

The complaint

This complaint's about two buy-to-let (BTL) mortgages Mrs and Mr F hold with The Mortgage Works (UK) Plc (TMW). They're unhappy that when they took further advances on both mortgages, TMW applied a new five-year interest rate product to the new borrowing but not to the existing mortgage balances.

What happened

The broad circumstances of this complaint are known to Mrs and Mr F and TMW. I'm also aware that the investigator issued a comprehensive response to the complaint, which has been shared with all parties, and so I don't need to repeat the details here.

Our decisions are published, and it's important that I don't include any information that might result in Mrs and Mr F being identified. Instead I'll provide a brief summary 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.

Towards the end of 2021, Mrs and Mr F were in contact with TMW about two of their BTL mortgages. In both cases, the current interest rate product was approaching its expiry date, and Mrs and Mr F wanted to agree new rate deals. They also wanted to apply for further borrowing on both mortgages. TMW told them they couldn't do the further borrowing and the new rate together, and they'd need to decide which to do first.

Mrs and Mr F decided to prioritise the further borrowing on both mortgages, and TMW's consultant told them this would mean the rate products on the existing mortgages would expire and Mrs and Mr F would need to arrange new rates for these separately after the further advances had completed.

TMW issued offers for both further advances in January 2022; both were offered on a five-year fixed-rate product running to 2027. The existing mortgages came to the end of their fixed rate deals and reverted to TMW's standard variable rate (SVR).

Mrs and Mr F complained, saying they thought the five-year products had been applied to the existing main mortgages as well as the further advances. TMW rejected the complaint, reminding Mrs and Mr F in its final response that it had told them they'd need to apply separately for new rate deals on the main advances after the further advances had completed.

Our investigator didn't recommend the complaint be upheld; Mrs and Mr F asked for it to be reviewed by an ombudsman. When it came to me, I instructed the investigator to obtain recordings of the phone conversations Mrs and Mr F had held with TMW during December 2021. I wanted to confirm that TMW's contemporaneous notes of the calls were accurate. The investigator did so, and after listening to them, issued a further view of the complaint reiterating to Mrs and Mr F why she was of the view that the complaint should not be upheld.

Mrs and Mr F again asked for the complaint to be reviewed by an ombudsman, saying that as far as they were concerned, they'd instructed TMW to arrange the further advances *and* apply new rates to the existing mortgages.

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.

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 seems to me that the real crux of the complaint is the two phone conversations in December 2021. That's why we obtain recordings of calls, when they are available. I've listened to them and having done so, I've reached the same conclusions as the investigator, and for much the same overall reasons.

Whatever instructions Mrs and Mr F think they may have given TMW, the call recording from 3 December 2021 confirms that TMW made it clear to them that they could not do both applications (the further borrowing and new rates for existing borrowing) at the same time. They would need to choose which one to do first, and I'm satisfied that when Mrs and Mr F elected to proceed with the further advances first, they did so knowing this would mean the existing main mortgages coming off their fixed rate and reverting to SVR in the meantime.

It wasn't incumbent on TMW to remind Mrs and Mr F to come back to it and apply for new fixed rates on the main mortgages after the further advances had completed. During the application phone calls, and in the offer documents for the further advances, TMW made it clear that Mrs and Mr F were in receipt of what is known as a "non-advice" service. That's where it is up to the borrowers to make decisions about what is suitable for their needs and circumstances, based on the information supplied by TMW.

It's also important to remember that Mrs and Mr F have a portfolio of BTL mortgages; they are, in effect running a commercial business. It's their responsibility to run their business, which means it's their responsibility to manage the costs the business incurs.

It was Mrs and Mr F's decision to prioritise additional borrowing over applying for a new rate. I imply no criticism of them for doing so and none should be inferred. But it was their choice, and I'm satisfied it was an informed choice where they were on notice that they would need to contact TMW again after the further advances had completed, to apply for a new rate on the existing main mortgages.

My final decision

My final decision is that I don't uphold this complaint or make any order or award against The Mortgage Works (UK). 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 Mrs and Mr F to accept or reject my decision before 8 May 2024.

Jeff Parrington

Ombudsman