

## **The complaint**

This complaint is about an unregulated buy-to-let (BTL) mortgage that Mr C took out in 2006 with The Mortgage Business Plc (TMB). The complaint originates from Mr C's purchase of a new-build flat from a developer. There are several strands to Mr C's complaint, and his dissatisfaction is with several of the parties he dealt with in the transaction.

As far as TMB is concerned, Mr C's main areas of concern are that he thinks the mortgaged property was over-valued by TMB's appointed valuer, and that TMB provided a mortgage that was only available for those with at least a 15% deposit, which he had not provided. He only put in a deposit around £7,000 (approximately 4.5%) with a further £15,000 contribution being put in from another source that he says he was unaware of at the time.

## **What happened**

The mortgage started in 2006; Mr C agreed the purchase with a developer I'll refer to as D, and applied for the mortgage with TMB through a broker firm I'll refer to as T. A firm of solicitors I'll refer to as B acted for Mr C and TMB in the transaction. TMB instructed a surveyor who valued the property at £154,950. In August 2006, TMB issued an offer for £131,705, plus fees. The mortgage completed in November 2006. Mr C says he was never given any choice about who the broker, lender, solicitor or valuer should be.

Mr C raised the complaint in 2025, after revisiting the paperwork from the time in more detail. The essence of Mr C's case is that he believed he'd agreed a purchase price of £139,950 with D, with his own deposit being £6,997.50. On examining the completion statement, he found that the price had been recorded as £154,950, with a further £15,000 having been contributed from a source I'll refer to as R.

Mr C says he knew nothing about this. He says that he (and others who also bought properties in the development) have been the victims of fraudulent misrepresentation. As far as TMB is concerned, he believes it overvalued the property, and provided a mortgage whose LTV was higher than the permitted maximum of 85% stated in the offer.

The case is with me now because our Investigator didn't recommend the complaint be upheld.

## **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.

The first point to make is that TMB's role here was solely that of lender. TMB played no part in the terms of the agreement reached between Mr C and D for the acquisition of the property. Neither did TMB have any input into, or influence over, the choice of broker firm or conveyancing solicitor.

In the case of the broker firm, it's my understanding that T was recommended to Mr C by D, and he accepted that recommendation. T in turn recommended TMB as lender, and again,

Mr C appears to have gone along with that. Any concerns or dissatisfaction Mr C may have with the conduct of those parties in the transaction are not TMB's responsibility and therefore not for me to address here.

As to the conveyancing solicitor, in a purchase and mortgage transaction, solicitors have two clients, the purchaser and the lender. There are two discrete roles the solicitors carry out. For the purchaser, the solicitors ensure that the property has good title, and there are no defects, errors, restrictions or hidden claims over the title or occupiers' rights. They raise enquiries with the seller's solicitors about the property, including fixtures and fittings, neighbour disputes, boundary maintenance and other relevant matters. They go through the survey report with their client to ensure that the purchaser is aware of any issues with the property before they are committed to purchasing it.

The solicitors liaise with the seller's solicitors and the estate agents in relation to when contracts will be exchanged and completion will take place. They arrange for the deposit to be supplied by the purchaser, and transfer it over on exchange of contracts. They arrange for documents to be signed and prepared for completion. They prepare the completion statement, showing how much the entire transaction costs, including the amount of any fees and Stamp Duty Land Tax. After completion, they will register the purchaser's title to the property and ensure all fees and taxes are paid. In all of that, the solicitors are acting as the purchasers' 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, prepare the report on title for the lender, obtain any undertakings (binding promises) from the seller's solicitors to safeguard the lender's position, they'll 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 solicitor can act for both purchaser and lender.

Here, the selection of B to act for Mr C appears to have already been made by the time the application was submitted to TMB. As B was a firm already on TMB's panel of approved solicitors, it simply agreed to instruct B for its own legal work in the transaction.

The only external party in the transaction that was selected by TMB was the surveyor who valued the proposed property, and I address that next.

The lending relationship between Mr C and TMB is ongoing. As such, and while the valuation, a property risk assessment (PRA), was carried out in 2006, I can consider whether it resulted in a relationship between Mr C and TMB that's currently unfair or not. On balance, however, and having considered all of the available evidence from the time, I'm not persuaded that the PRA in 2006, or TMB's actions following it, created an unfair relationship.

Lenders aren't experts in property; that's why they seek the professional opinion of someone who is. Typically that means commissioning a valuation from a member of the Royal Institution of Chartered Surveyors. TMB did that in Mr C's case. TMB was reasonably entitled to rely on the opinion of the suitably-qualified professional who conducted the PRA. The purpose of the PRA was solely to advise TMB whether the property was good security for the lending Mr C wanted to take. It wasn't to advise Mr C about what the property was worth or the wisdom of taking out a loan secured on it. That was a decision for him, as someone proposing to run a property rental business, to make. The PRA found that the property was good security and so TMB accepted Mr C's application. I'm satisfied it was reasonable for it to have made that decision based on the opinion of its own expert.

I haven't considered whether the PRA was carried out negligently; I have no remit to do that. But I'm satisfied there was nothing that ought to have led TMB to question whether it could reasonably rely on it at the time when deciding whether to lend.

That leaves the point about the purchase price, loan-to-value (LTV) ratio and the source of the additional £15,000 deposit. Mr C believes TMB knew about this and shouldn't have lent the money.

Mr C says the agreed price of the property was £139,950; with the proposed mortgage (before fees) of £131,705, that would result in an LTV of just over 94%. In support of that, Mr C has provided a copy of a letter D sent him in November 2005, acknowledging receipt of his initial down payment.

TMB's position is that the purchase price was £154,950, which would result in an LTV of 85%, the maximum allowed for in TMB's lending policy at the time. In support of that, TMB has provided a copy of the title register at HM Land Registry which shows the recorded purchase price as being £154,950. It has also provided a copy of the mortgage application form submitted to it in 2006. This document, which bears Mr C's signature, gives the purchase price as £154,950. I should also add that TMB's position is further supported by the completion statement issued by B in November 2006, and supplied to us by Mr C.

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 can't know, and won't speculate on, what was discussed and arranged between Mr C and D when the agreement to proceed with the transaction was reached. That said, I don't believe I need to. Overall, I find the evidence supporting a purchase price of £154,950 more persuasive than that supporting the lower figure Mr C has cited. It seems more likely than not, based on the available evidence, that this was TMB's understanding at the time. Taking this into account, and in combination with the PRA confirming a valuation of £154,950, TMB would, in my view, have had no reason to have any qualms about the property's suitability as security for the mortgage being requested. If the payment from R amounted to a developer's incentive or similar, that's not unusual when purchasing new build property. The PRA – and TMB's decision to lend – were based on what the property was actually worth at the time, not on what Mr C paid for it net of any incentive.

As far as the amount and source(s) of the deposit, TMB would have been entirely reliant on the information supplied to it by T, as Mr C's agent, when the application was submitted. Generally a lender would want to know about any incentives. But if TMB wasn't told that £15,000 was coming from R - the application form is silent on the point - then that fact cannot have figured in its lending decision. A lender is generally entitled to rely on what it's told unless there's good reason to question it, and I've not seen anything to suggest TMB ought to have had such reasons here.

Even if TMB was told - which seems unlikely to me, based on the evidence - then the reasonable conclusion to reach is that the information was of insufficient concern to cause TMB to decline the application. If that was the case, then it was a legitimate risk assessment for TMB to make. Ultimately, I'm satisfied that Mr C knew what he was paying for the

property, and knew what he was borrowing to support that purchase. Whether that was a sound basis on which to start a property rental business was a decision for him – and not one for TMB to make, or to advise him on.

Putting all of the above together, I can't find that the PRA or TMB's decision to grant the mortgage in 2006 led to a relationship which is currently unfair between Mr C and TMB.

### **My final decision**

My final decision is that I do not uphold this complaint or make any order or award against The Mortgage Business Plc.

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 February 2026.

Jeff Parrington

**Ombudsman**