

The complaint

Mr C has complained about how he has been treated by The Mortgage Business Plc ("TMB") in respect of his mortgage account.

What happened

Mr C has held this mortgage since 2003, and it has been on a variable rate for over ten years. Since 2022 the variable rate has increased regularly, leading Mr C's monthly mortgage payment to increase substantially.

TMB responded to the first complaint on 15 February 2023. In its response it summarised the complaint as:

'Thanks for getting in touch about us not contacting you on 10 October 2022 to start your specialist remortgage application for a new fixed interest rate. We haven't been able to talk about this, but I agree with this part of your complaint and want to put things right.

You also let us know about being charged higher interest since the time the new rate could've been in place as you've remained on the variable rate. I've looked into this for you, and based on what we know we're declining this part of your complaint.'

TMB offered £50 compensation for not calling in October 2022 but said Mr C should have contacted it when he didn't receive the call. The letter said Mr C had six months from the date of the letter to refer the complaint to us, and if he didn't refer the complaint in time, it said we wouldn't have its permission to consider the complaint. That meant Mr C needed to refer that complaint to us by 15 August 2023. I will refer to this as the first complaint.

A second complaint response was issued by TMB on 24 November 2023. In its response it summarised the complaint as:

'Thanks for getting in touch via [TMB's solicitor] in regards to your concerns about us instructing solicitors to start legal action against your property. We haven't been able to talk about this, but I've looked into this for you and based on what we know, we're declining your complaint.'

TMB again said that the complaint needed to be referred to us within six months of the date of the letter otherwise we wouldn't have its permission to consider the complaint. That meant Mr C needed to refer that complaint to us by 24 May 2024. I will refer to this as the second complaint.

In November 2023 the arrears were in excess of £60,000 and a hearing date for possession was set for 5 December 2023. As Mr C said he would be able to reduce the arrears balance the hearing was adjourned.

Although in January 2024 Mr C reduced the arrears balance down to around £17,000, since then payments were missed (with payments only being made in March and June 2024) which took the arrears balance back up to over £50,000 in June 2024.

In the meantime, the complaints were referred to our service on 15 April 2024.

Our Investigator said we couldn't look at the first complaint because it hadn't been referred to us in time, so his investigation would be limited to looking at issues dealt with in the second complaint response letter. Mr C didn't agree with the Investigator's findings and so the case was passed to me to reach a decision about our jurisdiction.

I issued a decision about our jurisdiction in December 2024, in which I found:

'We can't consider a complaint about the issues that were dealt with in the February 2023 final response letter as that complaint wasn't referred to us in time.

That means all we'll be considering here is the November 2023 final response letter.'

Our Investigator looked at that complaint. He said although TMB is a closed book lender so can't offer new rates, an application can be made for a specialist remortgage to Bank of Scotland. He said, in the period we can consider, Mr C hadn't applied for a specialist remortgage, albeit in November 2023 Mr C's mortgage was in arrears of over £60,000 and litigation had started, so he wouldn't have been eligible at that time anyway. He said the arrears were over £60,000, but the hearing was adjourned when Mr C said he would be in a position to reduce the arrears balance. Overall, our Investigator didn't think TMB had treated Mr C unfairly.

Mr C didn't agree and so the case was passed to me to decide.

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.

Although I've read and considered the whole file I'll keep my comments to what I think is relevant. If I don't comment on any specific point it's not because I've not considered it but because I don't think I need to comment on it in order to reach the right outcome.

Mr C has said he doesn't think we're impartial. We're required to decide what's fair and reasonable having assessed all the available evidence from the parties. I'm satisfied that's what the Investigator and I have done in Mr C's case. Insofar as our Investigator and I haven't agreed with him on the outcome of the complaint, that isn't in itself indicative of a lack of impartiality, however unwelcome he will have found our conclusions.

Mr C has continued to correspond about the decision I reached about our jurisdiction to consider this complaint. There has to be some finality in our process and it wouldn't be appropriate for us to continue to correspond about the same matters once an Ombudsman has issued a decision on them.

Having reviewed my decision I can't see that I've erred in my understanding of our rules, or in how I have applied them. For that reason, this decision won't be answering Mr C's points that relate to things I've already found we can't consider, such as the fact Mr C didn't complete a specialist remortgage application in October 2022, or that he therefore remained on the variable rate.

I'll also only be considering what happened up to when the final response letter was issued in November 2023. Anything that has happened since then, or that didn't form part of that complaint, aren't something I have the power to consider here.

In August 2022 the interest due on Mr C's mortgage was £3,215 a month, with that increasing to £9,152 a month by December 2023.

In 2023 Mr C made the following payments:

- January £0
- February £2,013
- March £1,200
- April £1,450
- May £0
- June £3,239
- July £0
- August £10,000
- September £3,000
- October £0
- November £0
- December £0

In total Mr C paid £20,902 in 2023, which is an average of £1,741 a month. Even if Mr C had successfully applied for a new rate in October 2022 (and to be clear, that's not something I can comment on as it isn't within my jurisdiction to do so) I know the interest that would have been due under that would have come to more than £1,741 a month. Even in 2021, when the majority of Mr C's mortgage was on an interest rate of 1.09%, the interest due was around £1,735 a month.

Mr C has said that interest rate deals were around 3.94% in August 2022, but whilst that might have been a rate that was available in the general market, it's not one that was offered through the specialist remortgage option at the time. However, even if I were to base the calculations on the rate of 3.94% that would still have required a payment of around £5,300 a month to cover the interest due, something that it seems from Mr C's transaction history and his income and expenditure information wasn't achievable for him. I understand Mr C had paid out a large sum of money in mid-2023 to fund a close family member's medical care and I've a great deal of sympathy for that. It is clear things were very difficult for him and his family. But even putting that aside, Mr C's income and expenditure indicated the mortgage wasn't affordable, and this was supported by the level of payments earlier in 2023.

The criteria at that time for the specialist remortgage was that a borrower in arrears isn't eligible for a new fixed rate. And there are good reasons for that – a borrower in arrears is more likely to end up selling the property or even have it repossessed, which would add an early repayment charge. However, notwithstanding the eligibility criteria, there are circumstances in which it might be fair to expect a lender to offer a new fixed rate. For example, where the borrower's circumstances are such that a reduction in the interest rate is enough to make the mortgage affordable and bring it back on track. But as I've explained above, that doesn't seem like it was the case here.

Having considered the repayment history for 2023, and bearing in mind the income and expenditure information Mr C provided, it seems there were no forbearance options that would have made this affordable for Mr C. His mortgage was already held on an interest only basis and, being interest only, a term extension would have had no impact on the monthly payment. Even if TMB could have offered a new interest rate product (either itself or through a specialist remortgage) that wouldn't have reduced the interest to a level it seems Mr C would have been able to sustain, when looking at the payments he was able to make.

I also don't think there were other measures TMB could have offered to help him get the mortgage back on track. It wouldn't have been appropriate to capitalise the arrears, since whilst the mortgage wasn't affordable and the arrears were rising, increasing the monthly payment through the addition of the arrears would have made the situation worse. And a reduced payment arrangement wouldn't change the amount due, it simply would have meant that an arrangement would also have been reported to Mr C's credit file alongside the arrears reporting.

I understand Mr C feels TMB and its solicitor were hasty in moving to litigation, but this was a situation that wasn't improving and Mr C didn't give any indication that it was likely to improve to the level he could not only get the mortgage back on track, but that he could then sustain it going forwards.

I've taken into account everything Mr C has said and I do understand the difficulties he's faced and the stresses he's been under, and I've a great deal of sympathy for his situation. But at that time TMB decided to take legal action it seems there were no other options. Repossession should be a last resort. Forbearance should be explored first. But the purpose of forbearance is to give breathing space so a borrower can get the mortgage back on track. Given the history and status of the account and what TMB knew about Mr C's circumstances, it was reasonable for TMB to conclude that was unlikely.

That said, TMB agreed to adjourn the hearing to allow Mr C time to bring the arrears back down to an agreed level which I think was fair in the circumstances.

Whilst Mr C has said TMB hasn't supported him as a self-employed individual after the pandemic, he hasn't expanded on what exactly he means by that, or what specific support he feels was due and he didn't receive. I can see from the contact notes that Mr C received Covid-19 payment deferrals for six months between March and August 2020 (inclusive) as laid out in the regulator's guidance at the time. The regulator later issued some tailored support guidance for those who needed further support past the six months of payment deferrals. That gave some broad guidance around flexible forbearance options and said that normal credit file reporting should resume if there were any payment shortfalls, even under an arrangement made due to the tailored support guidance. Some examples of the possible forbearance measures were extending the term, changing the repayment type or deferring payments due. As I've already explained, Mr C's mortgage was already held on an interest only basis so changing the repayment type wasn't an option to reduce the payments, and a term extension would have no bearing on the interest due each month. That only left the option of deferring payments due. But even if payments were deferred, they would still be reported as arrears, as the regulator said that normal credit file reporting should resume, so in effect all that would have meant was that the mortgage was in the same level of arrears, it was just agreed that could be the case.

All that said, having reviewed the contact notes there's nothing to show that Mr C told TMB at the time that he needed tailored support due to his business still struggling following the pandemic. In fact, in a call note from September 2022, it says Mr C wanted to discuss rate options and he said he had no affordability issues and no financial difficulties, he just wanted to look to obtain a fixed rate due to the Bank of England base rate rising.

I can't see Mr C has previously raised a complaint about what Covid-19 specific support he needed and didn't get. If that is something Mr C has a complaint about then he'd need to raise that with TMB in the first instance, and as I say he'll need to specify exactly what support he needed, and when, from the Covid-19 support that was on offer. Whilst he has made passing references to it, he's never been specific about what he feels he should have got and when, which is why that's not been treated as a separate complaint.

I appreciate this will likely come as a disappointment to Mr C. This decision doesn't intend to in anyway downplay or disregard his situation as I understand how distressing this must be for him. But he owes this money to TMB, and the debt is secured against his property. TMB has the right to take legal action if the arrears aren't cleared (or a reasonable plan isn't agreed to by the parties). In terms of the complaint that I can consider, I simply can't uphold it however much Mr C may want me to.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 16 April 2025.

Julia Meadows
Ombudsman