DRN-4067564

## The complaint

Mr and Mrs M are unhappy that The Mortgage Business Plc (TMB) marketed their property at auction for significantly less than the market value.

## What happened

Mr and Mrs M had a buy to let property which was taken into possession by TMB. TMB had to arrange for the property to be sold in order to repay the outstanding mortgage balance but Mr and Mrs M think that TMB marketed their property at auction for much less than it was worth.

They said a valuation was carried out originally which valued the property at £185,000 but TMB didn't try to sell it for this amount.

TMB said the property was affected by cladding issues and an EWS1 (External Wall System) form wasn't obtained so they could only sell the property via an auction for a cash buyer due to the fire safety concerns.

TMB said they obtained two independent auctioneers' appraisals and said they both provided a guide price of £85,000. The recommended reserve price for auction was £93,000 and £95,000. The property was placed for auction on 24 June 2021 with a reserve of £105,000 and an offer was made for £106,000 which was accepted.

The funds were used to pay some of the outstanding balance off the mortgage but Mr and Mrs M still have a shortfall of around £100,000.

They were unhappy with what TMB said so they brought their complaint to the Financial Ombudsman Service where it was looked at by one of our investigators. Our investigator didn't uphold the complaint and thought that TMB had acted reasonably by relying on advice from a professional that the property had to be sold at auction – and that TMB did enough to obtain the best price.

Mr and Mrs M disagreed. In summary, they made the following comments:

- The property was valued at £185,000 on 27 October 2020 and TMB made no attempt to put the property on the open market until it was sold on 30 July 2021. They don't feel that TMB did the best to try and obtain the best price for the property
- TMB only obtained one valuation and they should have obtained at least three and evidence for other properties which were sold shows that they were sold at a much higher price
- The selling agent's market appraisal valued the property at £135,000 and the actual valuation based on a third-party selling site was £284,000. There is no evidence submitted of the cost of cladding to subtract it from the real value of the property. The property should not have been down valued by £151,000.
- There is no evidence they tried to sell the property at £135,000. This would still have attracted buyers since there had been a reduction of £151,000 from the actual value of the property
- It is their opinion that since the defects of the building is the main reason that the RICS (The Royal Institution of Chartered Surveyors) surveyor drastically reduced the

value of the property, the shortfall should not be levied to them since they are protected under the Building Safety Act 2022

They said they have lost a significant amount of money through the inaccurate valuation by TMB and the onus of recouping the shortfall should not be placed on them entirely.

As Mr and Mrs M disagreed with the investigator, they asked for the complaint to be reviewed by an ombudsman, so it has been passed to me to decide.

**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.

I'll firstly explain what an EWS1 form is. The EWS1 form was introduced in collaboration between government, the mortgage industry and the surveying industry following the Grenfell Tower tragedy. The fire at Grenfell Tower led to concerns across the country about the possibility of combustible cladding and other fire safety issues which might allow fire to spread quickly through affected buildings.

A possession control form was completed on 30 September 2020 so that TMB could take possession of the property, and TMB instructed a RICS surveyor to value the property. The valuation was carried out on 27 October 2020 and the property was valued at £185,000. The valuation had the following comments:

*The valuation is provided on the assumption that any cladding systems present comply with MHCLG requirement, are considered fire safe and that no remedial works are required in this respect. If any remedial works are subsequently found to be necessary, then full details (including walking watch) together with any associated costs should be provided to the surveyor so that the matter can be reconsidered.*

The building did have some fire safety issues and it doesn't appear that an EWS1 form was completed. TMB said an external asset manager was appointed to oversee the sale of property.

There was a market appraisal completed on 29 September 2020 which stated that with an EWS1 form, the market value of the property could be between £160,000 to £170,000 but without one, it would be in the region of £140,000 to £150,000 but would have to be a cash buyer.

The notes show that the property was marketed for 79 days between initial marketing and completion with only 1 viewing. It was only limited to cash only buyers due to the fire safety concerns on the property.

While I can understand the argument that Mr and Mrs M make, there appears to be actions going on in the background to get the property ready to be sold – it's not always as straight forward as taking possession and putting the property on the market immediately.

I've seen a copy of the auction appraisal form which was completed on 12 November 2020 and has an opinion asking price of £135,000. The notes on this form state that the property is a cash buy only due to cladding issues and that the surveyors have seen an influx of flats with these issues and the supply is outstripping the demand. It was confirmed that auction would be the best method of sale, but they advised keeping the guide price very realistic in order to encourage interest.

There is a second auction appraisal carried out on 05 May 2021 which recommended a guide price of £85,000 with a recommended reserve of £95,000. The property was placed for auction on 24 June 2021 with a reserve of £105,000 – it sold for £106,000.

Mr and Mrs M have queried why it took so long to get the property sold and argued that had the property of been put to auction in November 2020 when the opinion on the value was £135,000 – it would have sold for much higher than it did in June 2021.

I have taken a look at the collection notes which have been provided to understand what happened during that period of time. I can see that the case was referred to TMB's credit risk team on 1 December 2020 due to the cladding issues. At the end of December the case was on hold due to the same issues and on 27 January 2021, there is a note that says they were trying to obtain the leasehold information for the property.

I can see from the notes provided by TMB that there were three offers made on the property prior to the property going to auction. They were all made from the same potential buyer and the highest offer made was £115,000. This offer was made on 26 May 2021 but at this point there was still uncertainty surrounding the cladding issues for the property and TMB were still waiting for the leasehold pack to be sent to their solicitors ready for auction. So as they had these concerns, they rejected the offer so they could proceed to auction once they had all the relevant information they needed.

Having thought carefully about this, I don't think it was unreasonable for TMB to reject the offer and proceed to auction. They still had concerns surrounding the cladding and what impact this may have on the property so it's reasonable for them to want to obtain all the relevant information needed. They encouraged the buyer who made the offer to bid for the property at auction too. TMB took the advice from a professional surveyor that the property would best be sold at auction and I don't think that TMB were unreasonable in relying on that information. And even though the market appraisal said the valuation was £135,000, the surveyor did say that the price would need to be realistic in order for it to gain interest.

I appreciate Mr and Mrs M feel that TMB haven't obtained the best price for them, but it's also in TMB's best interest to obtain the best possible value for themselves as well as the debt was still outstanding and they would want as much of that debt repaid as possible.

Based on the issues surrounding the property, I don't think that TMB have acted unfairly by taking the advice that they did when they were told to put the property for sale at auction. Lenders were not willing to lend on properties at the time with cladding issues so it would have made it very difficult for someone to obtain a mortgage in order to purchase it – so it's reasonable that this was the best way forward for all parties involved.

There didn't appear to be any guarantee as to when the remedial work for the property was going to start or be completed which would mean that the outstanding mortgage balance would increase due to the monthly interest being charged and added ground rent and service charges – which had already been added previously.

TMB relied on the advice of a qualified RICS surveyor and they marketed the property on the valuations that were provided. I can't agree that there was only one valuation completed as there was the first one which valued the property at £185,000 on the assumption there were no cladding issues, and the two auctioneers' reports – again obtained by qualified surveyors. I therefore don't find that TMB have acted unfairly or unreasonably in this situation.

Mr and Mrs B have said they should not be liable for the cost of the cladding issue as they are protected by the Building Safety Act 2022. They feel it's unfair that the cost of the cladding issues has fallen solely to them. When a property requires remedial work, the works are sometimes paid for by the developer or management company when borrowers own these properties. But in this case, the property had to be sold as the property had been taken into possession. And it's always in the best interests to get the property sold as soon as possible to avoid further costs being added to the outstanding balance of the mortgage – as I've already mentioned.

I do empathise with Mr and Mrs M as I know they still have a shortfall on the outstanding balance and understand they are in a difficult position. But having considered everything carefully, I can’t say that this situation is due to the actions of TMB as I think they acted reasonably in the circumstances of this complaint.

I can see that TMB have passed the outstanding debt to a debt management company to retrieve the shortfall. Mr and Mrs M are unhappy that they are being chased for the debt. Mr and Mrs M would need to discuss this with the debt management company to agree a way forward and engage with them to arrange to get the outstanding shortfall paid.

I know that Mr and Mrs M will be disappointed with my decision, but for the reasons given above, I can’t agree that TMB have acted unreasonably here.

**My final decision**

For the reasons given above, I don’t uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr M and Mrs M to accept or reject my decision before 25 August 2023.

Maria Drury
**Ombudsman**