

## The complaint

Mr and Mrs T have complained that Leeds Building Society (LBS) declined their request to port (transfer) their mortgage interest rate product onto a new mortgage on another property.

To settle the complaint Mr and Mrs T want LBS to reimburse the early repayment charge (ERC) they paid on redemption of their mortgage.

## What happened

I will summarise the complaint in less detail than it's been presented. There are several reasons for this. First of all, the history of the matter is set out in detail in correspondence, so there is no need for me to repeat the details here. I will instead concentrate on giving the reasons for my decision. In addition, our decisions are published, so it's important I don't include any information that might lead to Mr and Mrs T being identified. So for these reasons, I will keep my summary of what happened quite brief.

Mr and Mrs T had a mortgage with LBS, originally taken out in 2017 and refinanced onto a new interest rate product in 2019. Their mortgage was for approximately £640,000, of which about £585,000 was on an interest-only basis. The repayment vehicle for the interest-only part of the mortgage was a sale of the property. The terms of their interest rate product allowed LBS to charge an ERC on a tapering scale if the mortgage was repaid in full or in part before 30 November 2024.

In 2020 Mr and Mrs T took a six-month Covid-19 payment holiday on their mortgage. However, even after that, Mr and Mrs T had financial difficulties and weren't able to make all the monthly repayments on the mortgage. By 2022 Mr and Mrs T were finding the mortgage unaffordable. They decided to move house and downsize, and wanted to port the mortgage on a like-for-like basis onto the new property. They were selling for £1.5million and wanted to buy for £1.1million. They put in an offer on the new property, which was accepted.

However, LBS declined the application on the basis of affordability. Mr and Mrs T went ahead with their sale and paid an ERC. They complained to LBS that their mortgage application had been declined. In its final response letter, LBS explained that it was under a duty to ensure that any new mortgage was affordable. However, because Mr and Mrs T had been in financial difficulty and their circumstances had changed, LBS wasn't able to offer them a new mortgage.

Unhappy with LBS's response to their complaint, Mr and Mrs T brought their complaint to our service. They said that, after the sale of their property, they were unable to afford to buy another property and so have been forced into the rental market.

An investigator looked at what had happened. She thought LBS hadn't treated Mr and Mrs T fairly and that it should have agreed to the new mortgage.

The investigator asked LBS to do the following:

- refund the ERC, including 8% simple interest;

- allow Mr and Mrs T to apply for a new mortgage without the need for an affordability assessment;
- if the new mortgage was at a higher interest rate than the 2019 interest rate product, LBS would need to refund the difference until the 2019 product expired;
- LBS should allow Mr and Mrs T until September 2023, when their rental contract comes to an end, to do this;
- LBS should refund the rental payments from September 2022 until the date of purchase of the new property, or until September 2023, whichever is soonest, less the amount the mortgage payments Mr and Mrs T would have made during that period, and pay 8% interest on this;
- pay £500 for trouble and upset.

Mr and Mrs T agreed with the investigator's findings but LBS did not. LBS explained that, at the time Mr and Mrs T took out the mortgage, Mr T was earning over £170,000. However, when they asked to port the mortgage, Mr T was only earning £35,000, he and Mrs T had started companies that were both making a loss and they had unsecured debts of £125,000. As a result, LBS didn't consider the mortgage to be affordable.

### **Provisional decision of 28 June 2023**

I issued a provisional decision, in which I reached the following conclusions.

There are regulations in place that have flowed from the FCA's Mortgage Market Review (MMR) which took place after the financial crash in 2008. This has led to a series of major changes, effective since 2014, in the way residential mortgages are regulated. MMR regulations have brought about requirements for stricter lending assessments, aimed at protecting consumers and encouraging mortgage lenders to act more responsibly.

The FCA recognised though that existing borrowers who wanted to make changes to their mortgages might have difficulties with this if they had passed tests under the old rules but wouldn't under the new ones. So, it introduced certain rules to address this. The rules are contained in the Mortgages and Home Finance: Conduct of Business Sourcebook (MCOB).

MCOB says a lender doesn't have to carry out an affordability assessment if a borrower wants to vary or replace an existing mortgage and there is no additional borrowing (other than for product fees) and no change to the terms of the mortgage that is material to affordability.

Mr and Mrs T didn't want to increase their borrowing, but they were buying a property that cost less. This meant that the loan-to-value ratio (LTV) was increasing from 43% to 59%. This was an increase in risk to LBS, which was a change to the term of the mortgage material to affordability. In addition, Mr and Mrs T had told LBS they were in financial difficulties. I note they had not made all the contractual payments required under the mortgage contract, which is also something that is material to affordability.

LBS was concerned to see that Mr and Mrs T's income had decreased significantly – by about 80% - since they'd taken out the mortgage, in addition to which they'd told LBS they were in financial difficulty and had significant credit card debt of about £125,000. After checking records at Companies House, LBS noted that Mr and Mrs T's companies were both making a loss, which gave further cause for concern in relation to providing an income stream for the future.

Taking all this into consideration, I'm satisfied that LBS was entitled to consider affordability. The changes in Mr and Mrs T's circumstances since they took the mortgage out had a significant impact on the future affordability of a mortgage of more than £600,000, as it would have been about 18 x income, a multiplier that could not be considered reasonable under any circumstances. Given this, I'm satisfied that LBS's concerns about affordability were legitimate and that its decision to decline to port the mortgage was reasonable.

I've noted that Mr and Mrs T have claimed they have been forced into the rental market, as they can no longer afford to buy a property. However, I understand they sold their property for £1.5million. After paying off the mortgage and credit card debts, Mr and Mrs T would have been left with about £700,000. Online property portals show that they could have purchased a substantial property, free of mortgage, and in the same area as they wanted to buy, similar to (or better than) the property they are renting, for £500,000-£600,000. I'm therefore not persuaded that Mr and Mrs T could not have bought a property elsewhere.

In all the circumstances of this case, I don't think LBS acted unfairly in declining the mortgage application on the basis of affordability. I therefore don't intend to direct LBS either to offer a new mortgage or reimburse the difference in rental payments Mr and Mrs T have had to make.

I appreciate that having to pay the ERC on redeeming their mortgage was an unwelcome expense. However, it was a term of the mortgage contract and so I can find no basis on which it would be fair or reasonable to order LBS to reimburse this.

### **Responses to the provisional decision**

LBS had nothing further to add. Mr T, who has dealt with the complaint throughout, has replied in detail. To summarise:

- he is shocked and saddened that there has been a change in the outcome and he wants the previous outcome to be reinstated;
- before starting his business in 2019/2020 payments were always up to date;
- it was only the global pandemic that impacted on the mortgage, although business was slow to start up again after the pandemic;
- they had offered to put more money into the purchase and reduce the LTV, but LBS would not agree to this;
- LBS did nothing to support them;
- LBS never told them that they had concerns about lending them £600,000. If they'd known this, they would have looked for properties within a price range that LBS would have lent on, rather than being forced off the property ladder;
- I am wrong to suggest they could buy a property for £700,000, because they'd have to pay stamp duty and other expenses;
- he would be curious to see which properties I have seen which could accommodate a family of 6 for this price;
  
- they previously lived in a 3,000 square ft property with an acre of land and are now in a rental property half the size, paying twice the amount;
- LBS's actions are "*indespicable*".

### **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've reviewed the file again from the outside, and revisited my provisional decision, taking into consideration the further points Mr T has made.

I will begin by clarifying that the Financial Ombudsman Service is independent of both consumers and the businesses they complain about. We are not here to take either party's side in a dispute, but to investigate complaints. So whilst I acknowledge Mr T's strength of feeling about what he considers to be a lack of support, I have based my conclusions on the available evidence, and having done so, I am entitled to reach a different outcome from the investigator.

After reviewing the file, I still don't think LBS acted unreasonably. The significant decrease in Mr and Mrs T's income, the financial difficulties their new companies were facing, coupled with the substantial unsecured debt, meant that there were no available mortgage options that LBS considered affordable for Mr and Mrs T. It would have been irresponsible for LBS, and contrary to mortgage regulation, for LBS to offer a mortgage where there was insufficient income to sustain it and where the long-term sustainability of Mr and Mrs T's income stream was uncertain.

In all the circumstances, therefore, I don't think LBS acted unfairly. I know Mr and Mrs T will not see it that way, but the evidence doesn't persuade me that LBS has done anything wrong in declining the porting application. Even if Mr and Mrs T had offered to reduce the amount they wanted to borrow, the level of their other debts and the uncertainty that they had a secure income stream still meant that LBS couldn't have offered them a new mortgage of any amount. Given this, I'm not persuaded that the ERC was charged unfairly on redemption of the mortgage.

I'm satisfied that, taking into account the MMR regulations, it was appropriate for LBS to carry out an affordability assessment. Mr and Mrs T's circumstances had changed significantly since the mortgage was originally taken out. Mr T had moved from a job paying (in 2017) £170,000 to starting his own company in 2019. This was making a loss, and the £35,000 salary Mr T was drawing didn't appear to be sustainable, based on the published accounts. Mrs T had also started her own company, and this, too was making a loss.

As a result, Mr and Mrs T were unable to show a source of income that would support any mortgage borrowing. I'm also satisfied that, given the income concerns, it would not have been in the best interests of Mr and Mrs T for LBS to disregard the affordability issues and offer a mortgage in any event, as this would be in breach of LBS's regulatory obligations in relation to responsible lending.

I must also clarify that I did not at any point suggest that Mr and Mrs T should buy a property for £700,000, as Mr T has claimed. As I said in my provisional decision – set out above – I thought it would be feasible to purchase a property for between £500,000-£600,000, free of mortgage. This, of course, would not be as well appointed as either their previous property or the one they'd wanted to buy.

But I have identified today on rightmove.com over 80 results for 4-5 bedroomed properties within a 5-mile radius of their current rented property, 37 results for 4-5 bedroomed properties within 3 miles of the property they wanted to buy, and nine 5-bedroomed properties within a 3-mile radius of their former home, for between £500,000-£600,000. (There may, of course, be some geographical overlap giving duplicated results, but I think I have made it clear that there are a number of available properties in the area.)

So whilst I am sympathetic to Mr and Mrs T's situation, I'm not persuaded that they are totally without options in the property market, albeit that those properties might not be as desirable as the one they'd wanted to move to.

I know this isn't the outcome Mr and Mrs T were hoping for. Given the amount of equity they retained from the sale of their property, they might find it helpful to speak to an independent financial adviser about their options, to see if a mortgage can be sourced elsewhere. They can find details of how to find an adviser on the FCA website at <https://www.fca.org.uk>.

### **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 Mr and Mrs T to accept or reject my decision before 1 August 2023.

Jan O'Leary  
**Ombudsman**