

## The complaint

This complaint's about a Jasper-branded buy-to-let (BTL) mortgage Mr W holds with Topaz Finance Limited. Mr W is unhappy that Jasper didn't tell him he was accumulating arrears after his monthly payment went up but he didn't change his standing order. Mr W says the resulting entries on his credit file have caused him problems getting new interest rate deals on other BTL mortgages that he holds.

## What happened

By way of a provisional decision dated 8 January 2024, I set out my provisional conclusions on this complaint. The following is an extract from the provisional decision.

"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 W 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. If I don't mention something, it won't be because I've ignored it; rather, it'll be because I didn't think it was material to the outcome of the complaint.

The mortgage with Jasper is one of a portfolio of BTL mortgages held by Mr W. Some years ago, Mr W switched to making the monthly payments on it by standing order rather than direct debit. Between December 2021 and September 2022, the monthly instalment was increased as a result of a series of interest rate rises, but Mr W didn't alter his standing order instruction. Over time, a shortfall began to accumulate until, in January 2023, it reached the equivalent of one month's payment. Jasper wrote to tell Mr W about the shortfall, and he immediately repaid it and reverted to paying by direct debit.

Mr W complained, saying Jasper should have alerted him immediately when the first underpayment was made. In its initial response, Kasper offered Mr W £100 and proposed to remove the adverse information it had recorded on Mr W's credit file. It then changed its mind, and issued a follow-up final response saying that as it had informed him of each rate change and that he needed to amend the payment himself, it wouldn't be removing the adverse entry from his credit file.

Jasper left the offer of £100 available for Mr W to accept, but he wasn't happy and referred his complaint to us, saying Jasper should not only remove the adverse data from his credit file and reimburse him the extra interest he was now facing on his other BTLs because he couldn't get new deals on them. Our investigator upheld the complaint in part. She agreed that Jasper should remove the adverse data from Mr W's credit file, but didn't recommend it cover the additional interest on his other BTLs, because she couldn't be sure the adverse data was the sole reason Mr W hadn't been able to agree new deals.

Both parties rejected the investigator's recommendation and asked for the case 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.

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, and the remit those rules give us.

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done, the conclusions I've reached are different from the investigator's. So I've set them out in this provisional decision so that both parties can comment before I finalise them.

The starting point here is that when lenders record data on borrowers' payment records with credit reference agencies, that data must be factually accurate; it doesn't reflect context or circumstance. It's intended to report *what* happened, not *why* it happened. Provided it is factually accurate, then the only reason for ordering a lender to remove such data is if a material error or omission on the lender's part caused it to be recorded.

In Mr W's case, there's no suggestion the adverse data was anything other than factually accurate; his payments were short following the rate changes, resulting in the account slipping into one month's arrears by January 2023. That means that for Mr W's claim to succeed, and for me to uphold his complaint, it has to be because a material error or omission on Jasper's part caused the adverse data to be recorded.

Mr W thinks that's the case; he believes Jasper not telling him immediately the first time his monthly payment wasn't for the full amount, instead of waiting until he'd accumulated a month's worth of arrears, was an omission. However, I'm afraid that's not the case; rather it's standard industry practice.

To put some context around that, it's important to remember that a BTL mortgage isn't afforded the same degree of consumer protection given to residential mortgages, which are regulated by the FCA. But even in the case of regulated mortgages, the regulations only require lenders to contact borrowers about arrears once the shortfall has reached the equivalent of one month's arrears. So even if I were to hold Jasper to the higher standard required by regulation, I still could not reasonably find that it had treated Mr W unfairly by waiting until he was the equivalent of one month in arrears.

Lenders still have to treat holders of BTL mortgages fairly, but the test of what is fair is not quite as onerous when the customers is running a business themselves, as Mr W is doing here. As a businessman, he is responsible for monitoring and controlling his business outgoings, which in this case are his monthly mortgage payments. Every time his mortgage was subject to a rate change during the period he was paying by standing order, Jasper wrote to tell Mr W what the new payment was, *and* told him he needed to amend his instruction.

In my view, that should have been enough for Mr W to understand what he needed to do. Insofar as he didn't do what he needed to do, I can't fairly conclude that there's any valid reason for me to order Jasper to remove the adverse but factually accurate data from his credit file. It also follows that I don't consider it fair that should order Jasper to pay Mr W the other elements of redress he is seeking."

I gave the parties two weeks to comment on the provisional decision; both have done so.

Jasper accepted the provisional decision without further comment. Mr W made further representations, which I will address next.

### **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 considered afresh everything that both parties have said and provided, I'm not persuaded to depart from my provisional conclusions. But I will address the points Mr W made in his email of 22 January 2024.

Owning properties and renting them out for income, as opposed to living in them, is a commercial activity; so even if Mr W doesn't think of it as a business, I consider it appropriate to view it as such when deciding what is a fair and reasonable outcome. That aside, there remains the general principle that whilst a lender may *administer* a mortgage account, it is the borrower's responsibility to *manage* it.

The reason Mr W has given for cancelling the direct debit – to provide a payment holiday during the pandemic – isn't a reason in and of itself to uphold the complaint. Mr W says he didn't set up a standing order to replace the direct debit by choice when the payment holiday ended, but I don't agree. If Jasper failed to attach a new direct debit form when reinstating the monthly payment, it was open to Mr W to contact Jasper and asked for one rather than set up a standing order. He opted for the latter course of action rather than the former; that was a choice he made when an alternative was available.

Mr W says short payments shouldn't be ignored by lenders. Lenders don't ignore short payments; they monitor them but they don't immediately contact a borrower as soon as one payment is missed or made short. As I explained in the provisional decision, the FCA specifies what lenders must do in the case of regulated mortgages; that is, contact borrowers when the accumulated shortfall reaches the equivalent of one month's payment. It's not a regulatory requirement in Mr W's case, because his mortgage is unregulated. But it's certainly good industry practice to apply a regulatory standard to an unregulated mortgage, and that is what Jasper did.

Mr W says he presumed this mortgage was paid by direct debit simply because all his other regular bills were, and just one letter, email, phone call or text would have remedied the situation. But Jasper wrote to Mr W each time his interest rate changed, reminding him his mortgage wasn't paid by direct debit, and that action on his part was needed to amend the payment in line with the rate change. It did so on 17 December 2021, 19 March 2022, 17 May 2022, 24 September 2022, 17 December 2022, and 4 February 2023.

I've no doubt the financial consequences of the adverse credit reports for Mr W have been serious. But they weren't factually wrong, and nor were they the result of unfair treatment on Jasper's part. So it wouldn't be fair or reasonable to order Jasper to remove them.

**My final decision**

My final decision is 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 discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 20 February 2024.

Jeff Parrington

**Ombudsman**