear and unequivocal request that it do so.

#### *Call handling service standards*

When Mr W complained to TMW, he also mentioned that he felt a particular agent working in the LPA team had been rude to him. TMW said it didn't agree the agent was abusive or aggressive, but it did agree his tone wasn't as expected on calls on 26 January 2024 and 2 February 2024. Having listened to these calls, I have taken the impact of this on Mr W into account assessing compensation below.

#### *Conclusions and compensation*

I don't think that TMW's handling of this mortgage overall, including the decision to pass Mr W's property to receivers, was unfair or unreasonable. However, I have identified a number of areas where TMW's service to Mr W has slipped, and I think it's likely that this has made at least some of the issues in this case more prolonged and more stressful for Mr W than they needed to be. So I think TMW should make a payment of compensation in this case.

Before this case came to our service, TMW had offered Mr W £250 in compensation. Our investigator felt TMW should increase this offer to £550. TMW has indicated it is willing to pay that amount. I do think that provides a fair and reasonable outcome here. If TMW has already paid its existing £250 compensation offer to Mr W, it can deduct this from my award.

I invited the parties to make any final points, if they wanted, before issuing my final decision. Both sides replied.

### **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.

TMW said it had no further comment, and it was happy to accept my provisional decision.

Mr W replied to say that he had unfortunately not seen a number of emails sent by our service, so as well as making some comments, Mr W also asked for more time to reply. However, no further observations have been received from him within the extended deadline our service offered. I do now think it's appropriate to bring this case to a conclusion.

I'll respond to the comments Mr W made in turn.

Mr W said he didn't know he could have raised concerns with our service earlier, and said he would have done so if he'd known he could. My decision here is on the merits of Mr W's complaint. My provisional decision explained that I cannot reopen here the decision already reached on which parts of this complaint our service can consider.

Mr W said he was told his account was up to date, but then only days later he was notified of the appointment of receivers. It's not clear what point in time Mr W is referring to here. My provisional decision notes that Mr W spoke to TMW in December. He then made a payment, but this was less than the arrears figure Mr W was given on his December call. So the account was still not up to date after this, and in January, with no further payment or contact from Mr W, TMW then moved to instruct receivers.

I can see that Mr W then spoke to TMW again in late January, but by this time it does appear Mr W was aware that receivers had been instructed, both because he renewed his contact with TMW only a few days after TMW's receiver appointment letter was sent, and because Mr W referred to having received correspondence from LPA on his call on 26 January 2024.

Mr W insisted he had made contact with TMW monthly, and said TMW wasn't trying to help him. It was now going ahead with legal action. My provisional decision set out when I thought TMW had tried to contact Mr W, including a number of unsuccessful attempts to get in touch with him when his account fell back into arrears. I don't think Mr W did make contact with TMW monthly, in the time since he paid to regain control of his property in March 2023 after the fifth referral to receivers, leading up to the sixth referral to receivers in January 2024. And my provisional decision also considered the efforts TMW made to support Mr W,



concluding that TMW hadn't failed to offer appropriate support and forbearance in this case. I also explained that our service isn't able to consider the more recent events, including legal action, which have happened since Mr W referred this complaint to us in March 2024.

Mr W repeated that TMW had written to him identifying that the account was on block payment, so that no action should have been taken in this case. My provisional decision above noted I hadn't seen evidence that TMW has agreed to accept block payments on this account, and the terms of Mr W's mortgage do require monthly payments. However, I also said I thought the issues here had arisen not because Mr W's payments are made in block, but because his mortgage was substantially in arrears. I still think that.

For the above reasons, I haven't changed my mind on the fair and reasonable outcome in this case. I'll now make the decision I originally proposed.

### **My final decision**

My final decision is that The Mortgage Works (UK) Plc must pay Mr W £550 in compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 31 March 2025.

Esther Absalom-Gough

**Ombudsman**