

## The complaint

Mr and Mrs B's complaint is that The Mortgage Works (UK) Plc (TMW) unfairly declined their request to port (transfer) their buy-to-let (BTL) mortgage interest rate product onto a new mortgage on another property. As a result, Mr and Mrs B will have to pay an early repayment charge (ERC) of £10,000 when they repay the mortgage.

To settle the complaint Mr and Mrs B would like TMW to waive the ERC.

Mr B has dealt with the complaint throughout, with the consent of Mrs B.

## What happened

I don't need to set out the full background to the complaint. This is because the history of the matter is set out in the correspondence between the parties and our service, so there is no need for me to repeat the details here. In addition, our decisions are published, so it's important I don't include any information that might lead to Mr and Mrs B being identified. So for these reasons, I will instead concentrate on giving a brief summary of the complaint, followed by the reasons for my decision.

The events giving rise to this complaint took place in the spring of 2025. Mr and Mrs B had a BTL mortgage with TMW taken out in early 2024. The mortgage was for £204,400 over a term of 20 years on an interest-only basis, secured on a property I will refer to as 40HS. It was on an interest rate of 5.19% which was fixed until 31 March 2029.

The mortgage terms and conditions state that if the mortgage was redeemed before that date, an ERC was payable, on a tapering basis, starting at 5% if it was repaid before 31 March 2026, decreasing by 1% each year, with an ERC of 2% in the final year of the fixed rate.

Mr B has explained that the tenants at 40HS failed to pay the rent, and left without notice, owing several thousands pounds in outstanding rent, and leaving the property in a poor state of repair. Mr and Mrs B decided to sell 40HS, and apply for a new mortgage with TMW on another property they owned, 40aHS, porting the five-year interest rate property onto the new mortgage. 40aHS was mortgaged to another lender at the time. Mr and Mrs B also wanted to transfer a garage which was on the title of 40HS onto the title to 40aHS, and rent out the garage.

After considering the application, made through Mr and Mrs B's broker, TMW declined it. TMW explained to the broker that Mr B had a high level of unsecured borrowing relative to income. In addition, although £50,000 equity would be released on sale of 40HS, this would only be available after completion and so could not be taken into account. TMW said those funds could be used for other purposes. TMW also noted that, due to 40HS being sold, there'd be a reduction in rental income. TMW also clarified that £20,000 apparently due to be paid to Mr and Mrs B following a court case wasn't something that could be taken into consideration either.

The broker asked TMW to reconsider, but after doing so, TMW's decision was unchanged. TMW was concerned at the level of unsecured debt and thought the borrowing was unsustainable. Mr and Mrs B complained, but TMW didn't uphold the complaint, reiterating its reasons for declining the application.

Dissatisfied with TMW's response, Mr and Mrs B brought their complaint to our service. An Investigator looked at what had happened, but didn't think TMW had acted unreasonably.

Mr B asked for an Ombudsman to review the Investigator's findings. He's made some further points, which I summarise below:

- he accepts that TMW has acted within the mortgage terms and conditions, and has done nothing illegal;
- it is the morality of the situation he has issues with, and that, in a computer-run world, humanity is removed from the situation, along with reason and understanding;
- his unsecured debt was due to the tenants not paying their rent, and other factors beyond his control;
- tenants have more protection under the law than landlords;
- he couldn't sell the property with tenants in place;
- new tax laws make being a landlord less affordable or desirable;
- lending money is about risk, but he presented TMW with a situation in which its risk was reduced and he and Mrs B would have been better off.

As a result, Mr B believes it is unfair and unethical for TMW to seek to apply the ERC, which he describes as a "penalty".

### **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.

Having done so, I am sorry to disappoint Mr and Mrs B, but I've reached the same conclusion as the Investigator, for largely the same reasons.

First of all, a porting application isn't simply transferring a mortgage from one property to another; that isn't something that can be done. Instead, an application has to be made for a new mortgage, and as part of that, a request can be made for an existing interest rate product to be transferred onto the new mortgage on completion, and on redemption of the existing mortgage.

Given this was an application for a new mortgage, TMW was entitled to consider it in line with its lending criteria and underwriting guidelines. I will explain here that it's not my role to make a lending decision on this application, or to substitute my own lending decision for that reached by TMW. Rather, I am required to decide whether TMW has acted fairly and reasonably in all the circumstances.

TMW is entitled to set its own lending criteria. Decisions that TMW makes in respect of what those criteria are, its attitude to risk involved in this particular lending assessment, and

whether it should lend and if so, on what terms are clearly discretionary matters for its own commercial judgement that I would not interfere with.

I'm satisfied that TMW reached its lending decision fairly, after taking into account all relevant factors, including exposure to risk, and the specific circumstances of this application. Overall, I'm satisfied that TMW gave fair consideration to this application and so legitimately exercised its commercial judgement when declining the application. This means that there is no basis upon which I can find TMW acted unfairly.

In reaching this decision I've noted what Mr B has said about the sale proceeds of £50,000 on sale of 40HS. However, future sale proceeds don't fall within the parameters of acceptable sources of funds for a mortgage application. Likewise, a future possible payment arising out of legal proceedings is also not something that falls within TMW's acceptable criteria for a source of funds.

Far from this being a 'computer says no' exercise determined by an algorithm, I can see from TMW's notes that careful consideration was given by underwriters to Mr B's application at every stage, and that it was reconsidered on appeal. In the circumstances, I'm unable to conclude that TMW failed to give fair consideration to the application. It's up to TMW to determine its exposure to risk, and in this case, it decided the risk was too great to enable the application to proceed.

Therefore when the mortgage is redeemed the ERC will be payable. This is not, as Mr B says, a "penalty". In legal terms, a penalty is a contractual term which applies where there is a breach of contract. But where a mortgage is repaid within a fixed-rate period, there is no breach of contract, as the mortgage contract always allows the borrower to repay the loan at any time. The ERC is a contractual term to which Mr and Mrs B (who are commercial borrowers) agreed to be bound, in return for being offered a mortgage at a fixed interest rate.

I do sympathise with Mr and Mrs B. They incurred financial loss due to the actions of their tenants, and they feel the odds are stacked against landlords in relation both to tenants' rights and changes in the way landlords are taxed. However, in all the circumstances of this case, I can't find any basis on which it would be fair or reasonable to expect TMW to waive the ERC when the mortgage is redeemed.

### **My final decision**

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

This final decision concludes the Financial Ombudsman Service's review of this complaint. This means that we are unable to consider the complaint any further, nor enter into any discussion about it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs B to accept or reject my decision before 17 February 2026.

Jan O'Leary  
**Ombudsman**