

## The complaint

Mrs O has complained that The Mortgage Works (UK) Plc (referred to here as TMW) cancelled a buy-to-let (BTL) mortgage offer after a second credit check was carried out. As a result, Mrs O says she has been caused financial loss, distress and inconvenience, and would like TMW to compensate her for this.

## What happened

Mrs O had a BTL mortgage with another lender, which was due to revert to the lender's Standard Variable Rate on 1 July 2022. In early 2022 Mrs O applied through her mortgage broker to re-mortgage the property to TMW, borrowing an additional £41,500. The mortgage application said that the additional borrowing was for "*home improvements*", on both the BTL property and on Mrs O's residence.

Initially TMW was going to instruct solicitors which I will call ONP. After the valuation was completed, the property was down-valued, and so Mrs O's broker decided to change the product to a different one. This new product came with free legal work, for which TMW instructed solicitors which I will call E. After the first mortgage offer was cancelled, ONP requested a new mortgage offer. TMW has explained that at the time E were passing some of their cases to ONP, so TMW should have generated a new offer addressed to ONP.

Inadvertently, the instruction was cancelled and so no new offer was sent out. This didn't come to light until 30 June 2022, the last day of Mrs O's existing mortgage interest rate product. TMW therefore needed to generate and send out a new offer to ONP.

TMW has explained that when an application is amended – in this case by changing solicitors – it automatically re-scores, refreshing the credit search with a "*soft*" footprint (i.e. with no marker on the credit file). In Mrs O's case, the re-score showed high credit card and store card use, as a result of which the application was declined.

On 26 July 2022 Mrs O took out a new mortgage product with her existing lender, but with no additional borrowing. She complained to TMW, but the complaint wasn't upheld, other than TMW offering £25 as an apology for incorrectly cancelling the instruction to ONP.

Mrs O didn't accept this and brought her complaint to our service. Mrs O explained that she had needed to raise £39,000 and so wanted TMW to reinstate her mortgage offer with this amount included, and to compensate her for additional interest she had to pay to her existing lender. Mrs O also said that her household income was negatively impacted, and that she had been very sad and tearful, and thought TMW should compensate her for this.

An investigator looked at what had happened, but didn't think TMW needed to do anything more. He was satisfied that TMW had been entitled to cancel the application in light of the new information about Mrs O's outstanding credit commitments.

Mrs O asked for an ombudsman to review the complaint. She's made some further points, which I summarise below:

- TMW is in breach of contract and showed a lack of duty of care;
- TMW should be held accountable because it had issued an offer which she had accepted;
- TMW should have informed her of the cancellation much sooner, so she could have secured a rate with her existing lender.

### **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.

In addition to the information provided by Mrs O and TMW, I have also reviewed information provided by Mrs O's existing lender (with whom she took out a new rate) and from her mortgage broker.

Having reviewed all the evidence, I'm not upholding the complaint. These are my reasons.

The application submitted to TMW was for a mortgage of £225,000 - £183,500 to repay the existing mortgage and £41,500 additional borrowing, which the broker said was for "*Home improvements on security address and current residential address*". When the mortgage offer was issued, E were shown as solicitors.

This was an unregulated mortgage, as it was for a BTL property. The covering letter with the mortgage offer contains a declaration that Mrs O has disclosed all information which is material to the application. The letter also states that Mrs O has confirmed she has read the application form and that the contents are true, accurate and complete. The mortgage offer says it only becomes binding when the mortgage deed is signed and the funds released.

TMW has accepted it made an error in cancelling the instruction to issue a new offer showing ONP as acting rather than E. As stated above, when this was actioned, it triggered a credit re-score. TMW told the broker on 1 July 2022:

*".. the applicant has breached for high utilisation on credit/store cards. The case will need to be referred to our credit risk team to see if we can proceed, but in order to refer this we will need the following documents:*

- *proof of income for the applicant*
- *proof of savings*
- *if the application has recently reduced her credit/store card balances, then please provide evidence of this..."*

The broker didn't reply until 27 July 2022, but didn't provide the evidence TMW had requested. However, he had already arranged a product switch for Mrs O on 26 July 2022 with her new lender, and with no additional borrowing. I'm satisfied, therefore, that it was Mrs O's decision (presumably on the advice of her broker) to go ahead with the product switch.

I don't know what TMW's initial credit score showed, but I don't think the case turns on this, for reasons I'll explain below.

TMW says that the re-score code showed that an applicant may be overcommitted and using credit either to fund their lifestyle or expand a business or BTL portfolio. I'm satisfied that this is a reasonable concern for TMW to have, because an over-commitment suggests potential difficulty in funding repairs, meeting rental voids or other landlord costs. So I've

considered whether there is any other evidence to persuade me that TMW's concerns about Mrs O potentially being over-exposed were justified.

Mrs O's mortgage broker has helpfully provided his fact-find which he completed after speaking to Mrs O on 24 January 2022. It is reasonable for me to conclude that the fact-find records information provided to the broker by Mrs O. I am entitled to treat this as a true and accurate reflection of the broker's discussions with Mrs O. I am assuming Mrs O received a copy of this from her broker, but if not I am sure he will be able to provide it to her.

The fact-find shows that Mrs O told the broker that she had credit, loan or store card debt totalling £39,100. It is noted that Mrs O was *"looking for new mortgage deal, financing home improvements, debt consolidation"*, and wanted to borrow an additional £41,500 for this purpose.

The fact-find goes on to say: *"You want to be free from the constant cycle of debt. By clearing all your unsecured credit will free up £1,400 per month. You have advised this will allow you to save and be in a position to over pay your mortgage therefore reducing the term. You will have more disposable income available on a monthly basis therefore not funding your lifestyle on credit"*. [sic]

So it appears from what the broker recorded in the fact-find that Mrs O was in a debt cycle, living on credit, and that the intention was to borrow enough to pay off the £39,100 she owed to her unsecured creditors – which is almost exactly the same amount Mrs O told us she needed to borrow (£39,000). I will note here that the mortgage application to TMW makes no mention of borrowing for debt consolidation, only for home improvements.

I have to be satisfied that, in withdrawing the mortgage offer, TMW acted fairly and reasonably in all the circumstances. TMW's argument is that the re-score gave it cause for concern about Mrs O's financial position, and so it wasn't prepared to go ahead until those concerns had been alleviated. If I had not seen what Mrs O had told her broker, I might have concluded that TMW wasn't being fair.

But after considering the detailed information the broker recorded about Mrs O's financial position, I am persuaded that TMW's concerns about over-exposure on unsecured debt were justified. The information from the broker provides me with corroboration from an independent third party (who was acting for Mrs O) that Mrs O's financial position was actually as TMW had suspected, as revealed by the credit re-score.

TMW had not, of course, seen the fact-find, but it is evidence I am entitled to take into consideration. It independently supports TMW's position and is evidence which leads me to conclude that TMW's concerns about potential over-exposure to debt were legitimate.

In the circumstances, I'm satisfied that TMW was entitled to withdraw the mortgage offer following the re-score. As I said above, TMW was prepared to reconsider if Mrs O's broker was able to provide evidence of her finances, including evidence that her unsecured debts had reduced. However, TMW is not responsible for Mrs O deciding to arrange a new mortgage interest rate product with her existing lender instead.

I'm satisfied that the £25 TMW has offered Mrs O by way of apology for inadvertently cancelling the instruction to issue a new mortgage offer is fair and reasonable in all the circumstances. I'm not persuaded that TMW is responsible for Mrs O being unable to raise the additional £39,000 she has told us she needed to borrow. That's because, before TMW had been able to consider any appeal by Mrs O, she decided to take out a new mortgage product without any extra borrowing from her existing lender.

## **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 correspondence about the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs O to accept or reject my decision before 10 October 2023.

Jan O'Leary  
**Ombudsman**