

## **The complaint**

Mr and Mrs H complain about how The Mortgage Business Plc (TMB) has treated them whilst they have been trying to arrange a lifetime mortgage with a different lender to repay their existing TMB mortgage.

## **What happened**

Mr and Mrs H have held a mortgage with TMB for a number of years. They complained about this mortgage to our Service in early 2024. We resolved that complaint in February 2024. So, this decision is focussed on events since we considered that complaint.

Mr and Mrs H say that Mr H was furloughed during the coronavirus pandemic, which led to them being in arrears. Mr and Mrs H say they were approved for an equity release mortgage in March 2024, which would repay the entire mortgage and arrears, but were advised to wait until Mr H turned a year older in September as they would be able to borrow more then, and on more favourable terms.

In April and May 2024, TMB wrote to Mr and Mrs H saying it would start legal action if the amount of arrears weren't cleared. In June 2024, Mr and Mrs H complained to the solicitors TMB had instructed, and the solicitors referred this complaint to TMB to respond.

TMB responded to their complaint in August 2024. It said it had been trying to support Mr and Mrs H for some time with their mortgage arrears, and these arrears now stood at around £35,000. So, it was going to commence legal action. A court date was set for 15 October 2024. Mr and Mrs H referred the complaint to us in September 2024.

In October 2024, TMB agreed to hold off with further legal action until 15 January 2025, so that Mr and Mrs H could arrange an equity release mortgage to repay the arrears. As such, the court hearing was cancelled. TMB has since agreed to further hold court action whilst the complaint is with us.

One of our Investigators looked into this complaint. But she didn't think it should be upheld. Mr and Mrs H disagreed and asked for the complaint to be passed to an Ombudsman. So, the complaint is now with me to consider and make a final decision.

## **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 want to reassure Mr and Mrs H that I've read and considered everything they've sent us. I may not comment on each and every point. That's not because I haven't thought about everything, it simply reflects the informal nature of this Service. Instead, I'll focus on what I consider to be the crux of this complaint. That is, whether TMB has treated them unfairly in proceeding with legal action.

Mr and Mrs H first spoke with TMB about the possibility of taking an equity release mortgage

to repay their TMB mortgage, in March 2024. But they wished to wait until September 2024 because they thought they could obtain more money, that rates would fall and that their property value would increase. However, at this point Mr and Mrs H's mortgage remained in significant arrears of around £35,000.

However, there were no guarantees rates would fall, or that their property would increase further in value. TMB had been working with Mr and Mrs H for a number of years regarding their arrears. And a lender isn't expected to wait indefinitely when a borrower is in arrears – it's entitled to expect payments to be made and on time and can take action if this doesn't happen. I understand Mr and Mrs H would've preferred to wait longer to repay the mortgage for the reasons stated above, but this would likely only see the arrears increasing further and possibly eroding Mr and Mrs H's equity – and there was no guarantee that what Mr and Mrs H hoped would happen would come to fruition. There was no obligation for TMB to wait until it suited Mr and Mrs H better to repay the arrears, especially given the level of arrears they were in.

I can see Mr H was regularly in contact with TMB. I can't see that Mr and Mrs H ever managed to come to a formal arrangement with TMB to repay the arrears or the mortgage, and their proposal to repay the entire mortgage was based on actions they were planning to take in the future – nothing was set in stone. All of this was based on a number of variables some months down the line.

I'd also note that Mr H, in September 2024 assured TMB that he had an agreement for an equity release mortgage which would complete in six to eight weeks. However, to this date, the mortgage still remains unpaid.

Based on the above, I don't think it was unfair of TMB to proceed with formal legal action. Mr and Mrs H's mortgage had been in a significant amount of arrears for at least 12 years. And a possession order had been granted previously. No mortgage offer was provided to TMB to show they had obtained funding or were likely to be able to repay the mortgage or the arrears sooner. And I can't see that Mr and Mrs H engaged with TMB to the point of agreeing any other plan to repay the arrears.

In October 2024, TMB did agree a grace period for Mr and Mrs H to arrange an equity release mortgage. And it agreed to extend this while the complaint was with our Service. I note that, as I've said, the mortgage remains unpaid to this date. So, I'd recommend Mr and Mrs H engage with TMB and do what they can to ensure the equity release mortgage completes as soon as possible. It may be that if this isn't paid soon, or an arrangement isn't made, then TMB may recommence legal action.

Mr and Mrs H have said that the reason this mortgage is yet to complete is because of delays by TMB. But they've not specifically said what these delays are. I haven't considered these delays here as they've occurred since we started out consideration of this complaint. Mr and Mrs H may wish to bring this as a new complaint to our Service.

I've thought about what Mr and Mrs H have said about the recent arrears being caused by the coronavirus pandemic, and that lenders should be understanding of this. Whilst I have no doubt Mr and Mrs H, like many others, struggled greatly during the pandemic, their level of arrears was significant prior to this at around £20,000. So, I don't agree that the arrears have been caused by the pandemic. They may have increased since then, but it's clear Mr and Mrs H have been struggling for many years.

Mr and Mrs H have also raised the fact that they've made significant payments towards the account over the last few years. However, none of these payments have impacted the arrears to a level where they have reduced significantly, and over the past few years the

arrears have generally been in excess of £30,000.

Mr and Mrs H have also complained about the legal fees that have been added to their mortgage. I haven't considered that here. That's because, before we are able to consider a complaint, a business must be given a chance to put things right. Mr and Mrs H haven't complained about the legal fees added to their mortgage to TMB directly. And some of these fees have been added since our consideration of this complaint began. So, if they are unhappy about these fees being added, they would need to raise this with TMB in the first instance. If they remain unhappy once TMB has responded, they may be able to bring this as a new complaint to our Service.

In summary, I understand Mr and Mrs H feel that they've been harassed by TMB, and should've been shown more flexibility. But, for the reasons I've set out, I don't agree. Their mortgage has been in significant arrears for many years. A lender is required to be in regular contact with a borrower who is in arrears. And I believe that TMB has shown a lot of flexibility here, and that it was entitled to start legal action when it did so. Because of this, I'm not going to ask TMB to take any further action.

### **My final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs H to accept or reject my decision before 24 April 2025.

Rob Deadman  
**Ombudsman**