

The complaint

Mr and Mrs B's complaint relates to a mortgage they have with The Mortgage Business Plc (TMB). They have complained that there are three sub-accounts on the mortgage, that add £50,000 to the mortgage balance. Mr and Mrs B are also unhappy that TMB has taken legal action, given their concerns about the balance and validity of the mortgage, and that they received an eviction order for November 2024.

In settlement of the complaint Mr and Mrs B said they wanted the legal action stopped and an investigation undertaken to find out whether they or TMB is correct about the amount they owe. In addition, they would like compensation for the stress and anxiety the situation has caused them.

What happened

Mr and Mrs B took out their mortgage with TMB in early 2008. They borrowed £480,250 plus fees over a term of 11 years. The mortgage was arranged on an interest-only basis and the arrangement fee was added to the borrowing as a separate sub-account. The mortgage term ended on 1 February 2019.

During the term Mr and Mrs B got into financial difficulties and so additional interest was charged and fees were applied. TMB capitalised the arrears, fees, charges and additional interest onto the mortgage, and these balances were added as sub-accounts. However, due to the level of arrears at times, TMB also took legal action and it was granted possession orders more than once, but TMB has not followed the process through to the point of Mr and Mrs B being evicted and the property being sold to repay the debt.

Mr and Mrs B have made various complaints over the years, two of which Mr and Mrs B referred to this Service. We issued final decisions on those complaints in 2015 and 2017, covering issues relating to the capitalisation of arrears (resulting in sub-accounts being set up), how TMB behaved during their financial difficulties, and Mr and Mrs B's allegation of TMB acting fraudulently in relation to the mortgage.

Payments stopped being made to the mortgage in November 2018 and the balance payable at the end of the term was £670,869.61. Interest continued to be charged and, as Mr and Mrs B didn't make any payments, the interest was added to the amount owing.

In 2019 Mr and Mrs B said to TMB that they believed it had committed fraud and that there was no legal contract between it and them. As such, they said TMB could not proceed to repossess their home and evict them. They also raised issues about the documentation sent to the Land Registry and alleged a breach of data protection legislation. In addition, Mr and Mrs B alleged that TMB did not exist. TMB responded to the complaint on 10 September 2019. It explained that if Mr and Mrs B wanted to refer the complaint to this Service, they needed to do so within six months of the date of the letter.

In 2023 Mr and Mrs B again questioned the validity of the mortgage and repeated their allegation that it was fraudulent. They also complained that TMB had continued to pursue legal action and that its administration of the mortgage amounted to crimes against

humanity. Mr and Mrs B also said that they were unhappy they were not told that the mortgage account number had changed in 2013 and that the monthly payments had increased to the point they could not afford them. TMB responded to the complaint in August 2023. It only responded to the new complaint points Mr and Mrs B had raised and referred them back to the responses to previous complaints and the final decisions this Service had issued for the position on the repeated complaint issues.

On 4 April 2024 TMB wrote to Mr and Mrs B as it had identified an error in its administration of their account. This had meant that the arrears balances showing on some of the sub-accounts were higher than they should have been. TMB confirmed the total amount owing had always been correct, and that it had now corrected the arrears balances. The total amount owing of £935,743.09 was confirmed and this was broken down for each sub-account.

Mr and Mrs B complained about this and the existence of three of the sub-accounts. TMB responded in a letter of 4 June 2024. It again explained what it had done wrong administratively, and it sent Mr and Mrs B a cheque for £250 to compensate them for the mistake it had made. The offer was rejected as Mr and Mrs B said it was insulting. TMB did not respond to the matter of the sub-accounts as it had already done so in the past and that complaint had been considered by this Service.

Following further correspondence, Mr and Mrs B decided to refer their complaint to this Service. When they did, they set out all of their concerns about the mortgage and what TMB had done.

One of our Investigators reviewed our jurisdiction to consider the different aspects of the complaint that was referred to us on 30 October 2024. She confirmed that TMB had responded to Mr and Mrs B's concerns about the validity of the mortgage in 2019. As they hadn't referred the complaint within six months of the final response letter, we couldn't consider this aspect of their complaints. The Investigator concluded, in relation to Mr and Mrs B's complaint about TMB continuing to pursue legal action, that we could only consider that matter from the date of TMB's last response to the issue in August 2023.

As such, the Investigator explained that we could only consider Mr and Mrs B's complaint about the administrative error that had been responded to in TMB's final response letter of 4 June 2024 and the continued legal process from August 2023.

In addition, the Investigator confirmed that we would not be reconsidering any of the issues that had been dealt with in the 2015 and 2017 final decisions. It was also confirmed that if Mr and Mrs B had additional complaint points that they had not already raised with TMB, they would need to tell TMB about them before we could become involved.

Mr and Mrs B initially said that they didn't agree with the Investigator regarding which parts of their complaint we would be looking into. However, Mrs B subsequently confirmed that they understood there were parts of the complaint that we could not consider, and they agreed that the Investigator could move on to consider the merits of the remaining parts of the complaint.

On 3 February 2025 TMB wrote to Mr and Mrs B about a new complaint they had raised in relation to further matters relating to the court proceedings. It confirmed that the November 2024 hearing had been for Mr and Mrs B's application for the court to stop the eviction that had been planned. TMB explained that although it had told the court that it had suspended its action, Mr and Mrs B would need to ask for the hearing to be cancelled, as it related to their application, not TMB's.

TMB agreed to us adding that issue to this complaint. Mr and Mrs B subsequently told us that they had never made an application to the court appealing the eviction action.

The Investigator considered the merits of the parts of the complaint that fall within our jurisdiction. She didn't recommend that any of them be upheld.

Mr and Mrs B did not accept the Investigator's conclusions. They asked that the complaint be referred to an Ombudsman. They repeated their concerns about the mortgage not being a valid contract and that TMB no longer existed. While they acknowledged that we could not look at some complaint issues, they reiterated their concerns about some of those issues, with particular emphasis on the validity of the mortgage contract.

Subsequently, TMB made Mr and Mrs B an offer to resolve the overall situation with the mortgage. It offered to:

- Reduce the interest rate on the mortgage to zero.
- Not ask Mr and Mrs B to make any monthly payments.
- Only require the mortgage to be repaid upon the death of the last surviving borrower, or when the property was no longer used as their main residence.

In addition, as TMB considered Mr and Mrs B should seek independent financial advice before deciding to accept the offer, it said it would cover the costs of such advice up to £1,000 plus VAT. TMB highlighted that by accepting the offer, Mr and Mrs B would be acknowledging that all sums owed under all of the sub-accounts were due to the bank and secured by the mortgage deed.

The Investigator said that she considered the offer was fair and reasonable in the circumstances. Mr and Mrs B told us they were not willing to accept the offer. Essentially, this was due to the fact that they did not accept that they owed any money to TMB as they did not believe there was a valid contract between them.

As agreement could not be reached, the complaint was passed to me to consider. In light of Mr and Mrs B continued focus on matters that the Investigator had explained did not fall within our remit, or had already been considered and would not be again, I issued a decision setting out our jurisdiction in relation to the various complaint issues and confirmed that I would only be considering the merits of Mr and Mrs B's concerns about:

- the legal action taken by TMB since August 2023, including the recent correspondence they received in late 2024 and early 2025 about court hearings.
- The administrative error TMB made in relation to the arrears balances on the repayment sub-accounts, which it told Mr and Mrs B about in April 2024.

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 will start with the matter of the administrative error on the part of TMB relating to the repayment sub-accounts. I will not repeat the explanation of what happened and why, as this has been explained to Mr and Mrs B by both TMB and the Investigator. I also don't need to decide if TMB did anything wrong, as it has already acknowledged that it did. All I need to do is consider whether it needs to do anything more to put things right.

TMB has corrected the arrears balances on the affected sub-accounts and has amended how it administers those sub-accounts going forward so that it does not happen again. As

this fixes the problem, I consider TMB has acted appropriately and does not need to take any further action. TMB also paid Mr and Mrs B £250 for any upset or inconvenience the error caused them. Given that Mr and Mrs B don't appear to have been aware of the problem until TMB alerted them to it, I find no basis on which I can fairly require it to pay any more than that. If Mr and Mrs B did not cash the cheque they were sent, it will no longer be valid and they should ask TMB for a replacement if they now wish to accept that sum.

In relation to the matter of the legal action TMB has taken since August 2023, I note this was placed on hold in October 2024 when TMB was told a complaint had been referred to us.

While I know that Mr and Mrs B will not agree, as they maintain that the mortgage contract is not valid, I don't consider the continued legal action during the period between August 2023 and October 2024 was inappropriate or unfair. I say this as the mortgage had been due to be repaid in 2019 and had not been. No payments were being made during this period and the amount owing continued to rise. In addition, when TMB attempted to get Mr and Mrs B to interact about the debt, they did not do so.

I can understand that Mr and Mrs B found the continued correspondence during this time upsetting as it highlighted that TMB would be pursuing the legal process it had already started. However, as I have said above, the situation was such that it doing so was not unreasonable and TMB needed to make sure Mr and Mrs B were aware of what was and would be happening.

In relation to the letters that Mr and Mrs B received in the autumn of 2024 and early 2025, I don't consider that TMB or its solicitors did anything wrong. I say this as I have seen the letter that TMB's solicitors sent to the court to suspend the legal proceedings on 30 October 2024.

As neither TMB nor Mr and Mrs B attended the November 2024 hearing, the court rescheduled it for January 2025. The document sent to TMB's solicitors with the new hearing date stated that:

'IT IS ORDERED THAT:-

1. *The warrant of possession is suspended, pending the re-listing of the Defendant's application on 29th January 2025 ...'*

While Mr and Mrs B have said they have not made an application to the court, it would appear that the court believes they have. As the hearing that they have been contacted about is in relation to an application they've made, TMB would be unable to cancel that application or the resultant hearings that have been listed. As such, I can't conclude that TMB is responsible for any upset that these hearings being scheduled have caused Mr and Mrs B. I would suggest that they may wish to contact the court to look into the matter and potentially cancel the upcoming rescheduled hearing.

Since the complaint has been referred to us, Mr and Mrs B have provided new information about Mrs B's medical situation. It appears that this, along with the possibility of another court hearing, has prompted TMB to review Mr and Mrs B's mortgage and situation. It has made an offer, which I have detailed above, that effectively means that Mr and Mrs B will be able to remain in their home without the debt increasing or them having to make any payments to it. This offer has not been made in relation to the specific complaint points I have considered in this decision. However, the offer appears to be very fair in the circumstances and I can only suggest that Mr and Mrs B consider the offer again. If they wish to accept the offer, they will need to contact TMB directly.

My final decision

My final decision is that I do not uphold the complaint Mr and Mrs B brought to this Service.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs B to accept or reject my decision before 16 June 2025.

Derry Baxter
Ombudsman