

The complaint

Mr P complains that The Mortgage Works (UK) Plc ("TMW") won't let him take out a new fixed interest rate, because it says he has broken the terms of his mortgage by living in the property himself. Mr P says those terms don't say anything about him living in the property.

What happened

Mr P has a Buy To Let ("BTL") mortgage with TMW, and lives in the mortgaged property. He said TMW was refusing to let him remortgage, because it said he couldn't live in the property himself. But Mr P says there's nothing saying that in the terms of his mortgage, so he thinks charging him the Standard Variable Rate ("SVR") is unfair. Mr P has sent us terms and conditions for his mortgage, which TMW had sent to him.

TMW sent us a number of letters it had issued to Mr P, in response to his complaint.

The first of these letters was sent on 9 May 2019, and it said TMW hadn't consented to Mr P moving into the property, just because he'd told it that this was his new address. TMW said it had written to Mr P at the time, September 2018, to ask if this was because of exceptional circumstances. TMW said sometimes it can agree to a customer with a BTL mortgage living in the property if there's an exceptional reason for that.

TMW said Mr P didn't reply, and it understood Mr P also had a residential mortgage with another provider. So it wouldn't agree that Mr P had moved into this BTL property because of exceptional circumstances.

TMW said then that Mr P was in breach of the terms and conditions of his mortgage. It wouldn't evict him, but it wouldn't allow him to amend his mortgage at all, either, while this breach continued.

TMW showed us a more recent letter, which it sent to Mr P on 25 August 2022. That letter gave Mr P some wrong information about Mr P's mortgage. It still said that TMW wouldn't let him take out a new fixed rate for his BTL mortgage, while Mr P was living in the property, but it said there wasn't anything it could point to in the terms and conditions which told Mr P this.

TMW then wrote again the very next day, 25 August 2022. It said the information it had previously given Mr P was wrong. Its agent had been looking at the wrong mortgage terms. TMW said the terms for BTL mortgages did expressly say the property could only be occupied under the terms of a tenancy.

Our investigator didn't think TMW had done anything wrong. He thought the agreement Mr P had reached with TMW was clear that the property could only be occupied under the terms of a tenancy. So he didn't think TMW had acted unfairly by not offering Mr P a new fixed interest rate mortgage.

Mr P replied, to say he didn't accept the terms of this mortgage said anywhere that he couldn't live in the property himself. Mr P has also suggested he bought this house for a family member to live in for a while, and Mr P had always intended to then move in himself.

Because no agreement was reached, this case then came to me for a final decision.

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 reached the same overall conclusion on this complaint as our investigator.

I know that TMW first wrote to Mr P about this complaint in 2019, and he didn't complain to our service within six months of that letter. But because TMW has changed its position on this complaint more recently, then changed it back again, and because TMW has reached a more recent decision not to allow Mr P to fix his mortgage, I do think our service has jurisdiction to consider this complaint now.

Mr P's complaint is that TMW won't allow him to arrange a new fixed term, fixed interest mortgage deal, because he's living in the property, and TMW says that's a breach of his mortgage conditions. Mr P says there's nothing in his mortgage conditions which prevents him living there.

Mr P has sent our service two documents, covering the terms of his mortgage. They both refer to BTL mortgages. And, as I understand it, Mr P hasn't disputed that this is the mortgage type he has.

The first document is the Standard BTL Offer Conditions:2006 ("the Offer conditions"). These Offer conditions are clear that they must be read with a second document, the Standard BTL Mortgage Conditions: 2009 ("the Mortgage conditions").

The Offer conditions include the following –

15. Terms of a BTL

We are offering you a mortgage under our BTL scheme. It is a fundamental term of a BTL that a property may only be occupied under the terms of a tenancy where vacant possession can be obtained at the end of the term of the tenancy. In the majority of cases this will mean the tenancy will be an assured shorthold tenancy (an 'AST') within the meaning of Section 20 of the Housing Act 1988 as amended by the Housing Act 1996.

The provisions go on to say how Mr P can satisfy TMW that the property is properly let, if there was already a tenant in situ when he bought the property.

I think the provision I have set out above is incompatible with Mr P, the owner of this property, living in the property himself.

Mr P also sent us the Mortgage conditions. Those set out a number of circumstances in which Mr P will be in breach of his mortgage terms. They include this –

(b) you are in breach of any of your other material covenants or obligations under the mortgage or the offer ...

Earlier in the Mortgage conditions, there is a glossary of terms, which states that “offer” in this document “...includes the offer conditions”. And the “offer conditions” are defined as “The Standard BTL Offer Conditions 2006”. That’s the first document I quoted from above.

So the Offer conditions say that it’s a fundamental term of the BTL mortgage, that only tenants can live in the property (and indeed, only tenants of a specific type). Then the Mortgage conditions set out that if Mr P breaches any of the obligations set out in that document, or set out in the Offer conditions (including the one I’ve explained above) then Mr P is in breach of the mortgage as a whole. The Mortgage conditions say that in these circumstances, TMW can ask him to pay back all the money it lent him, right away.

For the reasons set out above, I don’t agree with Mr P that there’s nothing in the terms of this mortgage about whether he can live there himself. I think it’s a clear conclusion of the terms of occupancy which were set out in his Offer conditions, that he cannot live there.

Mr P hasn’t disputed that he is living in the property himself. So I do think he’s in breach of the terms which govern his mortgage.

TMW said in 2018 that it wasn’t then planning to ask Mr P to pay back all the money it had lent him straight away. But it also said then that it wouldn’t let him make any changes to his mortgage, until this issue was resolved. And it’s refused, more recently, to let him make changes to his mortgage interest rate, because of that.

I think TMW was right to say that the terms of Mr P’s mortgage don’t allow him to live in the property. So I don’t think it was unfair or unreasonable for TMW to respond to this breach, by saying that it wouldn’t currently agree to fix a new interest rate for Mr P.

I can see from the notes TMW has shared with our service, that Mr P suggested TMW might have known about his plans for this property from the start. But that doesn’t appear to me to be the complaint Mr P asked our service to look into here. And I can’t comment on whether TMW did know that, or if that would have any impact on the overall position here, unless Mr P has already complained to TMW about this. So I won’t comment on that issue here.

I know Mr P will be disappointed, but I don’t think this complaint should be upheld.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 31 October 2023.

Esther Absalom-Gough

Ombudsman