

The complaint

This complaint is about Mr M's attempts to arrange term extensions and new interest rate deals on two buy-to-let (BTL) mortgages he holds with OneSavings Bank Plc trading as Kent Reliance (KR). The term extensions were necessary because the remaining term of each mortgage was less than two years, which was the minimum duration of an interest rate product KR had available.

The applications were delayed, and then refused on the grounds that Mr M was in arrears. Since that time, the accounts have been on KR's standard variable rate (SVR), making the monthly payments substantially higher than the rental incomes and therefore, Mr M maintains, unaffordable. As further arrears accrued, KR appointed Law of Property Act 1925 Receivers (LPRs) to take over managing the accounts, but then agreed to hold the instruction in abeyance whilst Mr M attempted to re-finance the mortgages.

The gist of Mr M's complaint is that delays on KR's part in dealing with the term extension requests actually caused the arrears that it then used as the reason for refusing them.

What happened

The events leading up to, and arising out of, the complaint are complex and the evidence in the case is detailed, running to more than 3,500 pages of documents, all of which I've read. There's a lot of duplication and some of the documents are more relevant to the case than others.

In what follows, I have set out events in rather less detail than they have been presented. No discourtesy's intended by that. It's a reflection of the informal service we provide, and 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. This approach is consistent with what our enabling legislation requires of me.

It allows me to focus on the issues on which I consider a fair outcome will turn, and not be side-tracked by matters which, although presented as material, are, in my opinion peripheral or, in some instances, have little or no impact on the broader outcome.

Our decisions are published and it's important that I don't include any information that might result in Mr M being identified. Instead I'll give a summary in my own words (and rounding the figures where relevant) and then focus on giving the reasons for my decision.

Mr M has two BTL properties; I'll call them 18C and 1B respectively. Both have interest-only mortgages on them. In the case of 18C, the balance is around £2.6m, and the original term has been confirmed by KR as being due to expire on 5 November 2023. The mortgage on 1C is made up of two sub-accounts, with balances of around £944,000 and £261,000, with expiry dates of December 2022* and September 2023* respectively.

*These dates are based on information set out in interest rate product transfers offers KR issued to Mr M in January 2020.

These same products were coming up for renewal towards the end of 2021, prompting Mr M to seek new deals to avoid the mortgages reverting to SVR. To do this, he engaged a new mortgage broker firm (which I'll call G) to act as his intermediary. The interest rate deal on 18C was due to expire first, on 30 November 2021; that on 1B was due to expire on 28 February 2022.

The shortest duration deals KR was offering ran for two years. As both mortgages had less than two years to run, KR said Mr M would need to apply to extend the mortgage terms first; if those were accepted it, it could then consider new product transfers. It also said that any arrears needed to be cleared, as a pre-condition of assessing the term extensions. Mr M made a nominal payment to the account on 18C which he considered brought the account up to date.

Mr M signed forms requesting the term extensions on 13 December 2021, for G to send in to KR. However KR says these weren't received; Mr M says they were but KR lost them. Meanwhile, the mortgage on 18C had reverted to SVR on 1 December 2021, increasing the monthly payment from around £7,000 to a little over £13,600. The December 2021 payment was collected by direct debit, but Mr M recalled it, partly because he couldn't afford this and partly in protest at what he saw as KR's failure to action.

A new set of application documents was submitted in March 2022. By now, the interest rate product on 1B had expired, and Mr M was facing similar increases in the monthly payments on the two sub-accounts, from £2,980 to £5,200 and £820 to £1,430 respectively. These, he said, were also unaffordable, and by now, all three accounts across the two mortgages were in arrears. KR refused the term extensions, which in turn meant the mortgages remained on SVR.

Mr M corresponded at length with KR, hoping to negotiate a compromise; one suggestion was that the arrears might be calculated at a lower, fixed rate, and then capitalised, in order to facilitate the terms extensions. When this didn't succeed, he raised a complaint, which KR rejected. It later instructed the LPARs. Mr M brought his complaint to us. Our investigator didn't recommend the complaint be upheld; Mr M has asked for it to be reviewed by an ombudsman.

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 start with some general observations.

Although I've read and considered the whole file, I'll keep my comments to what I think is relevant. If I don't comment on any specific point it's not because I've failed to consider it but because I don't think I need to comment on it in order to reach what I think is the right outcome in the wider context. My remit is to take an overview and decide what's fair "in the round".

If the available evidence is incomplete and/or contradictory (or simply disputed) we reach our findings on what we consider is most likely to have happened, on the balance of probabilities. That's broadly the same test that the courts use in civil cases.

It's for us to assess the reliability of evidence, from both sides, and decide how much weight should be attached to it. When doing that, we don't just consider individual documents in isolation. We consider everything together to form a broader opinion on the whole picture.

We're impartial, and we don't take either side's instructions on how we investigate a complaint. We conduct our investigations and reach our conclusions without interference from anyone else. That means I don't have to address every individual question or issue that's been raised if I don't think it affects the outcome.

We have no regulatory function; that's the role of the Financial Conduct Authority (FCA); nor are we a consumer protection body. We're an alternative dispute resolution body; an informal alternative to the courts for financial businesses and their customer to resolve their differences. We deal with individual disputes – when we're able to – subject to rules laid down by the FCA (which are known as the DISP Rules).

I've considered everything that both parties have said and provided; having done so I'm not persuaded the underlying dispute is quite as complex as it has been made to look. Our investigator didn't think KR had unduly delayed the process, and that it wasn't provided with everything it needed in order to assess the term extension requests until March 2022. I've reached much the same conclusion as the investigator; I'll explain why.

One of Mr M's particular frustrations is that KR has seemingly relied on the presence of arrears on the 1B mortgage to justify its decision to refuse a term extension on the 18C mortgage. I've looked very hard at that point, and I'm not persuaded that's what actually happened.

The existing rate deal on 18C was due to expire first, on 30 November 2021. Mr M's new intermediary G was in contact with KR about securing a new rate for 18C in October 2021; however, at that stage, KR didn't have authority to deal with G (G would only sign the relevant authorisation form on 10 December 2021). Also, because the existing rate would not expire until 30 November 2021, by that time the mortgage would have less than two years left. So I'm satisfied that Mr M would always have to apply for a term extension, and that the application would have to be approved, before KR would even consider a request for a new rate.

There's quite a lot of argument about whether and when KR received the term extension request form, and what it did with the form what it did receive it. What's not in dispute is that Mr M signed the request form on 13 December 2021, but didn't complete it with any relevant detail. G posted the signed but otherwise blank form it to KR (by first class mail, with no proof of delivery) on 15 December 2021.

That's already two weeks after the existing interest deal had expired, and the mortgage had reverted to SVR. So I'm satisfied that regardless of what happened next, Mr M knew (or if he didn't, he should have) that his monthly payment for December 2021 was going to more or less double. This was not a penalty payment, as Mr M has characterised it; it was the amount he was required to pay under the terms of his mortgage contract in the absence of a new interest rate product.

What did happen next is that KR, having received the third party authorisation form G filled in on 10 December 2021, wrote to Mr M on 16 December 2021 confirming it had registered G as an authorised third party to discuss all aspects of both mortgages. Then, on 20 December 2021, KR wrote to G confirming receipt of the application to extend the term (of both mortgages) and setting out all of the additional information it needed in order to consider the application further. That letter was returned to KR by Royal Mail as undelivered, at which point KR wrote to Mr M forwarding the material that had been sent to, and returned from G.

By now, 2021 had passed into 2022, and critically, the newly-increased monthly payment for December 2021 hadn't been paid. That was because Mr M had recalled the direct debit, by

his own admission partly as a protest to try and get KR's attention. I don't mean this unkindly, but that was not a wise thing to do.

Whatever frustration a consumer might feel about the way a business is dealing with them, the deliberate withholding of payment that is legitimately due under the lending contract is not an appropriate response. All it can ever do is make a bad situation worse, and that's precisely what happened in Mr M's case, because it meant that having previously taken steps to clear historic arrears on the 18C mortgage, Mr B had now caused it to go into arrears afresh.

Meanwhile, it then took until early March 2022 for the term extension application, and all relevant supporting documentation, to be resubmitted. By that time, the existing rates on the two sub-accounts of the 1B mortgage had also expired, and the monthly payments for those had increased as well. Only then was KR in a position finally to assess the term extension requests. The decision not to grant them was relayed to Mr M on 6 April 2022, and the reason given was they "didn't meet its current policy and arrears" (sic). Whilst not expressed particularly well, I'm satisfied the decision was reached fairly and reasonably, given that the 18C mortgage and one of the 1B sub-accounts were both in arrears at this point.

Mr M has told us that KR led G to believe at the outset that the term extensions would be a matter of routine. We don't have recordings of telephone calls between KR and G, but we do have email exchanges, supplied by G. There's nothing in those that would indicate KR created the impression that the term extensions and/or new rate deals were a formality, and I wouldn't expect there to be. No one is entitled to borrow money; and even when they've borrowed before, they're not automatically entitled to more time to repay it.

But a lender must treat customers fairly. In the context of an application for a term extension, that means assessing it fairly in accordance with its lending criteria and appetite for risk, and being mindful of what good practice requires of it. Lenders' criteria are commercially sensitive and not generally made public. Having looked at all the arguments and evidence from both sides, I'm not persuaded KR treated Mr M unfairly when it declined his requests to extend the terms of his mortgages in order that he could then apply for lower interest rates.

I understand Mr M's strong sense of grievance at the subsequent appointment of LPARs, and the events that eventually led to him seeking new finance on what he clearly considers as disadvantageous terms. But those events post-date the final response from KR on the complaint Mr M referred to us, and which I'm determining here. He'd need to raise a fresh complaint with KR about what has happened since the final response dated 1 August 2022. If he does that and is unhappy with the outcome, he'll have the option of referring that complaint to this service.

I said at the outset that I wouldn't be commenting on every single point, and I haven't. I have, as I said I would, confined myself to those matters that I consider have a material effect on the outcome. I can see how strongly Mr M feels. He sees error or wrong-doing in almost everything the KR has done (or not done).

That's a natural, subjective reaction, and entirely understandable. It's also natural to emphasise individual statements or comments that appear to support a particular viewpoint, whilst at the same time paying less attention to those that support the opposite viewpoint. But look hard enough and it's possible to find inconsistencies and/or anomalies in what both sides have said and done from time to time.

Be that as it may, I have to take a different approach. I'm impartial and I have to look at things objectively, sometimes taking a step back from the minutiae, focussing on the broader

picture. That's what I've done. Having done so, for all the reasons I've set out, I can't find in Mr M's favour.

I will however make a further observation. Given the quantum involved, there's a strong possibility that this case may go to court, if Mr M ultimately rejects my final decision. And if that happens, then subject to any time limits or other restrictions a court might impose, Mr M's recourse to a legal remedy of his own against KR over the subject matter of this complaint won't have been prejudiced by our consideration of it. But of course he will need to weigh up the likelihood of a successful outcome and the potential costs he'll face if not successful.

My final decision

My final decision is that I don't uphold this complaint or make any order or award against OneSavings Bank Plc trading as Kent Reliance.

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 Mr M to accept or reject my decision before 6 November 2023.

Jeff Parrington

Ombudsman