

## The complaint

Mr W's complaint is about his mortgage with The Co-operative Bank Plc trading as Platform (Co-op). Specifically, he says:

- Co-op has unfairly declined his request for its consent to a second charge on the mortgaged property.
- His mortgage isn't enforceable as Co-op didn't inform him of its transfer from Platform Funding Limited (PFL) to it.
- Co-op didn't add a shortfall in July 2023's mortgage payment to his mortgage balance.
- Co-op's claim that his mortgage is unregulated because it is a buy-to-let (BTL) is incorrect. It is a residential mortgage and so is regulated and qualifies for Co-op's commitments under the Mortgage Charter Scheme (MCS).

## What happened

Mr W took a mortgage with PFL in 2007 for approximately £713,000. The mortgage was set up on an interest only repayment basis and had a 25-year term. The mortgage offer from the time shows that the property purchase price was £950,000. The interest rate was to be fixed at 6.19% until 1 September 2010, and then move to a variable tracker rate at 2% above the Bank of England base rate.

In 2016 PFL transferred Mr W's mortgage to the Co-op. Mr W says he was never sent any confirmation by Co-op that the mortgage had been transferred and that means his mortgage is unenforceable. He says, despite Co-op having provided a copy of a letter dated 1 April 2016 informing him of the transfer, he was told by Co-op in a telephone conversation on 4 August 2023 that the letter was never sent. Mr W says he wasn't made aware of the transfer until 2023 when he complained.

Towards the end of 2022, Mr W requested a change to his payment date. That request was accepted by Co-op and, in a letter dated 22 November 2022, it confirmed Mr W's payment date had been changed to the 28th of every month, starting 28 December 2022. The letter also confirmed that would result in an additional amount of approximately £2,286 in interest being charged that month, making the amount payable approximately £4,843. And the letter confirmed any shortfall in payment would be treated as arrears on the account.

Co-op wrote to Mr W again on 5 January 2023. It said the amount of interest actually charged in December 2022 was greater than the amount forecast in its letter dated 22 November 2022. The amount actually charged was £5229.41, which was £386.72 more than the amount forecast. The letter confirmed the £386.72 would be added to the capital balance of the loan.

In March 2023, Mr W asked Co-op if it would consent to a second charge on the property. Co-op confirmed, in a letter dated 30 March 2023, that it would not give its consent for the second charge. The letter invited Mr W to call if he wanted to discuss the situation. Mr W called Co-op on 6 April 2023 and was told that it considered the proposed second charge may cause financial hardship concerns, so, as a responsible lender, it couldn't consent.

In the months leading up to Mr W's complaint, Co-op sent him several letters regarding increases to his interest rate, resulting from increases to the Bank of England base rate. Those letters explained that if Mr W's first payment following the rate change was for the previous contractual monthly payment the shortfall would be added to the capital balance of the loan.

In its final response letter dated 25 September 2023, Co-op said it declined to consent to a second charge based on information provided which suggested Mr W was experiencing wider financial hardship. It said it applied the payment Mr W made in June and July 2023 in line with how it said it would and in line with the terms of the mortgage. And it said Mr W's mortgage was not regulated by the FCA, so it can't be in breach of its rules and regulations.

Dissatisfied with Co-op's response to his complaint, Mr W asked us to consider his complaint. Our investigator didn't uphold his complaint. She said she understood why Co-op didn't consent to the second charge and thought it had followed the terms and conditions of the mortgage. Our investigator said she thinks Co-op did inform Mr W of the transfer of his mortgage and the mortgage terms and conditions allow for that to happen. She also said she thought there was a shortfall in payment in July 2023 and that wasn't due to the difference in interest rate, so it was fair for Co-op to treat that as arrears rather than add it to the capital balance. With regard to the regulation of Mr W's mortgage, our investigator was satisfied that it was a buy to let mortgage and so was not regulated.

Mr W didn't agree so his complaint has been passed to me for a 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.

To decide Mr W's complaint, I've thought about whether it was reasonable for Co-op to withhold consent for a second charge on his mortgage; Mr W's assertions that his mortgage is unenforceable; whether Co-op's treatment of the July 2023 payment was fair; and whether the evidence available suggest Mr W's mortgage contract is or is not regulated. In doing so, I've been mindful of Mr W's assertions that Co-op has provided false and misleading information.

#### Second charge consent

Mr W says that when he requested consent for the second charge in March 2023, his mortgage payments were up to date and had been for at least the previous 12 months. He says the arrears of £5,949.69 Co-op has referred to related to October 2023 (so after it had withheld consent) and were for a brief period of time. Mr W also says Co-op referred to his income as £1,500 per month. But that was only is rental income in 2020 (during the Covid pandemic), yet the potential rental income in March 2023 was between £3,500 and £5,750 per month. And, he says income was irrelevant because the lending in question was for a 12-month bridging loan with no monthly payment commitment.

The terms and conditions of Mr W's mortgage state:

#### **"5. YOUR OBLIGATIONS**

##### **5.1 You agree that you will not do any of the following:**

- (a) Create or allow to exist any mortgage or any other Security Interest upon the property without our prior written consent;"***

So, I'm satisfied that, under the terms and conditions of his mortgage, Mr W was required to obtain the consent of Co-op before using his property to secure further borrowing with another lender. And I can't compel Co-op to give its consent in that regard. But I've given careful thought to whether Co-op considered Mr W's request to do so reasonably.

Co-op says its decision to withhold consent was made on the basis of affordability and sustainability. It says the outstanding balance on Mr W's mortgage "is" £728,207.95, with "current" arrears of £5,949.69. And Mr W wanted to borrow £213,000 – of that £186,000 was to pay a capital gains tax bill. But his contractual monthly payment was £3,611.78 per month and his income yield [from the property] was £1,500 per month. In summary, Co-op says, *"Due to historic tax demands and the arrears, this suggested Mr W has broader financial difficulties and as a responsible lender, we could not consent to his request."*

As outlined above, Mr W has disputed the arrears Co-op has referred to. Based on the evidence available I agree with him on that point. There doesn't appear to have been any arrears on Mr W's mortgage account when he made the request for consent in March 2023. So, I don't think it's been helpful in resolving this complaint for Co-op to have mixed circumstances applicable at the time of the request with those applicable at the time of its response to the complaint. The £5,949.69 arrears couldn't have been a factor in Co-op's decision-making process because they hadn't occurred at the time of the request.

However, I have seen that Mr W had recently requested that his mortgage payment be moved to the 28th of each month and that in January 2023 he didn't make the payment due on time. So, it does appear that, as his contractual monthly payment increased because of the Bank of England base rate, he may have been finding it increasingly difficult to make his mortgage payments on time. Co-op also referred to *"historical tax demands"* as being a factor in its decision-making process. I think that's a reasonable concern for Co-op to have regarding overall affordability and sustainability given that Mr W wanted to borrow a significant amount of money to pay a capital gains tax bill, rather than pay the bill from the capital gain itself.

Mr W also disputes the rental income value of the property. But I've not seen that the property ever actually earned the level of income he claims was achievable. It doesn't appear that he submitted any such evidence to Co-op, so I don't think it ought to have used the rental yield claimed by Mr W in its assessment of his financial circumstances.

Overall, while I think it should have been clearer in its reasoning in response to this complaint, I think it was reasonable for Co-op to have concerns about Mr W's wider financial circumstances, given the evidence available.

Should Mr W want to make a similar request in the future and be able to support his request with evidence about his financial circumstances – including, but not limited to, the rental yield on the property – Co-op should give that reasonable consideration.

#### The enforceability of Mr W's mortgage contract

Mr W says his mortgage contract is unenforceable because he received no notification from Co-op that his mortgage had been transferred to it.

Co-op has provided a copy of a letter, dated 1 April 2016, and addressed to Mr W, confirming that, as part of its strategy to simplify and restructure its business, his mortgage would be transferred *"by Platform Funding Limited to The Co-operative Bank p.l.c. (trading as Platform)"*. And it said there would be no changes to Mr W's account number or his mortgage terms and conditions. The copy of the letter provided doesn't show a Co-op

letterhead, but its signature block does say “*For and on behalf of The Co-operative Bank p.l.c. (trading as Platform).*” So, I’m persuaded that letter was from Co-op.

Mr W says he was told in a telephone conversation with Co-op on 4 August 2023 that the letter was never sent. Co-op hasn’t provided a recording of the call, but it has told us what was said in that regard during the call. Of most relevance, the Co-op representative said “*I can see it was drafted, but obviously when it is in transit, I can’t speak about what happens then.*” I take that to mean the Co-op couldn’t guarantee that the letter was delivered to Mr W after it was sent, rather than the letter not being sent at all.

This part of Mr W’s complaint is that his mortgage contract has become unenforceable, essentially because of a legal technicality – that Co-op didn’t inform him of the transfer of ownership of his mortgage. That would mean that, should Co-op seek to enforce the terms of the contract in court, following his default, it wouldn’t, by law, be able to do so. Given that context, I think the most appropriate body to decide that specific point would be a court.

That said, I have considered the matter from a fair and reasonable point of view. I’ve not seen, in any of Mr W’s submissions, that he’s said he didn’t borrow or receive the money stated in his mortgage contract. And I haven’t seen that he claims to have repaid the capital and the interest due under the mortgage contract. So, I think it would be fair and reasonable that Co-op continues to seek payment of the capital borrowed and the interest chargeable under the mortgage contract, in line with its terms and conditions.

#### The payment due in July 2023

The evidence available shows that interest rate increases in 2023 were applied to Mr W’s account on the first day of the months of February, March, May, July, August and September. The letter sent by Co-op informing him of the interest rate increase applied from 1 July 2023, resulting from a Bank of England base rate increase on May 2023, explained:

*“Your new contractual monthly payment will be £3,912.62 with effect from 28/7/23 until further notice.*

*If your first payment after 01/07/23 is for the old amount it will not cover the interest charged at the new rate from 01/07/23 to the end of your current payment month. This shortfall will be added to your mortgage balance.”*

Mr W’s mortgage transaction statement shows:

- On 27 June 2023 interest of £3,763.41 was charged to the account.
- On 28 June 2023 Mr W made three payments totaling £3,762.21 (the statement confirms that was the amount due).
- An entry on 30 June 2023 confirms an interest rate increase to 6.5%, effective from 1 July 2023.
- On 27 July 2023 interest of £3,897.57 was charged to the account.
- On 28 July 2023 Mr W made a payment of £1,480.00 (the statement confirms £3,912.62 was the amount due).
- On 31 July 2023 Mr W made payments of £2,099.21, £73.00 and £110.00, bringing his total paid amount in July 2023 to £3,762.21.
- So, the payment Mr W made in July 2023 was £150.41 short of the amount due.
- An entry on 1 August 2023 confirms an interest rate rise to 7%, effective from 1 August 2023.
- On 21 August 2023 Mr W made a payment of £150.41.
- On 27 August 2023 interest of £4,174.67 was charged to the account, plus a further

- £1.69 in arrears interest.
- On 29 August 2023 Mr W made a payment of £964.58 (the statement confirms the amount due was £4,213.51).

An arrears statement dated 25 September 2023 shows that Co-op considered Mr W's mortgage account to be in arrears by £150.41 after he'd made July's payments, until he made the payment of £150.41 on 21 August 2023.

The central question here is: should Co-op have added the shortfall in payment of £150.41 to the mortgage capital balance, rather than treat it as arrears?

Given the letter he received from Co-op on 14 June 2023 (and other similar letters), I can understand why Mr W may think the shortfall in his July 2023 payment qualifies to be added to the mortgage capital balance. However, the part of the letter referring to adding a shortfall to the capital balance specifically says "*if your first payment after 01/07/23 is for the old amount...*" and then "*...this amount will be added to your mortgage balance.*"

My understanding is that, should the old amount be scheduled for payment – most likely by standing order – and isn't or couldn't be changed in time, Co-op would not consider the shortfall to be arrears. Mr W didn't pay the old contractual amount, he paid an amount he chose, which was short of the new contractual amount. I say Mr W "*chose*" because the statements indicate that the payments he made in July were by card rather than a scheduled automated payment – I don't know whether he had the funds available to make the full contractual payment.

Based on the evidence available, I don't think Co-op failed to treat Mr W's shortfall in payment in July 2023 as it said it would in its letter dated 14 June 2023. So, I don't think it treated the shortfall as arrears unfairly.

#### Whether Mr W's mortgage contract is or is not regulated

Mr W says he was told in 2007, by the original lender, before completing the loan that, despite agreeing he could let the property, the loan was considered a residential mortgage. Mr W has pointed to point 5.1(e) of his mortgage terms and conditions, which he says confirms that.

Section 5 of the terms and conditions of Mr W's mortgage relate to his obligations under the mortgage contract. Point 5.1(e) says:

*"5.1 You agree that you will not do any of the following:*

- (e) Use the Property except as a private dwelling house and as your private residence without our prior written consent unless we have already given permission for an alternative use of the property in the mortgage offer."*

In that regard, Mr W's mortgage offer dated 30 July 2007, under "*special conditions*", confirms the lender was aware the property was to be let and then goes on to outline all the conditions associated with the letting of the mortgaged property. The mortgage offer doesn't say that it is a regulated mortgage.

Co-op has provided a copy of the application form Mr W signed in 2007. Under the section headed 'product details' the 'buy-to-let' option is ticked. And the application confirms the sale was non-advised and made by an intermediary.

Based on the evidence available, I think Mr W applied for and received a buy-to-let mortgage. I've not seen any evidence to indicate the mortgage was a regulated contract – as I would expect on a residential mortgage offer from that time.

I understand Mr W says he was told he would be obtaining a residential mortgage. But I've not seen any evidence to support that claim and any complaint about the advice given at the time of the sale would need to be made to and addressed by the intermediary, not Co-op.

I'm persuaded, on balance that Mr W's mortgage was a buy-to-let contract and wasn't regulated.

### Summary

I do agree the statement Co-op submitted to us with regard to its assessment of Mr W's request for second charge consent was incorrect. However, that doesn't change my conclusion on that part of his complaint. And, for the reasons I've explained, I don't uphold any of Mr W's complaint points.

### **My final decision**

My final decision is I don't uphold Mr W's complaint about The Co-operative Bank Plc trading as Platform.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 9 February 2024.

Gavin Cook  
**Ombudsman**