

## The complaint

Mr K complains that The Mortgage Works (UK) Plc (TMW) has overcharged him interest. He said that in 2022 it told him he could not switch to a cheaper interest rate – but later when rates had gone up agreed that he could. He also complains about the way it dealt with a data subject access request.

## What happened

Mr K had a mortgage with TMW. The mortgage was in joint names with his now ex-wife.

In 2022, Mr K said he asked TMW to switch to a cheaper interest rate but it declined his request. But he said it later told him that it was possible to switch rates – but by that point it was too late as there was an offer to buy the mortgaged property. Mr K wants TMW to refund the interest he believes it has overcharged him.

TMW issued a final response rejecting Mr K's complaint on 14 July 2023. It issued follow up letters on 17 and 31 July 2023 and 5 September 2023. Mr K referred his complaint to us on 14 May 2024.

I issued a jurisdiction decision that we could not look at the complaints about the rate switch or the resulting impact on Mr K's credit file. I said we could consider complaints about the way the DSAR was presented to him and there were documents missing. I also said we could consider whether TMW has recorded accurate information on Mr K's credit file.

I then issued a provisional decision. Subject to any further submission I proposed to uphold the complaint in part. My provisional findings, which form part of this decision, were:

### Jurisdiction

*I understand Mr K's strength of feeling about this matter. I am not disregarding what he's told us. Rather, as I explained in my jurisdiction decision, I must follow the rules that are set out in the FCA handbook. If I were to make a decision about the merits of a complaint where we did not have the power to look at under our rules, that decision would not stand.*

*A final response is defined by the FCA in its handbook. TMW sent its final response to Mr K's complaint about the rate switch on 14 July 2023. Mr K had six months from the date of that letter to refer his complaint to us.*

*The fact that TMW continued to correspond with Mr K after it had issued its final response would not give Mr K more time. I am satisfied that the other letters TMW sent about the rate switch were not final responses as defined in the rules. Therefore, when Mr K referred his complaint to us in May 2024, it was outside the time limits in our rules. I have not made any decision about whether his complaint about the rate switch to TMW is valid or he has a point.*

*While TMW might have indicated to Mr K that it would cooperate with our investigation that is not the same as consenting to looking at a complaint that has been referred outside our time limits. And TMW has not consented to us doing so.*

*I see no reason to reach a different decision on jurisdiction here. Mr K can refer to my jurisdiction decision for the full reasons why we can't help with this complaint.*

*TMW would not be required to answer all of Mr K's questions once it had issued its final response.*

*Mr K has asked us to look into the limited parts of his complaint we can consider. The difficulty is that he deeply believes we should look at his complaint about the interest rate – and that flows into the parts of the complaint we can consider. I appreciate why Mr K feels that way – but no matter how strongly he feels about this, I simply can't help him with the points he is actually unhappy about. But I will look into the parts of the complaint we can consider. I appreciate that is not going to resolve things for Mr K but it is what he has asked us to do.*

### DSAR

*Mr K said that when he requested DSAR he couldn't access it, it didn't include all of the information it should have, the information wasn't presented in chronological order and it took too long to provide the DSAR,*

*TMW initially sent Mr K a link to access his DSAR. When it didn't work it sent him a new link. And when that didn't work it said it would send sent Mr K a compact disc containing the information and then transcripts of the phone calls.*

*The guidance from the Information Commissioner's Office (ICO) is that when deciding what format to send a DSAR, businesses should consider both the circumstances of the particular request and whether the individual has the ability to access the data in that format. It's not clear from the evidence we have that TMW checked that the online access was the best way to send the call recordings to Mr K. And despite requesting the call recordings to be sent by compact disc in November 2023, it has no record of actually doing so. It wasn't until March 2024 that it sent the transcripts to Mr K.*

*I consider that TMW did not treat Mr K fairly when processing the DSAR. I accept that it was always going to take some time to provide a transcript of all of the calls. But there was a delay of around three months where no action was taken – and perhaps that could have been avoided altogether if TMW had taken steps to make sure Mr K had the ability to access the data before it sent it that way. It is clear that having access to this data was very important for Mr K – and that he feels he has not been able to pursue his main complaint because of that. I would note that it does not make any difference to my findings on jurisdiction. But it is relevant in determining the impact on Mr K.*

*Our guidance says that we would make an award of between £300 and £750 where the impact of the business's actions has caused considerable distress, worry and inconvenience that needs extra effort to sort out, typically the impact lasts over many weeks or months. In view of that and in all the circumstances, I consider that TMW should pay Mr K £400 for the distress and inconvenience it has caused in handling his DSAR.*

*Bearing in mind the number and nature of exchanges between Mr K and TMW regarding the DSAR, I would be surprised if it had not sent everything it was required to. There is no real evidence that it hasn't done so. The ICO regulates compliance with data protection laws. If Mr K thinks TMW has not complied with its obligation to provide the personal data it holds on him, then that is avenue he can explore.*

*When Mr K made his DSAR he asked for recordings of all of the telephone call he'd had with TMW and all its notes. As far as I can see it eventually provided that information to Mr K in a way that is open and that does not include irrelevant information bearing in mind the request that Mr K made. I can't see there was any obligation for TMW to provide the information in chronological order or ordered in a certain way.*

*In respect of the credit file, Mr K's point is that his credit file has been affected because TMW did not give him a new interest rate. That is part of the complaint I can't consider. But the evidence I have shows that the information TMW recorded on Mr K's credit file is a true and accurate reflection of how the mortgage operated. So there is no reason why TMW should amend it.*

TMW accepted my provisional findings. Mr K did not. He made a number of points, including:

- He can't accept that we will not consider all of the case because of the six month time bar. TMW have ignored it and continue to communicate regarding that complaint.
- An award of £400 against a claim of thousands of pounds is unjust. The DSAR is intrinsically linked to his claim has been ignored.
- The ombudsman should protect the rights of the public rather than side with TMW on a technicality. Particularly as TMW confirmed it was willing to co-operate with the investigation. That has been ignored.

### **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.

The points that Mr K made in response to my provisional decision have already been addressed in my jurisdiction decision and in my provisional decision. For example, my provisional decision said:

*The fact that TMW continued to correspond with Mr K after it had issued its final response would not give Mr K more time. I am satisfied that the other letters TMW sent about the rate switch were not final responses as defined in the rules. Therefore, when Mr K referred his complaint to us in May 2024, it was outside the time limits in our rules. I have not made any decision about whether his complaint about the rate switch to TMW is valid or he has a point.*

*While TMW might have indicated to Mr K that it would cooperate with our investigation that is not the same as consenting to looking at a complaint that has been referred outside our time limits. And TMW has not consented to us doing so.*

There is little else I can add, other than to clarify that we are independent we do not act for Mr K or TMW. We have a set of rules that I must follow. And while they don't allow me to look at Mr K's main complaint, they are part of the same mechanism that allows me to consider other complaints. It wouldn't be right for me to disregard part of those rules just because that is what Mr K wants. And as I explained, any decision I did issue would not be valid as I would be acting outside the powers that I have.

In the absence of any substantive points regarding the complaint about the DSAR I see no reason to reach a different conclusion than I did in my provisional decision.

**My final decision**

My final decision is that The Mortgage Works (UK) Plc should pay Mr K £400.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 21 April 2025.

Ken Rose  
**Ombudsman**