

The complaint

This complaint is about a buy-to-let (BTL) mortgage Mr C held until recently with West Bromwich Mortgage Company Limited (WBMC). The mortgaged property was a leasehold flat, which I'll refer to as Flat 2, in a block where Mr C later acquired another flat, mortgaged to a different lender. Where I refer to Mr C's other flat, it will be for context only; for the avoidance of ambiguity, this complaint deals solely with Flat 2, and WBMC's interest therein.

There are several aspects to the complaint. Our Investigator, in her view of the case, grouped the complaint under three broad headings, which I have summarised in my own words, as follows:

- the lending decision was irresponsible, and assisted in creating an unfair relationship between WBMC and Mr C;
- The valuation of Flat 2 for the mortgage was defective, and assisted in creating an unfair relationship between WBMC and Mr C; and
- WBMC's treatment of Mr C when he got into financial difficulties, and its handling of the eventual shortfall on sale of the mortgaged property, contributed to the unfairness of the relationship between it and Mr C.

Mr C is represented in his complaint by Mrs B.

What happened

By way of a provisional decision dated 12 August 2025, I set out my provisional conclusions on this complaint. The following is an extract from the provisional decision.

"The basic background to this complaint is well known to both parties so I won't repeat all of the details here. I'm also aware that the Investigator issued a detailed response to the complaint, a copy of which has been sent to both parties. Our decisions are published, and it's important that I don't include any information that might result in Mr C being identified.

Instead I'll give a summary of the key events leading up to the complaint, rounding the figures, and then focus on my decision and the reasons for it. No discourtesy's intended by that. It's a reflection of the informal service we provide, and 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. This approach is consistent with what our enabling legislation requires of me.

The BTL mortgage started in 2006, in the joint names of Mr C and his late wife, after they'd inherited Flat 2. The application was introduced to WBMC by a third-party intermediary. The application form showed intended borrowing of £90,000. The mortgage was to be interest-only, with the sale of the mortgaged property as the intended repayment vehicle.

WBMC arranged a valuation of Flat 2 by an independent firm of surveyors; the valuation came back at £150,000, and recorded the property as having a 990-year

lease. In June 2026, WBMC issued an offer for a mortgage of £115,500, plus fees. The offer recorded that WBMC was not responsible for any advice or information in relation to the mortgage. The mortgage went ahead. Around the same time, Mr C also took out a BTL mortgage with a different lender to acquire Flat 1, on the advice and recommendation of the same third-party intermediary.

Mr C had to stop working in 2010, due to ill health. Mrs C also had long-term health problems and sadly, in 2015, she died.

The last tenancy on Flat 1 ended in 2020, and that on Flat 2 in 2021. Mr C decided to sell the flats. As far as Flat 2 was concerned, it was established that the lease now only had around 50 years left to run. The selling agents estimated Flat 2's value at £89,000, and even with an extended lease, it would likely be worth between £110,000 and £115,000. Even the higher of those figures was less than Mr C owed WBMC on the mortgage.

Flat 2 was eventually handed back to WBMC and was sold in 2023, leaving a substantial shortfall. Mr C's opinion, presented here by Mrs B, is that the shortfall is the result of acts and omissions on the part of WBMC and the third-party intermediary; specifically the concealment from Mr C in 2006 of knowledge regarding financial and legal conditions relating to Flat 2. As a consequence, Mrs B argues that throughout the life of the mortgage on Flat 2, an unfair relationship existed between WBMC and Mr C pursuant to Section 140A of the Consumer Credit Act 1974.

Our Investigator didn't agree. Mrs B, on Mr C's behalf, has asked for the complaint to be reviewed by an Ombudsman.

What I've provisionally 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 don't replicate the work of the courts. Whilst statutory, our scheme is intended to provide swift outcomes to disputes between business and the customers, with a minimum of formality. 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. But in doing so, we have to work within the rules of the ombudsman service, which include our jurisdiction.

The material we've received from Mrs B isn't confined to allegations made against WBMC directly; Mr C's dissatisfaction is with all of the parties involved in the transaction, and indeed in the transaction to purchase Flat 1. First of all, I think it would be helpful if I explain that my remit does not extend to any acts or alleged omissions on the part of the third-party intermediary.

Advice on taking out buy-to-let mortgages is an unregulated activity and therefore falls outside the remit of the Financial Ombudsman Service. That aside, the intermediary is entirely independent and separate from WBMC. It's my understanding that Mrs B, on Mr C's behalf, is pursuing a complaint with the intermediary about its role in the mortgage being taken out on Flat 2. The outcome of that complaint, if indeed it is being pursued, is not relevant to what I am

considering here, which is whether anything WBMC did or failed to do resulted in an unfair relationship being created and/or perpetuated.

I'll address the issue over WBMC's liability or otherwise for the valuation, which was also carried out by an independent third party, later in this decision.

The position regarding the conveyancing solicitors is a little more nuanced, as the solicitors typically have two clients, the borrower and the lender. There are two discrete roles the solicitors carry out. Where, as here, no purchase is involved, for the borrower the solicitors ensure that the property has good title, and there are no defects, errors, restrictions, covenants or hidden claims over the title or occupiers' rights. They go through the survey report with their client to ensure that the borrower is aware of any issues with the property before they commit to the transaction. In all of that, the solicitors are acting as the borrower's agent.

For the lender, the solicitors have to ensure that the title is suitable security for the mortgage. They will arrange signature of the mortgage deed and prepare the report on title for the lender, transfer the funds over on completion and register the lender's charge. All lenders maintain their own panels of solicitors who they are prepared to instruct to act for them on a mortgage transaction. If the buyer instructs a solicitor who is on the lender's panel, then that lender can act for both purchaser and lender.

It looks here as though the same solicitors acted for both parties, simultaneously, but separately. I've looked very carefully through the complaint and with one exception, which I'll get to shortly, the complaint being made against the solicitors relates to alleged acts and/or omissions in its capacity as Mr C's agent. Mr C has made a separate complaint about the conduct of the solicitors and Mrs B has sent us details of the outcome of that. There's nothing further I need to say about that.

The only allegation made by Mr C here that I consider relates to the solicitor acting as WBMC's agent is the alleged failure to identify the correct duration of the lease and check whether this would render the property unsuitable as security for the proposed mortgage. Thus far, we haven't looked properly into whether the solicitors did that, and if they did, what impact awareness of the lease's true duration would have had on WBMC decision to lend. I will be addressing that point in this decision.

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

Where the evidence is incomplete and/or contradictory, I'm required to reach my decision on the basis of what I consider is most likely to have happened, on the balance of probabilities. That's broadly the same test used by the courts in civil cases.

It's for us, rather than the parties to the dispute, to decide what evidence we need to reach a fair outcome. It's also for us to assess the reliability of evidence, from both sides, and decide how much weight should be attached to it. When doing that, we don't just consider individual pieces of evidence in isolation. We consider everything together to form a broader opinion on the whole picture.

I've taken all of that into account. Having done so, here are my findings on what I consider to be the main elements of the complaint, in the same order the Investigator used.

The lending decision was irresponsible, and assisted in creating an unfair relationship between WBMC and Mr C

It seems to me that, at its core, the case for an unfair relationship having been created in the first place is based on a belief on Mr C's part that WBMC should have done more in the way of due diligence around the viability of Mr C's plans to be a BTL landlord generally, as well as the viability of Flat 2 specifically. The inference is that had it done so, Mr C would not have been allowed to borrow the money.

If that is the case, then I'm afraid I must disappoint Mr C. It wasn't WBMC's responsibility to conduct due diligence on the commercial venture he was seeking to set up. That was a matter for him, and he clearly had his own advisors, in the form of the third-party intermediary, to help him do that.

The due diligence that WBMC was required to do was into Mr C's ability to afford the loan repayments. As a starting point, affordability of a BTL mortgage is typically linked to likely rental income from the intended property. That aside, this was a "self-certified" mortgage application; that is, one where the lender accepts in good faith what the applicant has told it about their income. Under what was considered standard business practice at the time, unless there was overwhelming evidence at the time to doubt the veracity of what it was being told (and nothing I've seen gives me reason to think that was the case here) a lender could reasonably and fairly do that.

Here, WBMC was asked to consider requests for different amounts, ranging from £90,000 to £127,000, before eventually agreeing to lend £115,500. Mrs B says that an initial decision to decline £90,000 (not revealed to Mr C at the time) undermines the eventual decision to agree a higher amount, but I see nothing sinister in that. Mortgage under-writing is not a binary process where one decision automatically precludes another being reached.

As far as the repayment strategy was concerned, the information on the application form was that the mortgage would be repaid by selling the mortgaged property. At the time this application was under consideration, there was nothing untoward about that, in particular given this was a BTL property and not the borrowers' home. Based on what it knew at the time, there was no reason for the stated strategy to give WBMC cause for concern.

It's not my role to second guess a lender's commercial judgement in connection with unregulated commercial borrowing, or to substitute my own (or Mr C's judgement) in place of that of WBMC. Generally speaking though, the assessment WBMC made doesn't strike me as unreasonable, or lacking in care to the extent that lending the money would have created an unfair relationship. In my view, this element of the complaint appears to rely on hindsight, given the adverse changes to Mr C's circumstances that happened later.

That bring me on to the question of the lease. WBMC's understanding at the time of the application was that the lease on Flat 2 had 990 years to run. It's now been revealed that the lease in fact had less than 70 years left to run, and that information was known to the solicitors at the time.

As I set out earlier, the duration of the lease went to the suitability of the property as security for the mortgage, so checking this with WBMC was something the solicitor was required to do as WBMC's agent.

The available evidence is limited, but it seems more likely than not that this didn't happen. So I've considered how things might have turned out differently if the solicitor had acted as it should have by alerting WBMC to the shortness of the lease. WBMC has provided an extract from its lending policy which confirms that its requirements at the time were that a lease must have minimum of 50 years left at the start of a mortgage and a minimum of 30 years left at the end.

The mortgage here had a term of 22 years. I said earlier that the duration of the lease at the time of the mortgage starting was under 70 years; in fact it has been variously reported as being 69 years (according to Mrs B on Mr C's behalf) or 66 years (according to WBMC). Even if I give Mr C the benefit of the doubt by taking the shorter of those as being true, that means the lease would have met both criteria for being acceptable security. It had more than 50 years to run at the start and would have had more than 30 years left at the end.

If WBMC had known the truth about the duration of the lease, then in isolation that might have given it reason to check with the surveyor whether and to what extent that affected the stated valuation of £150,000. But WBMC has also made the point that it had been told that Mr C, as freeholder, had control over the lease and was intending to extend it. So I don't think anything turns on that.

The conclusion I have to draw is that if WBMC had been put on notice about the duration of the lease in 2006, as it clearly should have been, it would in all probability still have made the same lending decision. Accordingly, Mr C doesn't seem to have suffered harm, financially or otherwise, as a result of the solicitors not informing WBMC about the lease. The outcome if they had would have been the same; that is, that WBMC made a reasonable lending decision that was consistent with its lending policy, and as consequence, did not create an unfair relationship

The valuation of Flat 2 for the mortgage was defective, and assisted in creating an unfair relationship between WBMC and Mr C

The allegation that the valuation on Flat 2 for mortgage purposes was too high isn't, in itself, a matter for WBMC to answer for, or me to consider. Where, as here, a lender has instructed a suitably-qualified valuer to carry out a valuation, it is entitled to rely on the valuer's opinion when deciding whether and how much to lend on the security of a property. We've explained that to Mr C in a previous complaint, but here, I'm viewing it in a different context; that is, whether any alleged shortcoming in the valuation contributed to an unfair relationship forming between WBMC and Mr C.

Whilst the context may be different, I'm afraid the outcome is the same. By instructing a suitably-qualified valuer, WBMC acted fairly and reasonably and by doing so met its duty to its borrower. WBMC wasn't aware of the discrepancy over the duration of the lease, and if it had been, for the reasons I've outlined above, I don't think WBMC had an obligation to ask the valuer to reconsider his valuation in that light. Accepting the valuer's opinion and relying on it when deciding to lend didn't, therefore, create an unfair relationship or in any way contribute to one being created.

Lastly on this point, and without wishing to prejudice any dispute Mr C may have raised, or may be considering raising, against the valuer, it's well established in law that in the case of a BTL property, the valuer instructed by the lender owes no duty to the borrower.

WBMC's treatment of Mr C when he got into financial difficulties, and its handling of the eventual shortfall on sale, contributed to the unfairness of the relationship between it and Mr C.

As with the point about the valuation, we've looked into this before. In an earlier complaint about how WBMC treated Mr C when he was in financial difficulties, we found some shortcomings in the fairness of WBMC's treatment of Mr C. At the same time, however, we concluded in the earlier complaint that WBMC's final response of February 2024 provided fair redress.

When I view that in the context of an unfair relationship, it follows that any potential unfairness in the relationship caused by WBMC's treatment of Mr C over his financial difficulties and the shortfall sale of Flat 2, ended when WBMC provided a fair remedy in its final response in February 2024

I appreciate how strongly Mr C feels; I'm not unsympathetic towards his current situation and the experiences he has gone through in the years since he entered into the BTL mortgage on Flat 2, and the other transactions too. It seems to me that Mr C's difficulties arise largely from events that happened after he took the mortgage out. He clearly feels he should have been better advised about the possible pitfalls and risks of becoming a BTL landlord, but it wasn't WBMC's role to provide that.

After considering everything that both parties have said and provided, I'm not persuaded that the circumstances in which the BTL mortgage on Flat 2 was lent and then later operated created a relationship between WBMS and Mr C that was unfair, or that there was any ongoing unfairness in that relationship that WBMC is under an obligation to remedy."

Both parties have replied to the provisional decision.

WBMC confirmed it had nothing further to add. Mrs B's response to the provisional decision was more detailed, and it consisted of comments on the underlying dispute with WBMC (which I will set out and address later in this decision) and further extensive comments about the actions of the solicitors, the surveyor and the third-party intermediary.

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.

With WBMC making no further comment, I can focus on Mrs B's substantive response to the provisional decision. This was initially sent by way of an email dated 13 August 2025, albeit we've had further submissions to supplement it since then. I'll take the same approach here as I did in the provisional decision, of summarising the more relevant points in my own words (there's a fair degree of overlap and circularity in the arguments as presented) then giving my findings and the reasons for them. 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, or because I have addressed it elsewhere.

I overlooked key elements of the unfair relationship

Mrs B says the Unfair Relationships Act (sic) is about the imbalance in power and knowledge between Mr C as an experienced borrower and the more experienced parties involved; i.e. the lender, the solicitors and the broker

There is no Unfair Relationships Act as such; rather, the principles around unfair relationships are a provision of the Consumer Credit Act 1974, specifically S.140A. As far as this complaint is concerned, my remit is confined to the relationship between Mr C and WBMC as lender; the latter extending to include the solicitors in respect of activities conducted on behalf of WBMC. Here, only one of the disputed acts or omissions by the solicitors meets that qualification; that is, the apparent failure to verify the duration of the lease. Every other disputed act or omission on the part of the solicitors was carried out as Mr C's agent.

Property Ownership

Mrs B points out that Flat 2 was inherited solely by Mr C. Not her and Mr C together. Mrs B is quite right and I apologise for that. Whilst it's a correction that I'm happy to make, I'm satisfied it has no material bearing on the outcome of this case in any way.

Initial Mortgage

Mrs B points out that the abortive mortgage application for £90,000 was on Flat 1, not Flat 2. Mrs B is quite right and I apologise for that. Whilst it's a correction that I'm happy to make, I'm satisfied it has no material bearing on the outcome of this case in any way.

Mortgage Type

The abortive application on Flat 2 was residential rather than BTL. Mrs B is quite right and I apologise for that. Whilst it's a correction that I'm happy to make, I'm satisfied it has no material bearing on the outcome of this case in any way. The decision to buy Flat 1 with a mortgage from a different lender was made in reliance on advice from the third-party intermediary, and not from anything WBMC said or didn't say about the application it received not succeeding. WBMC was under no obligation to disclose the reason why it chose not to make an offer of mortgage on Flat 1.

Sale of Flat 2

Mrs B points out that this took place in December 2024, not 2023. Mrs B is quite right and I apologise for that. Whilst it's a correction that I'm happy to make, I'm satisfied it has no material bearing on the outcome of this case in any way.

Errors regarding the solicitors' role and factual evidence

Mrs B says the solicitor received a commission payment from WBMC which is in breach of Law Society rules. Mrs B has previously said that the third-party intermediary received a hidden commission payment (it wasn't hidden – it was set out in the mortgage offer) but as far as I can tell this is the first mention of a similar allegation being made in respect of the solicitors. If Mrs B believes a breach of Law Society rules occurred that gave rise to a conflict of interest on the part of the solicitor, that's a matter to take up with the Law Society. It's not something for me to consider here.

Mrs B says my description of the mortgage on Flat 2 as self-certified was inaccurate. If that's the case, then again, I'm happy to accept the correction and apologise. But I did also say first that the primary assessment of affordability on BTL applications is typically the anticipated rental income. WBMC was entitled to rely on the information provided by the surveyor in that respect. That was the rental income estimate of £550 given by the surveyor in the valuation dated 19 June 2006. Whether or not that estimate turned out to be accurate or not, WBMC was allowed to rely on it when deciding to lend.

As to Mrs B's point about Mr C's overall income not being enough to support two mortgages, WBMC wasn't providing two mortgages. It accepted the application on Flat 2 having declined to lend on Flat 1. The eventual mortgage on Flat 1 was arranged with a different lender. Even if WBMC could have known about the transaction on Flat 1 going ahead with another lender, that wouldn't affect its affordability assessment on Flat 2.

The Solicitors' failures

I've read Mrs B's comments in this section very carefully, and I'm afraid I must disagree with her understanding of which alleged acts or omissions on the solicitors' part were conducted as agent for WBMS. In order that there should be no ambiguity, I will repeat what I said earlier. The only accusation levelled against the solicitors here that WBMC could be held responsible for is the verification or otherwise of the duration of the lease on Flat 2. That's because it was acting on behalf of WBMC for that task. For everything else that Mrs B references here (the deed of assignment, not extending the lease, notifying Mr C of the reason for the application on Flat 1 being rejected) the solicitors would have been acting for Mr C.

Withholding information

Mrs B says I've ignored the third-party intermediary's file notes from May 2006 that reveal long discussions between the intermediary and the solicitors about difficulties with the transactions. I've not ignored those notes; rather it is whilst a dialogue between two independent parties that didn't include WBMC might be relevant to complaints brought against those parties, it won't impact on the outcome of a complaint against WBMC.

Errors regarding financial suffering

I'm truly sorry if Mr C and/or Mrs B felt insulted by my expressing the opinion that Mr C didn't appear to have suffered, financially or otherwise. But there's a context to what I was saying there. I was referring specifically to the extent to which the solicitors' failure to tell WBMC about the duration of the lease changed what happened next. I was explaining why I thought it had made no difference to what happened next, and Mrs B's further comments in response to the provisional decision haven't changed that.

Other matters

In relation to Mrs B's email of 15 August 2025, when I asked the Investigator to request details of the separate complaint made about the solicitors. It was for background and context only, to help me understand what subject matter that complaint had, and had not, covered. When I referred to available evidence being limited, I was talking solely about evidence pertaining to whether or not the solicitors had told WBMC about the duration of the lease. That is completely unrelated to my request for information about the complaint against the solicitors.

My final decision

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

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 23 September 2025.

Jeff Parrington

Ombudsman