

The complaint

Mr N complains that West Bromwich Mortgage Company Limited (West Bromwich) unfairly increased the interest rate on his buy-to-let mortgage. As a result, he said the mortgages became unaffordable and he had to sell the properties at a loss.

What happened

Mr N had a buy-to-let mortgages with West Bromwich that had fixed interest rate products. In 2013, it increased the interest rate on the mortgages by 2% to reflect what it said were increased funding costs.

In 2016, the Court of Appeal ruled that West Bromwich had acted unlawfully in increasing the interest rate. West Bromwich said it accepted the court's judgment and reimbursed Mr N for the additional interest he paid.

Mr N complains that West Bromwich unfairly increased the interest rate on his buy-to-let mortgages. As a result he could not afford the mortgage and in 2014, had to sell the properties. He said he had no choice other than to sell the properties quickly under market value at auction to avoid repossession.

The investigator accepted that West Bromwich had unfairly increased the interest rate on Mr N's mortgage. But he wasn't persuaded that made the mortgage unaffordable or forced Mr N to sell the properties. Mr N did not accept what the investigator said.

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.

Jurisdiction

West Bromwich has continued to question whether we have jurisdiction in this case. I would refer it back to my jurisdiction decision, which explains why we have jurisdiction. It's not clear that it has read or understood that decision.

For the avoidance of any doubt, as far as I can see the communication we had with West Bromwich was clear that it needed to give referral rights appropriately. It didn't do so in this case following its offer of redress after the court judgment. It is for West Bromwich to comply with the relevant rules in place at the time in question when dealing with complaints.

West Bromwich withdrew the 2013 final response. The 2016 was not a final response as it did not include referral rights to us. So Mr N has referred the complaint to us in time.

The subject matter of this complaint has not been dealt with in court and Mr N was not part of the court proceedings – so I can't dismiss it for that reason. I'm not sure the example West Bromwich has given was a case that we dismissed because it was dealt with in court, rather than where we said that providing redress in line with the court's judgment was a fair way to

settle that complaint.

In any case, under the relevant rules it is for me to decide whether to dismiss a complaint or not. I've already explained in my jurisdiction decision why I don't consider I should exercise my discretion to do so in this case.

Mr N's financial loss

It isn't in dispute that West Bromwich unfairly increased the interest rate on Mr N's mortgage. It has already compensated Mr N in line with the court's ruling. But Mr N said his loss goes further than that. He said he was left with no choice other than to sell the mortgaged properties and that caused him an additional loss.

When Mr N took out the mortgage, he told West Bromwich the rental income would be £1,600 a month. When the interest rate went up in 2013, the mortgage payment was £806.51. That left a surplus of almost £800 a month. And the mortgage payment was less than Mr N had to pay between 2007 and 2009.

Mr N has not given us any persuasive evidence that the increase in the interest rate made the mortgage unsustainable. Based on the evidence we have, I am not persuaded that the increase in interest rates made the mortgage unaffordable or unprofitable.

It follows, that I can't find that the increase in the interest rate was the reason why Mr N had to sell the properties. Even if the increase was a factor in Mr N's decision, I can't say it was the sole or main factor. Ultimately it was his decision. In all the circumstances, I don't consider it would be fair or reasonable for West Bromwich to compensate him for any losses he may have incurred because of that.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 2 January 2024.

Ken Rose
Ombudsman