DRN-5472275

The complaint

G, a limited company, brings this complaint represented by its director Mr O. G complains that The Mortgage Works (UK) Plc (TMW) didn't remove the charges over four buy to let properties for several months after the mortgages on them were redeemed. G also complains that TMW didn't communicate with Mr O about the mortgages, despite being instructed to do so.

What happened

G had four buy to let mortgages with TMW. Mr O says that, at the time the mortgages were taken out, G was owned by him through a nominee, Mrs O, though the mortgage offers record that it was solely owned by Mrs O. Mrs O was sole director.

In 2023, G was restructured, and Mr O took sole control of the company. Mrs O ceased to be a director and Mr O became sole director. G notified TMW of the change and asked that it communicate with Mr O in future – Mrs O had, until then, been the main point of contact. But TMW said it had not consented to any change in G's structure, and continued to send all correspondence to Mrs O. Mr O said that in reality this was and always had been his company, Mrs O was acting only as his nominee, and the new situation reflected that. He also said that there had been a dispute between him and Mrs O, in which Mrs O had tried to take control of the company. TMW's refusal to communicate with him had complicated the resolution of that dispute.

In March 2024, G redeemed the mortgages. In April 2024, Mr O complained that TMW hadn't removed its standard security from the properties. As the securities had still not been removed by August 2024, Mr O brought the complaint to us. He said that G was being prevented from refinancing or selling the properties. He also said that G had been overcharged interest, because it believed all four mortgages had been redeemed on 4 March, but TMW had not closed the accounts until between 10 and 18 March. The securities were discharged in September.

TMW said that at the time of the mortgage applications, Mrs O had been the sole director of G. It was a special condition of the mortgages that the directors and beneficial owners of the company could not change without TMW's consent. TMW said that while G had notified it of the change of directors after the fact, it had not consented to the change. It said that as a result G was in breach of the mortgage agreements. And it had continued to send all correspondence to Mrs O as the approved director.

TMW said that because the properties were in Scotland, it was not responsible for removing the standard securities. That had to be done by G or by solicitors acting on its behalf. It had notified Mrs O that the mortgages had been redeemed and that it consented to the securities being discharged. It was not responsible for any delay by G in applying to the Registers of Scotland, or in sending TMW the discharge paperwork.

Mr O said that his solicitors had applied for the removal of the charge promptly using the Registers of Scotland electronic portal. But TMW had not acted on the discharge request until it rejected it, and required a paper discharge instead, in August 2024. He said that TMW

ought to have acted on the electronic discharge request promptly – either by discharging the securities or telling the solicitors to use the paper process. By not doing so until August it had caused unreasonable delay and financial loss.

TMW said it had not received an electronic discharge request. It said it had acted promptly once it received the paper request in August.

Our investigator didn't think the complaint should be upheld, so Mr O asked for it to be decided by an ombudsman. I reached a different conclusion, so I issued a provisional decision.

My provisional decision

I said:

> "The mortgage offers contain the following special conditions:
>
> 1. We have assessed this application on the basis that the following directors and shareholders are the beneficial owners of the company. Immediately prior to completion of this advance, the conveyancer acting for you must provide us with specific written confirmation that these directors and shareholders (and their shareholdings) remain unchanged and that no shareholder is acting in the capacity of nominee on behalf of any other individual(s) or company. The advance will not be released by us until this has been received.
>
>   Director / Shareholder (Percentage Shareholding)
>
>   [Mrs O] 100%
>
> 2. Your conveyancers will secure the joint and several guarantees (in our standard form) from [Mrs O].
>
>   …
>
>   Consent from us must be obtained before the Directors or beneficial owners of the Company change or the trading activities are amended.
>
> In other words, it was a condition of the mortgage offers that Mrs O be the sole director and owner of G, and not a nominee for a third party, and that this would not change for the life of the mortgage unless with TMW's consent.
>
> Companies House records show that at the time of the mortgage offer, Mrs O was the sole director (though Mr O was appointed company secretary in September 2019). But there were two persons listed as having significant control – Mrs O with 75% ownership and Mr O with 25% ownership. That changed in 2023, when Mr O became a director and became listed as the sole person with significant control – he became the sole director from January 2024. And Mr O told TMW in his complaint that G is and always has been solely his company, and that Mrs O was at all times acting purely as his nominee.
>
> It therefore seems that G was in breach of the mortgage conditions – both at the time of the lending (because Mrs O didn't have 100% ownership and was acting as nominee for Mr O in her share) and at the time of the change of directors (because G didn't seek or obtain TMW's consent).

G did seek TMW's consent after the change of control, and after Mr O had been appointed director. TMW declined to consent in a letter dated 4 January 2024. It said this was because two of the properties were unoccupied and no rent was being paid – Mr O has told us he gave notice to the tenants in 2023 – and because the mortgages were in arrears. Mr O says the arrears were due to a dispute between him and Mrs O. When it refused consent to the change in G's structure, TMW said that G should revert to the previous structure, as set out in the mortgage offers, within 14 days – or repay the mortgages in full.

I don't think this refusal of consent was unreasonable, because it changed the nature of the lending TMW had agreed to. It had underwritten the loans based on Mrs O's ownership of G, and Mrs O had also given personal guarantees. Changing the ownership of G would complicate enforcement of the guarantee, should that become necessary, given that Mrs O would no longer have a connection to the mortgage but still be guarantor. And it wasn't unreasonable that TMW didn't consent to a fundamental change in G's structure while it was in arrears on the mortgages.

Mr O did then repay the mortgages, but TMW returned the funds because they came from his personal account and not from G's company bank account. I don't think this was unfair either. Bearing in mind its wider obligations, I think it was reasonable for TMW to check the source of the funds used to repay the lending, and refuse to accept funds that didn't come direct from the borrower. That's not unusual in mortgage lending. Even though Mr O was by then G's director, they are separate entities and Mr O's funds are not G's funds. Mr O then repaid the mortgages from G's account.

I've also thought about whether it was fair to refuse to communicate with G by writing to its new director, Mr O, as requested, and sending all correspondence to Mrs O instead. While it would usually be reasonable to follow G's instructions in changing the communication details it held, I'm not persuaded that refusing to do so was unfair in this case. That's because, by appointing Mr O as director and changing its ownership, G may have been in breach of the mortgage conditions – and TMW may have been entitled to take enforcement action against it as a result.

It's true that this possible breach didn't invalidate his appointment as director, and therefore his authority to represent the company. However, in the particular circumstances of this case, I've seen that there was a dispute between Mr O and Mrs O, with each accusing the other of trying to take over the company without the other's agreement, and in those circumstances I don't think it was unreasonable that TMW continued to correspond with the director it had been told was authorised when the loans were taken out. In any case, I'm not persuaded that Mr O has lost out because of this, because he was aware of what was going on and he has shared examples of Mrs O forwarding correspondence from TMW to him.

In March 2024 the mortgages were redeemed, this time by payment from G's account. TMW accepted the payments.

However, the standard securities over the properties were not then removed for around six months. Mr O says that the delay is TMW's fault, and has caused G loss because of an inability to sell or refinance the properties in the meantime – Mr O having taken out bridging finance to repay the loans with TMW.

Although the loans were paid off at the start of March, Mr O didn't instruct his solicitor to start the process of discharging the securities until 9 April. The solicitors then used the Registers of Scotland electronic discharge process – the solicitors say the

request was rejected by TMW, with a request for the use of paper documents, at the start of August. The solicitors then sent paper documents to TMW on 19 August, TMW returned them on 28 August, and the securities were discharged in September.

Mr O says that there appeared to be an IT error which led to TMW rejecting the discharge documents, and it is therefore responsible for the delay. But TMW says that electronic discharge isn't appropriate for buy to let property, the solicitors ought to have known that, and the delay was because the solicitors didn't start to use the proper process until August. It says it didn't receive any electronic discharge request.

There's a dispute between the two parties here. Mr O and his solicitor say that they submitted electronic requests, and have evidenced that those requests were marked in the system as "with lender" until rejected by TMW some months later. But TMW says it didn't receive any requests, and that in any case the electronic process shouldn't be used for buy to let mortgages.

In order to resolve this dispute, I contacted the Registers of Scotland myself. It told me that the electronic discharge process can be used for any residential property – buy to let or owner occupied – and it has no way of telling what type of mortgage it is simply from the security document. The Registers of Scotland told me that at the time of the discharge request TMW was using the electronic process. While a lender would not receive a specific prompt that a request had been submitted, all requests would be visible to the lender from the moment the system records it as being "with lender". And a request would not be declined or rejected unless the lender actively did so – either itself, or by instructing the Registers of Scotland to do so on its behalf.

The Registers of Scotland told me that on 7 August 2024, TMW told the Registers that it was stopping using the electronic process and asked the Registers to decline all outstanding discharge requests. The Registers actioned that request the same day using the standard wording provided by TMW. Prior to that, TMW was processing discharge requests submitted up to 4 July 2024 (which is later than G's request was submitted). I have seen evidence from the solicitors that it received rejections directing them to use the paper process for all four requests on 7 August.

Having taken into account the evidence provided by the parties, and considered what the Registers of Scotland has told me, I don't think TMW acted fairly here.

I'm satisfied that the solicitors submitted the electronic discharge request at a time when TMW was still using that process. Although it later stopped doing so, I've not seen anything to suggest that it had instructed solicitors not to use the process at the time the request was made, and TMW was still actioning requests made up to 4 July (after these requests).

I've seen the rejection the solicitors were sent. It was sent on the 7 August, the date the Registers of Scotland told me TMW instructed it to decline all outstanding requests. The same standard wording was used in all four rejections.

I don't therefore think it's likely that TMW didn't receive the discharge request. It was made using the electronic process TMW was using at the time. Because it was marked as "with lender", TMW would have been able to see it. And because it was rejected on 7 August, it was clearly received by TMW and included in the outstanding "with lender" requests it told the Registers of Scotland to reject.

I'm therefore satisfied that TMW didn't act fairly. It failed to deal with the discharge request for some months before instructing the Registers of Scotland to decline it

along with all other outstanding requests, even though it did deal with other requests submitted before 4 July. If TMW no longer wanted to accept electronic discharge requests, it should have told the solicitors that promptly – not waiting until 7 August – so the solicitors could make a paper request instead. I'm satisfied that the delay in discharging the property between when the solicitors submitted the electronic request in April and when it was finally discharged was TMW's responsibility.

That being the case, I need to think about what the consequences of that were. Mr O says that he borrowed alternative funds to repay the mortgages. But that's not a consequence of the delay in discharging the security; Mr O had already borrowed those funds, and needed them to repay TMW, before the application for discharge was made. And even if the cost of alternative funding was because of TMW's delay – which I'm not persuaded of – I could not make an award. That's because the evidence I've seen suggests the lending was taken out in Mr O's name, not in G's name. Mr O is not the complainant here and I can only award compensation for financial loss suffered by the complainant, G. As G did not borrow the money to repay, it has not incurred any losses there. G has also not incurred any loss in extra mortgage interest; G did not pay any interest to TMW while the securities were in place after the loans were redeemed, because the loans had come to an end.

Mr O also says that G was prevented from putting the properties on the market, and that he lost out on the chance to sell one of them to one of the tenants. In support of that he's provided a screenshot of a text message enquiring about buying property. I'm not persuaded this is evidence of financial loss. It's not clear what property this relates to, or that it was anything other than a preliminary enquiry. It was received in January 2024, and Mr O replied saying he had no property for sale. I'm not persuaded that this is evidence of a likely sale of a specific property subject to TMW's mortgage that, but for the discharge delay, would have gone ahead. There's also no other evidence of lost sales, or that G did later sell any of the properties and would have done so sooner but for the delay.

I'm not therefore persuaded on the evidence currently available to me that G suffered any financial loss resulting from the delay in discharge – other than the possibility that it might have had to pay additional legal fees. If TMW had processed the electronic discharge request when it received it – or made clear that it wouldn't accept an electronic request – then the solicitors wouldn't have needed to process both electronic and paper discharge requests. If, in response to this provisional decision, Mr O is able to provide evidence from the solicitors that G was charged additional legal fees that it wouldn't otherwise have been charged, I'll consider whether to require TMW to refund those fees. To consider that, I will require confirmation from the solicitors of the specific amount of additional fees, if any, that were wasted on having to make a second discharge request.

I understand that, even if there was no financial loss, Mr O found the delay to be very frustrating. But I can't make an award for that. I can only make an award for compensation for distress and inconvenience to a complainant, and Mr O is not the complainant; his company, G, is. As a corporate entity, G cannot experience distress. But I'm satisfied that the delay in discharging the securities caused G inconvenience in not knowing when the properties would be unencumbered and how that might affect its future plans. I'm currently minded to require TMW to pay £400 compensation for that inconvenience."

TMW agreed with my provisional decision.

Mr O asked me to look again at TMW's decision to refuse repayment of the mortgages from

his personal bank account. He said that the funds were not his personal funds. They were raised from alternative lending with the purpose of repaying these mortgages. He said that there had been costs incurred in raising alternative funding because of TMW's rejection of the initial payment which it should refund. Mr O also provided an invoice for £250 from G's solicitors.

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've considered again my provisional decision. Having done so I see no reason to change my mind about my conclusion that TMW didn't act fairly in not processing the discharge of the standard security, or not requesting it be resubmitted in paper form, when it first received the electronic request. I also haven't changed my mind about how it dealt with G and the change in its structure.

I said in my provisional decision that if there was evidence that the delay in redemption resulted in wasted legal costs – for example, because G's solicitors charged for two redemption requests not one – then I would consider whether it was fair to require TMW to reimburse that additional expenditure.

With that in mind, I've considered the invoice Mr O has provided. It's for £250 plus VAT, is dated 2 April 2025, and says that it's an invoice from the solicitors to G for "Complete with financial services ombudsman against nationwide building society [sic]" (Nationwide is TMW's parent company).

This appears to be an invoice for advising G about bringing its complaint now – not an invoice for additional costs relating to the redemption request. Our rules make clear that formal representation is not necessary to bring a complaint to the Financial Ombudsman Service (and, indeed, we haven't had any involvement with the solicitors; Mr O has represented G directly). So I don't intend to award G any costs for seeking advice about this complaint. This invoice is not evidence of additional costs incurred in the redemption. As I have no evidence of such costs, I make no award in this respect.

I've also considered what Mr O has said about the redemption payments. But I've not changed my mind about that either. As I said in my provisional decision, I think it was reasonable that TMW didn't accept payment from a third party – Mr O – and required payment to be made by the borrower, G. In any case, I'm not persuaded that this caused financial loss. Mr O raised the funds to redeem in his own name, and then lent the funds to G in the form of a director loan. Even if TMW had accepted payment from Mr O's account direct, he would still have had to raise the funds in the same way. And if the redemption amount had been paid from Mr O's account, it would still to have been to discharge G's liability, and therefore would still have been a director's loan from Mr O to G. Even if it was unreasonable for TMW to insist on payment from G – and I don't think it was – there's no evidence that resulted in financial loss to G.

My final decision

For the reasons I've given, my final decision is that I uphold this complaint and direct The Mortgage Works (UK) Plc to pay G £400 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask G to accept or reject my decision before 13 May 2025.

Simon Pugh
Ombudsman