

The complaint

Mr and Mrs D's complaint is about the way The Mortgage Business Plc (TMB) dealt with the sale of a buy-to-let (BTL) property. After the mortgage term expired, Mr and Mrs D tried to sell the property, but without success. They agreed with TMB that it would take over the property for an Assisted Voluntary Sale (AVS). However, Mr and Mrs D are unhappy about the length of time this took and about the sale price obtained for the property. Mr and Mrs D also say that TMB registered an incorrect postcode for the property at H M Land Registry (HMLR), which caused further delays in the sale of the property.

Mr and Mrs D have brought their complaint with the assistance of a representative, but for ease of reference I will refer to Mr and Mrs D throughout, even where submissions have been made on their behalf.

What happened

I don't need to 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 the details here. In addition, our decisions are published, so it's important I don't include any information that might lead to Mr and Mrs D 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.

Mr and Mrs D's BTL mortgage, taken out in 2005, reached the end of its term in 2020. In 2019 Mr and Mrs D discussed AVS with TMB, but TMB wasn't able to go ahead with AVS at that time, as it wasn't able to gain access to the property.

In 2022 TMB discussed with Mr and Mrs D extending the mortgage term for a further five years. However, Mr and Mrs D had concerns about affordability, particularly where there were rental voids. Mr and Mrs D tried to sell the property, but without success.

In January 2023 Mr and Mrs D decided to go ahead with AVS. The keys were handed over to TMB in March 2023 after the tenants had moved out. In the meantime, Mr and Mrs D received an offer for the property, but decided to go ahead with AVS.

In May 2023 Mr and Mrs D complained to TMB. They said that TMB had delayed the sale of the property because it had given an incorrect postcode to HMLR. They were also unhappy at what they believed to be a lack of support from TMB since 2019.

TMB didn't uphold the complaint. It explained that the address had been registered as a new-build, and once the issue had been raised on 21 March 2023, TMB's solicitors confirmed the property address to HMLR on 3 April 2023. TMB said it hadn't given Mr and Mrs D any incorrect information about the property postcode.

TMB also went through the chronology of events since 2019 detailing the contact with Mr and Mrs D, including discussions about the end of the mortgage term, negative equity

and sale of the property. TMB didn't agree that it had told Mr and Mrs D not to go ahead with a cash buyer.

Mr and Mrs D handed the property over to TMB to sell it under the AVS. The property was marketed at £90,000 with an asking price of £90,000. Offers were received as follows, but in each case the buyer did not progress any further with their purchase:

| | |
|----------------|---------|
| 25 May 2023 | £85,000 |
| 21 June 2023 | £50,000 |
| 21 June 2023 | £85,000 |
| 14 July 2023 | £86,000 |
| 26 July 2023 | £87,000 |
| 16 August 2023 | £45,000 |
| 6 October 2023 | £70,000 |
| 9 October 2023 | £75,000 |

The property was placed into auction and sold on 10 October 2023 for £75,000.

In October 2023 Mr and Mrs D raised their complaint with our service. An Investigator looked at what had happened but didn't think TMB had treated Mr and Mrs D unfairly. Mr and Mrs D disagreed with the Investigator and asked for an Ombudsman to review the complaint.

They've made some further points, which I summarise below.

- They weren't told in 2019 that TMB hadn't been able to gain access to the property. TMB therefore *"failed in their responsibility in due diligence"*.
- Mr and Mrs D thought the term extension had been agreed in 2022.
- In July 2022 Mr and Mrs D decided to sell the property because TMB couldn't do so while it was tenanted.
- TMB failed to tell Mr and Mrs D how long it would take for a negative equity sale to be authorised.
- In July 2022 Mr and Mrs D accepted a cash offer of £96,500, but say that it wasn't their decision not to go ahead with a sale at that price.
- If Mr and Mrs D had known about the negative equity process, they'd have surrendered the property, but had to wait until the tenancy agreement had come to an end.
- They were unaware that BTL mortgages are unregulated.
- Mr and Mrs D are now living in rented accommodation, Mr D has severe health issues and he and Mrs D are living on benefits and pension income. They are worried about potential bankruptcy due to the debt owed to TMB from the negative equity.

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 confirm I've noted everything Mr and Mrs D have said about their circumstances. I have no doubt that they have been through a very difficult time, and I am very sorry to note that Mr D is in such poor health. However, I have to put aside my natural feelings of empathy and decide this case impartially, on the basis of the evidence. In this respect, I have TMB's contact notes, which are contemporaneous, that is, compiled at the time of the events. In the circumstances, I am able to attach some weight to these, as they are records of what was discussed at the time, rather than being recollections some years later of the discussions that took place between Mr D and TMB.

AVS in 2019: This is an unregulated BTL mortgage, which is considered to be a business investment. TMB isn't required, as Mr and Mrs D suggest, to carry out due diligence on their behalf. There's nothing in TMB's contemporaneous notes about AVS in 2019, so I'm unable to comment on this further, other than to say that it is a requirement that a BTL property is untenanted when it is handed back. I can't see from TMB's records that Mr and Mrs D were either trying to sell the property or actively looking to hand it back in 2019.

Term extension: I've looked at TMB's notes from 2022 about the term extension that was discussed. I can see that on 13 January 2022 TMB discussed a 5-year interest-only remortgage. Mr D said he wanted to proceed, and Mr D was to call on 18 January 2022 to complete the application. However, he did not call TMB back and so the term extension was not put in place. On 19 July 2022 Mr D told TMB that he did not want to consider reinstating the remortgage application. There was therefore no formal term extension, just grace periods which TMB put in place in order to assist Mr and Mrs D, as I'd have expected it to do given the circumstances.

Support provided by TMB: I can see that TMB had referred Mr and Mrs D to Citizens Advice, StepChange and National Debtline, and that various holds had been put on TMB taking further action to enable them to obtain advice and/or arrange for tenants in the property to leave. TMB was aware of Mr D's health issues, but I note that it was always Mr D who contacted TMB and he appeared to have no difficulty discussing the various options with TMB. However, TMB referred Mr D to its team which dealt with vulnerable customers, which is what I'd expect it to do, in addition to which further holds were put on the account due to Mr D's health problems. TMB did ask if Mrs D would be able to discuss the account but Mr D said that it was he who dealt with all financial matters.

In October 2022 Mr D told TMB he needed to give the tenant two months' notice so he could sell the property and he was told that he'd need to discuss the position with the negative equity team. In January 2023 Mr D said that there was an offer on the property for £90,000 but that he wanted to hand the property back. After this was done the property was marketed and sold, as detailed above.

It wasn't until 4 February 2023 that Mr D told TMB that there was a buyer at £96,500. TMB explained that Mr D would need to speak to the negative equity team about this and was transferred to that team. On 6 February 2023 Mr D discussed the process for selling the property at negative equity, but confirmed he would take the property off the market and go ahead with the AVS.

Overall, after reviewing TMB's contemporaneous notes, I'm satisfied that TMB offered appropriate support to Mr and Mrs D, referring them to debt advisory services, placing holds on the account and exercising reasonable forbearance. Ultimately it was Mr and Mrs D's decision to hand back the property, and not proceed with their own buyer. I can't see that TMB instigated this; rather TMB gave Mr and Mrs D information about their options and made it clear that it was their decision on whether or not to hand the property back.

I'm also satisfied that TMB explained the AVS process and that Mr and Mrs D would need to speak to the negative equity team if they wanted to sell the property themselves.

Sale price: TMB obtained two independent valuations before marketing the property. I'm satisfied that TMB properly tested the market by offering the property on the open market through an estate agent. Various offers were received, but the buyers ultimately didn't go ahead, which is something outside the control of TMB.

TMB is under no obligation to leave the property unsold over a long period of time in the hope that the market might improve and a higher offer achieved, with interest accruing against the mortgage debt. Given this, I'm satisfied the decision to sell the property at auction was reasonable, taking into account the length of time the property had remained unsold.

It was Mr and Mrs D's decision to go ahead with AVS, rather than go ahead with their own buyer. I'm therefore not persuaded that TMB can be held responsible for the amount of the shortfall in the sale price and the outstanding mortgage balance after the property was sold at auction.

Property description at HMLR: Registration of title to the property was the responsibility of the solicitors who acted for Mr and Mrs D at the time they bought the property. It is not part of the legal work required to put the mortgage in place. TMB therefore wasn't at fault for the property being described as "Plot No." rather than the address which was later assigned to. It's not uncommon for new-build properties on first registration to be listed under their plot numbers. However, once the issue came to light in 2023, TMB's solicitors resolved it quickly, at no cost, and therefore no loss, to Mr and Mrs D.

Conclusion

After carefully reviewing everything Mr and Mrs D and TMB have said, I'm unable to find TMB has acted unfairly or unreasonably in relation to its handling of this mortgage account. I'm satisfied that TMB showed appropriate forbearance, referring Mr and Mrs D to various agencies that could provide them with advice and support.

When TMB was made aware of Mr D's health issues, holds were put on the account and Mr D was referred to the Vulnerable Customer team. Notwithstanding Mr D's health issues, he wanted to try to manage the mortgage himself, until at a much later stage in 2023 a family friend was appointed as representative. TMB had no power to insist Mr D didn't deal with matters himself, and it seems that, despite his health issues, Mr D was able to discuss the various options with TMB in some depth.

I'm satisfied that TMB obtained the best sale price available at the time, after a number of buyers had made offers but not gone ahead. Whilst I appreciate this leaves a shortfall debt that's higher than if Mr and Mrs D had gone ahead with their own buyer (assuming that sale would have completed at the indicated price), TMB's notes are clear that it was Mr and Mrs D's decision to hand back the property, even though they had a cash buyer. I can't hold TMB responsible for this decision.

My final decision

I know this isn't the outcome Mr and Mrs D were hoping for, but my 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 Mr and Mrs D to accept or reject my decision before 15 April 2025.

Jan O'Leary
Ombudsman

