DRN-5501607

## The complaint

Miss R, Mr R1, and their father the late Mr R complained that Metro Bank PLC unfairly issued a final demand on their portfolio buy to let mortgage, and unfairly appointed receivers to manage the properties.

## What happened

Miss R, Mr R1, and the late Mr R ran a property business in partnership together. In this decision, where necessary I'll refer to them as individuals, but when referring to them collectively I'll call them "the partnership". Sadly, Mr R passed away while the complaint was in progress, and his part in it is now being continued by the executor of his estate. I hope Miss R and Mr R1 will accept my condolences on their loss.

In 2015, the partnership borrowed around £2.8million from Metro, secured over their portfolio of rental properties – some residential and some commercial in use. For the first two years interest was charged at a margin of 3.59% over Bank of England base rate, reverting to Metro's standard variable rate (SVR) (then 4.5%). The loan was on interest only terms over a period of 25 years. It included the following special conditions and covenants:

- All rental income to be paid into a Metro bank account in the partnership's name.
- A minimum ratio of 125% rental income to interest payments, to be tested annually.
- A loan to value of not more than 75%, to be tested annually.

The key events of this complaint begin in late 2022. Until then the loan had largely been well managed – though there were around eight occasions when payments were made after the due date but within the same calendar month. A capital repayment of £200,000 had also been made in 2019.

In November 2022, the partnership notified Metro of its intention to sell one of the properties in the portfolio. The expected sale price was £470,000 and the partnership asked Metro to allow it to retain £270,000 of the sale proceeds to help meet a tax liability. I'll call this Property A.

Metro declined that request. It wrote to the partnership saying it had concerns about the future sustainability of the loan, for reasons including:

- Due to recent rises in interest rates, Metro was concerned that increased monthly payments wouldn't be affordable.
- Metro was concerned about the partnership's ability (or the ability of the individual borrowers) to meet their other liabilities.
- Having reviewed the partnership's bank account, Metro noted that it appeared that not all rental payments were being paid into the account, which it said was a breach of the loan terms and conditions. It was also concerned that there were regular

deposits of cash.

The partnership responded to say that:

- Rental cover was currently at 129% of the mortgage payment – above the 125% required by the terms and conditions.

- The tax liability was as a result of recent changes to the tax arrangements for buy to let landlords, which had increased the tax they had to pay. It was this which had led to the decision to sell one of the properties, and was likely to result in future sales.

- Rental income was being paid into the account. Some of their tenants paid in cash, which was then deposited.

Metro said that the proceeds of sale should be used to repay the partnership's borrowing, with £105,000 being used to repay a separate loan held in Mr R's sole name, and £345,000 being used to reduce the balance of the portfolio mortgage.

The December 2022 direct debit payment was returned unpaid. The monthly payment was, by then, around £13,700 and so the loan went into arrears for that amount. Metro wrote to the partnership again in late December, asking how the missed payment would be made up, and expressing its concern again about future viability – especially as the November payment had also been made after the due date. It also remained concerned that not all rental income was being paid into the partnership account. And, given rising interest rates, it was concerned that the 125% rental cover requirement in the terms and conditions was at risk of being breached.

Metro said that it would require updated valuations for all the properties in the portfolio, and it would appoint a legal adviser to review its security for the lending. It said the costs of both these steps would be charged to the partnership.

The partnership was unhappy with this, and the loan was discussed at a face to face meeting in January 2023. The partnership explained that because of interest rate rises, the monthly payment had risen from £8,500 at the start of 2022 to £13,700 at the start of 2023. Because of that, and because of difficulties collecting rents during the pandemic, the partnership had decided to sell most of its portfolio and repay the loan. One property, Property B, had already had an offer accepted, and two others were on the market. Following Property A's sale, the balance was reduced by around £450,000.

Metro also raised concerns that another property, which I'll call Property C, had had alterations done without its consent, which it said was a breach of the terms and conditions. And it understood that this property was not being let, but was being occupied by Mr R1, also a breach. The partnership said that it had informed Metro of the works and Metro had consented at the time. It accepted that Mr R1 should not be living in the property and that he would vacate it shortly. Finally, Metro was concerned about how Mr R would meet his tax liabilities without retaining any of the proceeds of sale of Property A, and how this would impact on the sustainability of this loan.

There were further discussions between Metro and the partnership. Metro said it would consider what support it could offer if the partnership was having difficulty making the monthly payments, but it would need information about the financial circumstances of each of the partners. The partnership asked for a reduced interest rate, but Metro said it had no new interest rate products available. There were no long-term measures available, but it would offer short term forbearance while the partnership sold the properties or explored refinancing elsewhere.

Metro sent the partnership a letter saying that it considered that four events of default had potentially arisen, and unless it received a satisfactory response, it would default the loan:

- Repayments had been made late in November and December 2022 and February and March 2023.

- There had been alterations to Property C without consent.

- Not all rental income had been paid into the partnership's Metro bank account.

- Another property, Property D, had an energy performance certificate (EPC) rating of G – a minimum rating of E was a legal requirement for rental property.

On 11 April 2023, Metro issued a default notice. It demanded full repayment of the outstanding balance of £2.31million. Although Metro had previously identified four potential events of default, the default notice relied on the late payments only, April's payment also not having been made by the due date. Metro appointed receivers to manage the properties on 28 April 2023. It indicated in early May that it would allow the partnership 60 days to refinance, but said the partnership should deal with the receivers in the meantime. Later in May, the sale of Property B completed and the outstanding balance was reduced by around £340,000. In July 2023, the partnership refinanced, taking out a bridging loan with another lender with a one year term.

The partnership complained. It didn't think it had been treated fairly, either in the way Metro had managed the loan and considered forbearance, or in the default and appointment of receivers. The partnership said the default and appointment of receivers had led to other lenders refusing applications for refinance, leaving an expensive bridging loan as the only alternative. The partnership also complained about the costs Metro had added to the loan balance, including the receivers' costs.

Metro didn't uphold the complaint. It said it had acted fairly and had good reasons for defaulting the loan and appointing receivers. But it said that following final calculations of the costs, the partnership had overpaid and it refunded just over £10,000.

Our investigator said that although it had earlier identified several areas of concern, Metro only actually defaulted the loan for one reason – late payments. He said that the loan terms said the payment due date was the date the original funds were released, the 6th of each month. So by making payments late in late 2022 and early 2023, the partnership was in breach of the terms and conditions. But he also noted that the partnership had gone on to make all the payments in the month in which they were due. So at the time of the default, the loan was only in one month's arrears, with the payment due on 6 April not having been made by the time of the default on 11 April.

The investigator said that the loan terms gave Metro the power to default the loan in these circumstances, but didn't require it to do so. It hadn't done when payments had occasionally been made late in the past. The partnership had been engaging with Metro, giving it the information it requested, and keeping up with the payments (albeit late) despite the difficulties they had explained they were experiencing. The partnership was taking active steps to resolve the situation by selling the properties or refinancing.

The investigator said that applying a default in these circumstances wasn't fair or proportionate. Payments were being maintained, though not always on time, and while the partnership was experiencing difficulties there wasn't any sign that things were getting out of control. There were still other options for reasonable forbearance that could have been tried. For example, it could have agreed a change to the payment due date – Metro said this wouldn't help, because doing so would require two payments to be made in the month of the change, but the investigator said that Metro could have explored ways around this.

The investigator therefore didn't think that Metro had acted fairly when it defaulted the loan and appointed receivers. The underlying issue – that the partnership struggled to pay by the due date each month but could pay before the end of the month – could easily have been resolved. The partnership was already actively trying to resolve the situation through sale or refinance, and the default only made that harder. The default was therefore premature and unfair.

The investigator said that to put things right, Metro should:

- Pay Miss R, Mr R1 and Mr R £1,500 compensation.

- Refund the receiver's costs and any interest charged on them before redemption, adding compound interest at the bridging loan rate, for the one year term of the bridging loan.

- Pay the partnership the difference between interest on the loan balance at redemption (minus the receiver costs) at the rate Metro would have charged, and at the bridging loan rate, for the one year term of the bridging loan.

He said that this was because it was more likely than not that the partnership would have been able to refinance on standard terms, at roughly the same interest rate that Metro charged, rather than having to take a bridging loan, had Metro not applied the default when it did.

He said he didn't think Metro should pay the difference in interest beyond the one year period of the bridging loan, as that gave the partnership enough time to put other arrangements – such as property sales – in place by the end of the bridging loan.

The investigator reached that view in 2024, before the end of the bridging loan term. Metro didn't agree with his view and asked for an ombudsman to review the complaint.

Metro said that in deciding to default the loan it also considered the conduct of another loan (Loan 2) held in Mr R's sole name. There had been repeated breaches on that loan – not least that the term ended in 2019, but it wasn't paid back until 2023. Both loans were managed together at the bank by the same relationship manager and considered as part of an overall portfolio of lending. Because Mr R had repeatedly told Metro of plans for repayment of Loan 2, but then said those plans had changed and asked for more time, Metro was wary of reassurances it was given about this loan. It was natural for the bank to take into account what it knew about the conduct of Loan 2 when considering what to do about this loan, involving the same borrower in Mr R.

In respect of this loan, Metro was not only concerned about late payments. It had set out other concerns too, and had given the partnership considerable time to address them. The partnership asked for forbearance, so Metro asked for additional financial information – which was not provided. Metro also had concerns that while some of the properties were on the market, they were listed at inflated asking prices and so not selling. This led it to decline the forbearance request and issue the default. It then appointed receivers – as is standard practice. It took the view that it was more likely that timely sales would be achieved by the receivers.

Metro also said that it didn't think the default was the only reason the partnership couldn't get a mainstream loan to refinance, and that it wouldn't have been able to do so anyway. This was because of a poor credit history resulting from the late payments, as well as the fact that at this time Mr R's residential property was subject to repossession proceedings by his mortgage lender. It also said the appointment of receivers wouldn't have been a barrier to refinancing.

Metro said it was in regular contact with the partnership prior to defaulting the loan. It gave the partnership opportunities to resolve its concerns and to provide information needed to consider forbearance. It said it offered considerable forbearance in respect of both loans and didn't think the complaint should be upheld.

The investigator wasn't persuaded to change his mind. He noted what Metro said about the conduct of Loan 2, and thought it wasn't unreasonable that it was taken into account as part of the overall management of the lending relationship. But the delay in repayment of Loan 2 hadn't led Metro to default the partnership's loan. By the time Metro decided to default, in April 2023, Loan 2 had already been repaid. So other outstanding debt couldn't have been a factor in the decision to default.

The investigator said that there was more Metro could have done by way of forbearance to address the stated reason for the default – the late payments – before deciding to default, for example by agreeing to change the monthly due date. The issue wasn't that the partnership couldn't meet the payments at all, it was that it was struggling to do so by the due date each month. The partnership had requested a change of due date in February 2023, and the investigator thought that Metro ought reasonably to have agreed to that request. It was reasonable for Metro to have concerns about the long term viability of the lending. But there wasn't sufficient reason, acting fairly, to default the loan at the time it did. The investigator also said that appointing receivers to sell the properties, when the partnership was already trying to do this, added unnecessary cost. He wasn't persuaded that the properties were being marketed at unrealistically high levels.

Metro said that even if Loan 2 had been repaid by April 2023, it was still right to take into account the history of that loan in deciding what to do about this loan. It said that appointing receivers to sell the properties on the partnership's behalf introduced an independent party who could ensure that the properties were sold at the best price achievable within a reasonable time. It said the partnership was a sophisticated and experienced borrower, dealing with a large unregulated loan as part of a commercial venture. The partnership was aware of the terms and conditions of the loan but was in regular breach. It was reasonable for Metro to act on that.

As no agreement could be reached, the complaint was referred for an ombudsman's decision. Consideration of the complaint by an ombudsman has been delayed because Mr R sadly passed away, and we had to wait for grant of probate for his executor to authorise his estate's continued participation in the complaint. That has now happened, so we have appropriate consent from all parties and I am now in a position to decide the complaint.

Before making a final decision, I issued a provisional decision to give the parties a final chance to make any submissions for me to consider.

**My provisional decision**

I said:

> "In some ways this is a complex and involved complaint, at least in terms of its factual history. I've summarised that history above – though it is only a summary, I have taken everything into account. Despite that, at its heart, I think the issues I need to decide in this complaint are relatively straightforward:

- Was it fair for Metro to default the loan when it did, calling in the full balance and appointing receivers?

- If not, what – if any – redress is appropriate?

*Did Metro act fairly and reasonably in defaulting the loan and calling it in?*

The starting point for considering this question is what the loan terms and conditions entitled Metro to do. But it is only the starting point; as well as whether Metro was entitled to do something, I also need to consider whether doing so was fair and reasonable in all the circumstances. That's what our rules require of me. In considering what's fair and reasonable in all the circumstances, I take into account relevant law, relevant regulatory rules standards and guidance, relevant codes of practice, and – where appropriate – what I consider to have been good industry practice at the relevant time.

This is a commercial lending facility secured over a mix of rental residential and commercial property. As such it is not a regulated loan and the rules of mortgage regulation don't apply. But as a regulated firm, Metro is nevertheless subject to the regulator's general rules and principles, including the obligation to pay due regard to the interests of its customers and treat them fairly, so that is a relevant consideration for me to take into account.

The terms and conditions say, at section 10 (headed "Events of Default") of the Standard Terms,

10. The Loan and all interest, and all other amounts payable under the Finance Documents will become due and payable immediately on demand by the Lender if any of the following events happens:

10.1. you fail to pay any amount under this letter when due; or

10.2. any of the Financial Covenants are breached at any time; or

10.3. any representation or warranty made or deemed to be made by you or any Obligor in any Finance Document or in any statement delivered or made pursuant thereto is incorrect when made or deemed to be repeated; or

10.4. you are, or any Obligor is, in breach of any other provision of the Finance Documents; or

10.5. any event or circumstance occurs which the Lender reasonably believes has or is reasonably likely to have a Material Adverse Effect; or

10.6. any liability of you, or any Obligor, or Specified Person for payment or repayment of money, howsoever arising, is not satisfied when it becomes due or any such liability is or becomes capable of being declared due prior to its stated date of payment;

"Finance Documents" means "this letter [the facility letter, including the terms and conditions quoted above] and any Security Document". "Security Document" includes the Mortgage Deed.

Section 5 of the Mortgage Deed (headed "Covenants by the Chargor", meaning the partnership) says:

5.1. The Chargor will, at all times during the continuance of the Security:

…

5.1.7. not apply for nor implement any planning permission in respect of the Property without the consent in writing of the Lender, and if so required by the Lender in writing (but not otherwise), apply for any planning permission which may be necessary to make any use of the Property lawful under the Planning Acts;

5.1.8. manage or procure the management of the Property diligently in accordance with the principles of good estate management and promptly notify the Lender of any material default by any lessee or other occupier of a Property;

5.1.9. ensure that no person:

(a) demolishes any buildings or erections on any Property;
(b) makes any structural alteration to any Property; or
(c) removes any fixtures from any Property, without the prior consent of the Lender

…

5.1.11. not, without the prior consent of the Lender, carry out or permit to be carried out any development for which planning permission is required at the Property or make (or permit others to make) any application for planning permission; or implement any planning permission;

It's clear from looking at the correspondence that Metro had several concerns about the conduct of the loan and the position of the partnership, and I think those concerns were reasonable. Interest rates had risen substantially, and so had the monthly payments. It's clear from what the partnership said that this was causing difficulties – especially as at the same time rental income had reduced while several properties were left vacant pending sale. The partnership explained in some of the correspondence with Metro that it was struggling to raise sufficient funds to cover the interest payments by the due date each month. It also pointed out that it had to use some rental income to meet expenses associated with the properties as well as loan repayments. But the fact is that, as a result of these difficulties, several of the monthly payments were late.

At the same time, the partnership was having tax difficulties – it seems this was caused partly by changes in the tax rules for buy to let landlords, which increased the amount of taxable income by removing the ability to offset interest payments as expenditure reducing profit; and partly by capital gains liability due to earlier property sales. That was why the partnership wanted to retain funds from property sales rather than using the funds (or all of the funds) to reduce the balance.

In those circumstances, I think it was reasonable for Metro to want to confirm whether the 125% rental cover covenant was no longer met. It was also reasonable for it to be concerned about the long term viability of the loan, or whether an exit strategy needed to be considered.

Similarly, given the terms of the mortgage deed around alterations to the property, it was reasonable for Metro to be concerned that one of the security properties had been split into two. The partnership said that it involved no structural alteration, just the adding of internal dividing walls. And that no planning permission was required either. But it accepted that while it had notified Metro of the change, it hadn't sought permission in advance. Even if the partnership was correct that there wasn't, strictly, a breach of the mortgage deed in that there was no structural alteration and no need for planning permission, I think it was reasonable for Metro to be concerned enough about it to at least make enquiries of the partnership.

I appreciate that the partnership found Metro's correspondence to be difficult – requiring considerable information to be provided at short notice, for example. But having considered things overall, I think Metro was justified in having, and raising, the concerns it did. The partnership suggests that it didn't genuinely have such concerns; or, if it did, it was using them as an excuse to engineer the failure of the loan to get it off its books. I've not seen any evidence that was the case. And I do think Metro's concerns were largely reasonable. So I don't think it acted unfairly in the action it took in investigating the position of the partnership and its ability to meet its obligations and the long term sustainability of the loan.

The default itself was issued in early April, and although the earlier concerns went wider, in issuing the default Metro only relied on the late payments. Under condition 10.1, failure to pay any amount when due is an "Event of Default". There had been several such failures in the preceding six months. So as a matter of the terms and conditions alone, Metro was entitled to issue the default.

But as I said above, that's not the end of the matter. I also have to consider whether doing so was fair in all the circumstances. I'm not persuaded it was. While there had been several late payments, no payment had been missed altogether. The partnership was co-operating with Metro and providing it with the information required. The partnership itself recognised that there were questions over the long term viability of the lending, and was actively looking for an exit strategy in marketing several of the properties and also exploring re-finance.

Metro questions whether the partnership was actively pursuing a sales strategy, because it believes the partnership had put some properties on the market at unrealistically high prices. It's true that initial asking prices were high – but it's also true that the partnership responded to that by reducing prices and did achieve sales before the default, with other properties in the sales process. I think it's also important to bear in mind that all the properties in the portfolio were similar, and concentrated in a small geographic area. The partnership did try to sell the portfolio as one, turning down one offer as too low (which it later accepted may have been a mistake). But selling the properties individually would have to be done carefully as there was a risk of flooding the market, driving down prices or even driving away sales altogether.

Metro also says it was reasonable to consider Mr R's conduct of Loan 2 as part of the wider context. I agree about that. But I don't attach the same weight to it that Metro appears to have done. While that loan was repaid in 2023, four years after the original due date, Metro and Mr R were in discussion throughout that period. Mr R was actively pursuing ways of repaying, and Metro agreed a series of repayment extensions until the loan was eventually paid. So while it is relevant to the question of whether the partnership was experiencing wider financial issues which might impact on the sustainability of the loan, I don't think it was a good basis for doubting the credibility of what the partnership told Metro.

The partnership asked Metro to consider forbearance while it pursued the sales or refinance strategy. Metro said it would consider forbearance, but ultimately refused to make any changes. It said there was no new reduced interest rate available, which wasn't unreasonable. Metro also didn't implement a change to the due date. I don't think this was fair. Metro said the partnership decided not to go ahead with this option because it would involve making two payments in one month, which the partnership wasn't in a position to do – making the usual payment at the start of the month, and then bringing forward the following month's payment to the end of the month.

But that's not the only way to change the payment due date. Rather than bringing forward a payment from the start of a month to the end of a previous month, Metro could have offered to delay a payment from the start of a month to the end of the same month. That would have resulted in additional interest being added to the loan because of the delay in the payment. But that was happening anyway, because the partnership was often paying late. And it could have been dealt with either by adding the extra interest to the balance formally, or by reaching an arrangement to spread repayment of it out over succeeding months.

The terms and conditions entitle Metro to default the loan if any payment – even one – is made late. It actually did so after several payments had been made late. But even so, I'm not persuaded that was fair. The implications of defaulting the loan for the partnership were serious. The partnership had been co-operating with Metro and had been frank about the difficulties it was facing. It was actively pursuing an exit strategy. Although payments were late, no payment had been missed altogether or failed to be made up by the end of the month. And Metro had dismissed a reasonable forbearance option of changing the due date without moving a payment forward. I don't think Metro had fully considered or explored options for avoiding a default, or sufficiently taken into account the risk a default might impact the partnership's exit strategy – which would also impact Metro's ability to recover the outstanding balance in a timely way. In all the circumstances, I think the issue of the default was premature and not fair and reasonable.

I think it follows from my conclusion about the default that appointment of the receivers wasn't fair and reasonable either. Had Metro not issued the default, I don't think the receivers would have been appointed either.

However, even if I'm wrong about the default, I would still find that the appointment of receivers wasn't fair. I think it would have been reasonable, having issued a default, to commission valuations of the properties, and to expect to be kept up to date with the partnership's plans for sale or re-finance, and to expect a clear plan for exit by a defined date.

But a default doesn't automatically mean that receivers have to be appointed. Appointment of fixed sum receivers for a loan of this size is very costly. The purpose of appointing receivers is to manage the properties with a view to exiting the loan, for example through selling the properties. But the partnership was actively doing that anyway, with some sales achieved and others in progress, alongside a plan to market the remainder. For the reasons I've already given, the geographical concentration meant that selling – either via agent, or at auction – all the properties at once would be likely to depress the sale price or even prevent sales completely. So I think it would have been fair and reasonable to allow some time for the partnership's strategy of incremental sales while exploring refinance to be tried before insisting on selling all the properties at once – especially while the partnership was still able to pay the monthly interest (even if sometimes late).

That being the case, there was no need to appoint receivers immediately on default. A fairer approach, in my view, would have been to allow the partnership a reasonable time to pursue its own exit strategy – only appointing receivers later if that strategy failed or showed signs of not being completed in a reasonable time. Appointing receivers to sell the properties immediately was premature; appointing receivers to oversee the continuance of the partnership's exit strategy added unnecessary administration and substantial cost.

For those reasons, even if it was fair and reasonable for Metro to have defaulted the loan when it did, I would still think that it wasn't fair to appoint receivers immediately following the default without allowing the partnership a reasonable time to manage its exit strategy first.

**Putting things right**

That brings me on to the second question – having found that Metro didn't act fairly in defaulting the loan, I now need to consider what it needs to do to put matters right.

Firstly, Metro should remove any record of the default from Mr R1 and Miss R's credit files. I think it should also refund the unnecessary receiver fees, including the legal fees, added to the loan balance as a consequence of the default. As these fees were added to the redemption balance and so included in the bridging loan, Metro should also add compound interest at the bridging loan rate until the end of the one year term of the bridging loan, and simple annual interest of 8% thereafter.

Our investigator said that Metro should also refund the difference between the interest rate on the Metro loan and the interest rate on the bridging loan the partnership ended up taking. I've thought carefully about this.

I agree with Metro that it's likely that it wasn't only the default and the appointment of receivers that meant that the partnership was unable to obtain alternative mainstream financing, for example through standard buy to let or commercial mortgages. I accept the default made it even less likely. But given what's been said about the partnership's difficulties in affording each monthly payment (even though they were made in full), as well as the relatively low overall rental cover value – and the property concentration risk – I don't think I can safely find that it's more likely than not that the partnership would have found alternative mainstream finance even without the default.

Metro says that means it's not fair to expect it to pay the difference between the Metro interest rate and the bridging loan interest rate – because the partnership would always have ended up having to take finance along those lines even without the default.

But I'm not persuaded of that. I agree that a loan along those lines was likely the only refinancing option that would ever have been available. But that's not the primary exit strategy the partnership was pursuing. It was trying to repay the lending by selling off the properties – without marketing them (other than as a portfolio) all at once.

Had the partnership been able to pursue that strategy, it might never have needed to take the bridging loan at all. Had Metro not issued the default, or issued the default but not appointed receivers, I think there's a real possibility that the partnership would, over time, have sold enough property either to repay the loan facility entirely, or sold enough to make alternative mainstream finance more viable. Had that happened, the partnership would only have had to pay the Metro interest rate in the meantime – not the bridging loan interest rate.

But because Metro did default the loan, and did appoint receivers, the partnership was unable to pursue the sale, or sale followed by refinance, strategy. Instead it was left with no choice but to refinance immediately, and no choice other than doing so with a bridging loan. I've seen correspondence from the receivers making clear that if the refinance didn't go ahead quickly the properties would be put up for auction. I can't comment on the fairness of the actions of the receivers – because once appointed they become agents for the borrowers, not the lender. But I have found that Metro should not, acting fairly, have appointed the receivers in the first place, and if it hadn't done so the partnership would not have found itself in that position.

For all those reasons, I agree that it's fair and reasonable for Metro to refund the difference between the interest charged on the bridging loan and interest that would have been charged had the partnership remained on the Metro loan while pursuing its own exit strategy. I think it's reasonable to limit that period for one year, as that would have given the partnership sufficient time to make progress with its exit strategy to be able to repay, either through sale or more mainstream refinance having reduced the portfolio, or through getting the Metro loan back on a more sustainable footing having reduced the portfolio and improved the rental position. And similarly, the partnership had enough time to do that by the time the bridging loan came up for renewal. For the same reasons, Metro should refund the set up fees of the bridging loan, which were £60,126.

Finally, I agree that issuing the default and particularly appointing the receivers caused Mr R1, Miss R and the late Mr R considerable stress and upset – at, given Mr R's health concerns, what was already a difficult time for them as a family. I think compensation of £500 each is fair and reasonable in all the circumstances, making £1,500 in all."

I went on to say that I was provisionally minded to require Metro to carry out the following calculations to arrive at fair redress:

- In respect of the receiver and legal fees added to the loan balance following the default, calculate:
    - The amount of fees charged to the loan balance, minus the £10,350.87 already refunded, plus
    - Compound interest at the Metro SVR from the date the costs were added to the loan to the redemption date of the Metro loan; plus
    - Compound interest at the bridging loan rate of 1% per month for one year from the redemption date of the Metro loan.

  The result of this calculation is figure A (the fees less the amount already refunded, plus interest charged on them to the end of the bridging loan period).

- In respect of the £10,350.87 already refunded, Metro should calculate interest on the basis set out above from the date the fees were added to the loan balance to the date the £10,350.87 was refunded.

  The result of this calculation is figure B (interest charged on the refunded element of the fees, but not the refunded fees themselves).

- In respect of the increased cost of borrowing the capital sum because of re-financing to the bridging loan:
    - Calculate the redemption balance of the Metro loan, minus the receiver and legal fees.
    - Calculate compound interest on that amount at the difference between the bridging loan rate of 1% per month and the Metro SVR from time to time, for one year from the redemption date of the Metro loan.
    - If the partnership reduced the balance of the bridging loan during the one-year period through further property sales, Metro should adjust the interest calculation so that it is based on the reduced balance from the date of

reduction onwards. The partnership will need to give Metro information about property sales for it to take account of this.

The result of the second calculation is figure C (the difference between the borrowing costs of the capital sum at the bridging loan rate compared to the Metro SVR, not including the capital sum itself).

- In respect of the £60,126 set up fees of the bridging loan, calculate the amount of the fees plus compound interest at the bridging loan rate of 1% per month for the one-year period of the bridging loan. The result of this calculation is figure D.

I said that fair redress is therefore:

- A + B + C + D, plus
- Compensation of £500 to each of Miss R, Mr R1 and the estate of Mr R.

In addition, I said that Metro should pay simple annual interest of 8% on A, C and D running from the one year anniversary of the date of redemption of the Metro loan to the date redress is paid, and simple annual interest of 8% on B from the date the £10,350.87 was refunded. It should also add simple annual interest of 8% on the £1,500 compensation running from 28 days of the date we notify Metro Miss R, Mr R1 and the estate of Mr R have accepted my final decision, if they do, to date of payment – unless payment is made within the 28 day period.

I said that Metro may deduct income tax from the 8% interest element of my award, as required by HMRC. But it should tell Miss R, Mr R1 and the estate of Mr R what it has deducted so that they can reclaim the tax if they are entitled to do so.

I said that I thought it unlikely that the calculated redress would exceed the maximum award limit applicable to this complaint of £415,000 plus interest. All elements of my award other than the 8% interest elements are included in the award limit, because the compound interest represents financial loss, and the 8% simple interest element represents interest on the crystallised financial loss. However, I took into account the possibility that fair compensation might exceed the limit.

My provisional decision was therefore that Metro Bank PLC should pay Mr R1, Miss R and the estate of Mr R the amount produced by the above calculations – up to a maximum of £415,000 plus the 8% interest elements.

If the amount produced by the calculation of fair compensation is more than £415,000 I said that I intended to recommend that Metro Bank PLC pays Miss R, Mr R1 and the estate of Mr R the balance above £415,000. This recommendation is not part of my determination or award. Metro Bank PLC does not have to do what I recommend. It's unlikely Miss R, Mr R1 and the estate of Mr R can both accept my decision and go to court to ask for the balance, if any, above the award limit if Metro Bank PLC does not do what I recommend. I therefore said that they may want to get independent legal advice before deciding whether to accept my final decision, if it remains along the lines set out above.

**The responses to my provisional decision**

Miss R, Mr R1 and the estate of Mr R accepted my provisional decision. Metro did not. It said:

- It considered it likely that Miss R, Mr R1 and the estate of Mr R, as the partnership, were not eligible complainants. It said the partnership appeared to have a balance sheet, in April 2023, of in excess of £5million, which exceeded the thresholds for micro-enterprises and small businesses falling within our jurisdiction.

- If I were able to consider the merits of the complaint, it did not consider that it should be upheld.

- In my provisional decision, I had misunderstood the nature of the loan and overlooked the fact that it was not a regulated loan – and had instead treated it as if it was a regulated loan.

- It was not fair to say that Metro had failed to allow a reasonable time for the partnership to implement an exit strategy when it had issued five letters of concern over a four and a half month period before issuing the formal demand.

- I had misunderstood the role of the receivers. It is not correct that the appointment meant that the partnership's only option was immediate refinance. The partnership still had the equity of redemption, which could be exercised at any time until any sales agreed by the receiver completed.

- It is not correct to say that receivers were appointed "immediately" – in fact they were appointed on 28 April 2023, 17 days after the final demand.

- It is not correct to say that it was because of Metro's actions that the partnership was only able to source a bridging loan, rather than mainstream finance. It's more likely that the partnership was in that position because of its poor credit history – not least that Mr R had been subject to possession proceedings on his personal residential mortgage. As a result it is not fair and reasonable to expect Metro to pay for the set up costs of the bridging loan, or the difference in interest rates.

- The partnership had breached the loan agreement. Mr R had a poor track record with his own personal loan with Metro as well as with his residential mortgage with another lender. It is therefore not rational to conclude that it was unreasonable for Metro to take action in those circumstances.

- It is inconsistent to say that it was reasonable for Metro to have concerns about the loan, but not reasonable to issue a default notice or appoint receivers.

- My provisional decision on this case is inconsistent with other ombudsman decisions on cases involving other unregulated commercial and buy to let lending.

- I have not defined the standard of "fairness and reasonableness" that Metro should take in relation to unregulated buy to let lending. As a result, the obligations I consider are placed on banks' unregulated commercial lending, and the reasons for my conclusions in this particular case, are hard for Metro to understand.

**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 also considered again the conclusions I reached in my provisional decision, especially in light of the further arguments raised by Metro. But having done so, I haven't changed my mind. I'll deal with each point raised by Metro in turn and explain why.

*Are Miss R, Mr R1 and the estate of Mr R eligible complainants?*

At an earlier stage, our investigator explained that he was satisfied that they are eligible complainants, and Metro's response to his findings was focussed on the merits of the complaint. As I agree with the investigator, and this was not a matter that appeared to be in dispute, I did not deal with it at any length in my provisional decision. But Metro has raised this again now.

The rules of the Financial Ombudsman Service (to be found in the DISP section of the Financial Conduct Authority's Handbook) set out what complaints we can and cannot consider. They include a requirement that complainants be eligible to complain. There are two limbs to eligibility – the nature of the complainants themselves, and the nature of their relationship with the respondent. As customers of Metro at the time of the events complained of, Miss R Mr R1 and the late Mr R have a complaint that arises out of an eligible relationship. That is not in dispute.

Metro says that Miss R, Mr R1 and the late Mr R may not be eligible because of the other requirement. DISP 2.7.3 R says:

> An *eligible complainant* must be a *person* that is:
>
> (1) a *consumer*
>
> (2) a *micro-enterprise*;
>
> > (a) in relation to a *complaint* relating wholly or partly to *payment services*, either at the time of the conclusion of the *payment service* contract or at the time the complainant refers the *complaint* to the *respondent*; or
> > (b) otherwise, at the time the complainant refers the *complaint* to the *respondent*; or
>
> (3) a charity which has an annual income of less than £6.5million at the time the complainant refers the *complaint* to the *respondent*; or
>
> (4) a trustee of a trust which has a net asset value of less than £5million at the time the complainant refers the *complaint* to the *respondent*; or
>
> (5) (in relation to *CBTL business*) a *CBTL consumer*; or
>
> (6) a *small business* at the time the complainant refers the *complaint* to the *respondent*; or
>
> (7) a *guarantor*

Italicised terms in DISP have the meaning given in the Glossary to the Handbook; all other words bear their natural English meaning.

Miss R, Mr R1 and the late Mr R were not a charity or trustees of a trust. They were borrowers not guarantors. This was not a CBTL (consumer buy to let) loan. And they were not consumers – because, in running a property rental business for profit, they were not acting wholly or mainly outside their trade, business or profession.

Therefore, to be eligible complainants, they must be either a micro-enterprise or a small business. Both are italicised terms.

A micro-enterprise is defined as:

an *enterprise* which

(a) employs fewer than 10 persons; and
(b) has a turnover or annual balance sheet that does not exceed €2 million;

and in determining whether these criteria are met articles 3 to 6 of the Annex to the *Micro-Enterprise Recommendation* must be applied.

A small business is

an *enterprise* which

(a) is not a *micro-enterprise;*
(b) has an annual turnover of less than £6.5million (or its equivalent in any other currency); and
    (i) employs fewer than 50 *persons*; or

    (ii) has a balance sheet total of less than £5million (or its equivalent in any other currency),

and in determining whether these criteria are met articles 3 to 6 of the Annex to the *Micro-Enterprise Recommendation* must be applied.

An enterprise is

any *person* engaged in an economic activity, irrespective of legal form, including, in particular:

(a) self-employed *persons* and family businesses engaged in craft or other activities; and
(b) *partnerships* or associates regularly engaged in economic activity.

A person is

(in accordance with the Interpretation Act 1978) any person, including a body of persons corporate or unincorporate (that is, a natural person, a legal person and, for example, a *partnership*)

A partnership is

(in accordance with section 417 (1) of the *Act* (Definitions) any partnership, including a partnership constituted under the law of a country or territory outside the *United Kingdom*, but not including a *limited liability partnership*

Miss R, Mr R1 and the late Mr R were a partnership but not a limited liability partnership. In order to be eligible, therefore, they must meet either the micro-enterprise or the small business definition.

As a partnership running a property rental business – which is economic activity – they qualify as an enterprise.

Metro says they might not be eligible complainants because they had a balance sheet in excess of £5million – which is more than the limit for a small business. But I don't agree that this means that they are not eligible complainants.

There are two routes to eligibility – as a small business, or as a micro-enterprise. To be a micro-enterprise, a complainant must a) employ fewer than 10 persons; and b) have a turnover or balance sheet that does not exceed €2 million – to be measured at the time of the complaint to Metro.

I haven't seen a formal balance sheet for the partnership. But I agree that, if there was one, it would show assets in excess of €2 million. But that is not the test. The test is having either a balance sheet or a turnover that does not exceed €2 million. These are alternatives – it is not a requirement for both to be below €2 million. As long as one is below the threshold, it does not matter that the other is above it.

The schedule of rents prepared in 2020 and 2021 show the total rental income of the portfolio to be under £350,000. The financial statements prepared by each of Miss R, Mr R1 and Mr R in 2023 show their sole incomes derive from their property rental business (largely, but not entirely, comprised of the properties in the Metro portfolio). Their incomes are the profit, not the turnover, of the rental business. But the financial statements show that there was no other turnover besides the rental business – and that in 2023 the number of properties from which it was derived had not substantially increased since the 2021 rent schedule. The income from the property sales in the period leading up to the complaint were not enough to take the turnover from around £350,000 to over €2 million.

Although I haven't seen partnership accounts, I don't think there's any reasonable basis, on the evidence available, on which I can conclude that the partnership may have had a turnover in excess of €2 million at the time of its complaint to Metro. And there's no suggestion that the partnership employed more than 10 people – which is as I'd expect from a relatively small-scale property rental business partnership.

As I've said, the definition of a micro-enterprise requires *either* a turnover, *or* a balance sheet, that does not exceed €2 million – not both. The partnership had assets in excess of that amount, but a turnover below it. It therefore qualifies as a micro-enterprise, and so the partnership – in the capacity of the partners Miss R, Mr R1 and Mr R – is an eligible complainant.

This is a separate definition to that of a small business. Even if the partnership does not qualify as a small business because of the size of its balance sheet, it still qualifies as a micro-enterprise – because of the size of its turnover and head count.

As the investigator said, this complaint falls within the jurisdiction of the Financial Ombudsman Service.

*Metro's arguments on the merits of the complaint*

- In my provisional decision, I had misunderstood the nature of the loan and overlooked the fact that it was not a regulated loan – and had instead treated it as if it was a regulated loan.

I don't agree with this. I expressly reminded myself at the outset of my provisional findings – reproduced above – that this was an unregulated loan.

The key questions for me to consider are 1) whether Metro was entitled to do what it did; 2) if so, whether doing so was fair and reasonable in all the circumstances; and 3) if not, what is fair redress.

I explained in my provisional decision that Metro was entitled by the terms and conditions to issue a default notice based on the fact that some payments had been made after the due date.

But I also explained why, notwithstanding that entitlement, doing so was not in my view fair and reasonable in all the circumstances – where payments, while late, had been made within the months in which they were due, and where the partnership had engaged openly and frankly with Metro about the difficulties it was facing and was seeking an exit strategy of its own. I think the fact that Metro had issued letters of concern about several matters, but went on to issue the default notice on the sole, narrow, basis of the late payments, shows that its wider concerns had been satisfactorily addressed by the partnership.

It does not inevitably follow that acting on a contractual entitlement is always fair. In my view, it was not fair and reasonable for Metro to have issued a default notice based on late – but not missed – payments in circumstances where there was a less draconian alternative available; amending the payment date to later in the month and allowing the partnership a reasonable time to pursue its exit strategy.

None of those conclusions relied on a finding that this was a regulated loan; I expressly found that it was not. I did say that the regulator's principles for businesses were a relevant factor to take into account – in fact, they do not apply to unregulated activities and so are not relevant to this complaint. However, I did not rely on the principles in reaching my provisional decision, and in any case I have disregarded them when re-considering what is fair and reasonable in all the circumstances for the purposes of this final decision. I have focussed on what is, in my view, fair and reasonable in all the circumstances.

My provisional conclusions did not depend on any regulatory requirement or principle. My provisional conclusions were that in defaulting the loan in respect of a relatively minor concern – a small number of payments made late, but not missed altogether – without first offering to amend the payment date as a resolution to that issue, and without allowing a reasonable time for the partnership to explore its own exit strategy, Metro had not acted fairly and reasonably in all the circumstances. I remain of that view.

- It was not fair to say that Metro had failed to allow a reasonable time for the partnership to implement an exit strategy when it had issued five letters of concern over a four and a half month period before issuing the formal demand.

Much of Metro's letters of concern were related to other matters. As I said in my provisional decision, these were reasonable matters for Metro to have been concerned about at the time. But they did not go on to form part of the reasoning for issuing a default notice – from which it seems likely that the partnership's responses had adequately addressed those other concerns.

At the same time, the partnership explained that it was pursuing its own exit strategy. Given the nature of the portfolio and particularly the geographical concentration of the properties, it wouldn't be appropriate to market them all for sale separately but simultaneously. But the partnership was exploring sale of the portfolio as a whole, staggered sale of individual properties, and re-financing. Some sales had already been agreed – which shows the partnership was actively progressing matters. I'm not persuaded that the point where it was reasonable for Metro to conclude that a default notice was the only or best way of bringing the loan to an end within a reasonable time had yet been reached.

- I had misunderstood the role of the receivers. It is not correct that the appointment meant that the partnership's only option was immediate refinance. The partnership still had the equity of redemption, which could be exercised at any time until any sales agreed by the receiver completed.

I agree that the partnership could have redeemed the loan at any time. However, in practical terms, once receivers were appointed, that could only realistically be done through refinance. The partnership could not have repaid Metro from its own resources. And I've seen exchanges of emails between the receivers and the partnership in which the receivers make clear that if the loan is not redeemed through refinance shortly the properties will be entered into auction.

- It is not correct to say that receivers were appointed "immediately" – in fact they were appointed on 28 April 2023, 17 days after the final demand.

My conclusion is that in applying a default and then instructing receivers, Metro did not act fairly and reasonably in all the circumstances, because it failed to offer reasonable forbearance before applying the default. Had it not applied the default, the receivers would never have been appointed at all. But, as I explained in my provisional decision, even if it was fair and reasonable to apply the default – which I don't think it was – it would not follow that Metro acted fairly in appointing receivers without first allowing the partnership a reasonable time to pursue its own exit strategy. I do not consider 17 days to be a reasonable time for that.

- It is not correct to say that it was because of Metro's actions that the partnership was only able to source a bridging loan, rather than mainstream finance. It's more likely that the partnership was in that position because of its poor credit history – not least that Mr R had been subject to possession proceedings on his personal residential mortgage. As a result it is not fair and reasonable to expect Metro to pay for the set up costs of the bridging loan, or the difference in interest rates.

This misunderstands my provisional decision. I expressly said that I thought mainstream finance would have been unlikely even without the default. I said:

> "I agree with Metro that it's likely that it wasn't only the default and the appointment of receivers that meant that the partnership was unable to obtain alternative mainstream financing, for example through standard buy to let or commercial mortgages. I accept the default made it even less likely. But given what's been said about the partnership's difficulties in affording each monthly payment (even though they were made in full), as well as the relatively low overall rental cover value – and the property concentration risk – I don't think I can safely find that it's more likely than not that the partnership would have found alternative mainstream finance even without the default.
>
> …
>
> I agree that a loan along those lines was likely the only refinancing option that would ever have been available. But that's not the primary exit strategy the partnership was pursuing. It was trying to repay the lending by selling off the properties – without marketing them (other than as a portfolio) all at once.
>
> Had the partnership been able to pursue that strategy, it might never have needed to take the bridging loan at all. Had Metro not issued the default, or issued the default but not appointed receivers, I think there's a real possibility that the partnership would, over time, have sold enough property either to repay the loan facility entirely, or sold enough to make alternative mainstream finance more viable. Had that happened, the partnership would only have had to pay the Metro interest rate in the meantime – not the bridging loan interest rate."

My reasons for concluding that it would be fair and reasonable for Metro to cover the costs of the bridging loan were not because the default meant that the partnership was required to take bridging as opposed to mainstream refinance. Rather, my reasons for concluding that were because the default meant that the partnership had to refinance – with bridging finance as the only option – rather than exit through the preferred sale strategy. I haven't changed my mind about that.

- The partnership had breached the loan agreement. Mr R had a poor track record with his own personal loan with Metro as well as with his residential mortgage with another lender. It is therefore not rational to conclude that it was unreasonable for Metro to take action in those circumstances.

I explained in my provisional decision that it was reasonable for Metro to take into account Mr R's other lending, but that I didn't attach the same weight to it that Metro did:

> "Metro also says it was reasonable to consider Mr R's conduct of Loan 2 as part of the wider context. I agree about that. But I don't attach the same weight to it that Metro appears to have done. While that loan was repaid in 2023, four years after the original due date, Metro and Mr R were in discussion throughout that period. Mr R was actively pursuing ways of repaying, and Metro agreed a series of repayment extensions until the loan was eventually paid. So while it is relevant to the question of whether the partnership was experiencing wider financial issues which might impact on the sustainability of the loan, I don't think it was a good basis for doubting the credibility of what the partnership told Metro."

This is only one element to take into account. My primary reason for upholding this complaint is that Metro did not show reasonable forbearance before issuing the default and appointing receivers. I think it's relevant to note – notwithstanding what Metro says now – that Mr R was keeping Metro up to date with his efforts to repay that lending and that Metro agreed a series of extensions with him. I don't think that Mr R's conduct of his other loan – or his residential mortgage – means that it wasn't reasonable to show forbearance in respect of this loan.

- It is inconsistent to say that it was reasonable for Metro to have concerns about the loan, but not reasonable to issue a default notice or appoint receivers.

I don't agree about that. There is no inconsistency between finding that the initial concerns were reasonable; but that the action taken later, when most of those concerns had been resolved and there were alternative options to address the remaining concern about the late payments, was not reasonable.

- My provisional decision on this case is inconsistent with other ombudsman decisions on cases involving other unregulated commercial and buy to let lending.

I have reviewed the decisions Metro has referred me to. It's important to note that each case is decided individually based on its own particular facts and circumstances, and no one case forms a precedent for any other. That said, there is a reasonable expectation that like cases will be treated alike. But, based on the facts of those cases as set out in the decisions, I'm not persuaded that they are similar to this complaint or that they make my conclusions in this case unreasonable or irrational. Those cases were also about buy to let mortgages, but they concerned situations where borrowers were in substantial arrears or had not paid the mortgage back by the end of the term. That is not the case here.

- I have not defined the standard of "fairness and reasonableness" that Metro should take in relation to unregulated buy to let lending. As a result, the obligations I consider are placed on banks' unregulated commercial lending, and the reasons for my conclusions in this particular case, are hard for Metro to understand.

I explained my reasons for upholding the complaint in my provisional decision. I did so following what our rules require of me – which is to determine the complaint according to what I consider to be fair and reasonable in all the circumstances. Fairness is not a fixed concept; it depends on the individual circumstances. It is for Metro to satisfy itself it is acting fairly; and it is for me to decide what is, in my view, fair and reasonable in all the circumstances of the particular case. I'm satisfied that is what I have done.

Having therefore considered what I said in my provisional decision, and having reconsidered all the evidence and arguments – including what Metro said in response to my provisional decision – I haven't changed my mind about the fair and reasonable outcome to this complaint. I'm not persuaded that it was fair and reasonable for Metro to issue the default, and appoint receivers, based on the late (but not missed) payments without offering alternative forbearance first. In particular, it ought fairly to have amended the payment due date and allowed the partnership a reasonable time to pursue its exit strategy of repayment through property sales.

## Putting things right

For the reasons given in this and my provisional decisions, Metro should put matters right in the way set out below.

## My final decision

My final decision is that I uphold this complaint. I direct Metro Bank PLC to carry out the following calculations to arrive at fair redress:

- In respect of the receiver and legal fees added to the loan balance following the default, calculate:
    - The amount of fees charged to the loan balance, minus the £10,350.87 already refunded, plus
    - Compound interest at the Metro SVR from the date the costs were added to the loan to the redemption date of the Metro loan; plus
    - Compound interest at the bridging loan rate of 1% per month for one year from the redemption date of the Metro loan.

  The result of this calculation is figure A (the fees less the amount already refunded, plus interest charged on them to the end of the bridging loan period).

- In respect of the £10,350.87 already refunded, Metro should calculate interest on the basis set out above from the date the fees were added to the loan balance to the date the £10,350.87 was refunded.

  The result of this calculation is figure B (interest charged on the refunded element of the fees, but not the refunded fees themselves).

- In respect of the increased cost of borrowing the capital sum because of re-financing to the bridging loan:
    - Calculate the redemption balance of the Metro loan, minus the receiver and legal fees.
    - Calculate compound interest on that amount at the difference between the bridging loan rate of 1% per month and the Metro SVR from time to time, for one year from the redemption date of the Metro loan.
    - If the partnership reduced the balance of the bridging loan during the one-

year period through further property sales, Metro should adjust the interest calculation so that it is based on the reduced balance from the date of reduction onwards. The partnership will need to give Metro information about property sales for it to take account of this.

The result of the second calculation is figure C (the difference between the borrowing costs of the capital sum at the bridging loan rate compared to the Metro SVR, not including the capital sum itself).

- In respect of the £60,126 set up fees of the bridging loan, calculate the amount of the fees plus compound interest at the bridging loan rate of 1% per month for the one-year period of the bridging loan. The result of this calculation is figure D.

Fair redress is therefore:

- A + B + C + D, plus
- Compensation of £500 to each of Miss R, Mr R1 and the estate of Mr R.

In addition, Metro should pay simple annual interest of 8% on A, C and D running from the one year anniversary of the date of redemption of the Metro loan to the date redress is paid, and simple annual interest of 8% on B from the date the £10,350.87 was refunded. It should also add simple annual interest of 8% on the £1,500 compensation running from 28 days after the date we notify Metro Miss R, Mr R1 and the estate of Mr R have accepted my final decision, if they do, to date of payment – unless payment is made within the 28 day period.

Metro may deduct income tax from the 8% interest element of my award, as required by HMRC. But it should tell Miss R, Mr R1 and the estate of Mr R what it has deducted so that they can reclaim the tax if they are entitled to do so.

I think it is unlikely that the calculated redress would exceed the maximum award limit applicable to this complaint of £415,000 plus interest. All elements of my award other than the 8% interest elements are included in the award limit, because the compound interest represents financial loss, and the 8% simple interest element represents interest on the crystallised financial loss. However, while unlikely, I take into account the possibility that fair compensation might exceed the limit.

My final decision is therefore that Metro Bank PLC must pay Miss R, Mr R1 and the estate of Mr R the amount produced by the above calculations – up to a maximum of £415,000 plus the 8% interest elements.

If the amount produced by the calculation of fair compensation is more than £415,000, I recommend that Metro Bank PLC pays Miss R, Mr R1 and the estate of Mr R the balance above £415,000. This recommendation is not part of my determination or award. Metro Bank PLC does not have to do what I recommend. It's unlikely Miss R, Mr R1 and the estate of Mr R can both accept my decision and go to court to ask for the balance, if any, above the award limit if Metro Bank PLC does not do what I recommend. They may want to get independent legal advice before deciding whether to accept my final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R, Mr R1 and the estate of Mr R to accept or reject my decision before 4 June 2025.

Simon Pugh
**Ombudsman**