

The complaint

This complaint is about a buy-to-let (BTL) mortgage held with The Mortgage Works (UK) Plc (hereafter referred to as TMW) by a limited company I'll call J. J's current director is Ms S. The essence of the complaint is that Ms S is unhappy with the conditions TMW imposed following the appointment of a second director (whom I'll refer to as Mr S) who was also a shareholder in J. When those conditions weren't met, TMW went on to appoint Law of Property Act (LPA) Receivers to manage the BTL mortgage. The Receivers were subsequently dis-instructed after Ms S resigned as a director of J but Ms S is unhappy about the actions of the Receivers in contacting J's tenants, and believes that the charges the Receivers added to the mortgage were unfair.

What happened

The broad circumstances of this complaint are known to both parties. I'm also aware that the investigator issued a detailed response to the complaint, a copy of which has been sent to both parties, and so I don't need to repeat all the details here. Our decisions are published, and it's important that I don't include any information that might result in J, Ms S or Mr S being identified.

Instead I'll give a brief summary of the key events, rounding the figures, and then focus on giving the reasons for my decision. If I don't mention something, it won't be because I've ignored it. It'll be because I didn't think it was material to the outcome of the complaint.

J took the mortgage out in 2020; it was an express condition of the mortgage offer that any change in directors or beneficial ownership of the company had TMW's consent before taking place. Mr S was appointed as a director of J on 25 May 2022. TMW says Ms S spoke to it on 7 June 2022, advising she was intending to add a new shareholder and was told to complete a change of directors/shareholders form. A Confirmation Statement made on 6 June 2022 and recorded at Companies House on 2 August 2022 show Ms S and Mr S as each having 50% of the shares in J (that is, ten of twenty allotted shares each) but that Mr S held no voting rights.

In September 2022, having apparently not received the completed application form, TMW wrote the first of what would become a steady number of letters advising J of the necessity for Mr S' status to be approved by TMW. An application was received in December 2022, but in July 2023, TMW cancelled it due to not having received the information it needed to grant its consent.

In October 2023, TMW resumed writing to J about the issue of Mr S having been made a director and shareholder without its consent. In April 2024, with the matter still unresolved, TMW decided to appoint LPA Receivers. The Receivers were instructed on 26 April 2024. On 6 May 2024, Mr S resigned as a director of J. A Confirmation Statement made on the same day recorded that the number of allotted shares had reverted to ten, all with voting rights. On 17 May 2024, TMW dis-instructed the Receivers, and control of the mortgage returned to J.

Ms S complained on J's behalf about the appointment of Receivers. TMW issued a final response largely rejecting the complaint. But it accepted that an email from Ms S in January 2024 hadn't received a reply, and paid £75 compensation. Ms S referred the complaint to us, saying that the actions of the Receivers had caused her tenant to move out she also notified us that the Receivers had added costs of around £1,750 to the mortgage balance.

The investigator who reviewed the complaint wasn't persuaded TMW had treated J unfairly; Ms S has asked for the case to be reviewed by an ombudsman.

What I've decided – and why

I'll start with some general observations. We're not the regulator of financial businesses, and we don't "police" their internal processes or how they operate generally. That's the job of the Financial Conduct Authority (FCA). We deal with individual disputes between businesses and their customers. In doing that, we work within the rules of the ombudsman service and the remit those rules give us. We don't replicate the work of the courts.

We're impartial, and we don't take either side's instructions on how we investigate a complaint. We conduct our investigations and reach our conclusions without interference from anyone else.

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The first point I need to make here is that the eligible complainant isn't the director Ms S. The eligible complainant here is the limited company J. Ms S presents the complaint on the company's behalf.

That means that when deciding how the complaint should fairly be settled, I can only take account of how TMW's acts and/or omissions have impacted on the company. It's important to remember that the mortgage, as a BTL is unregulated; it's a commercial transaction between two corporate entities. A business engaging in commercial activity, such as J is doing here, is held to a higher standard than a private individual borrowing money in their own right and is not covered by the regulatory protections that apply to residential mortgage borrowers.

My starting point here is that the mortgage contract J entered into with TMW in 2020 contained a clause requiring that TMW must consent to any proposed change in the directors and or ownership of the company before it can take effect. Ms S says the specific steps that TMW required J to take in order for consent to be granted aren't specified in the mortgage contract. That may be true, but I wouldn't expect them to be. Those are matters for a lender's policy, and will vary from time to time, to reflect changes in the legal and economic climate.

The steps that J needed to take for Mr S' appointment to be approved were a matter for TMW's commercial judgement; it's not my role to second guess or otherwise interfere with that. What I can do is assess the extent to which TMW made those requirements known to J, and whether J complied with them in a reasonable time. The requirements were for J to:

- pay TMW a fee of £150;
- record Mr S at Companies House as a person with significant influence or control (PSC) holding between 25% and 50% of the shares;

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- have Mr S complete a Deed of Guarantee having first taken independent legal advice.

Ms S has disputed the notion that Mr S should have been regarded as a PSC, as he had no voting rights. However, guidance on the GOV.UK website states that a PSC is an individual who meets *one or more* of the following conditions:

- an individual who holds more than 25% of the shares in the company;
- an individual who holds more than 25% of the voting rights in the company;
- an individual who holds the right to appoint or remove the majority of the board of directors of the company.

(The italics are mine.)

Very simply, Mr S only needed to meet any one of the three conditions listed above for TMW legitimately to regard him as a PSC, and he did, by virtue of the Confirmation Statement dated 6 June 2022 vesting ten out of twenty allotted shares in his name.

Nothing in the available evidence from either side in this dispute persuades me that TMW's four requirements for Mr S' appointment to be approved were met during what was close to a two-year period. That being the case, I'm persuaded its decision to appoint LPA Receivers was fair and reasonable.

I can't consider the fairness or otherwise of the actions the Receivers took, or the fees they charged for the work they carried out. The Receivers, once appointed, acted for J, not TMW. The rules of the Financial Ombudsman Service don't permit me to consider the acts or omissions of a party acting for a complaint.

It's regrettable that TMW failed to reply to Ms S' email of 7 January 2024. I don't think the omission materially changed how events unfolded, but it was an omission nonetheless for which I consider the £75 already paid to be fair compensation.

My final decision

My final decision is that that I don't uphold this complaint.

My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further consideration or discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask J to accept or reject my decision before 18 August 2025.

Jeff Parrington

Ombudsman