

The complaint

Mr and Mrs D complain about the way The Mortgage Business Plc (TMB) has treated them in connection with their buy-to-let mortgage.

What happened

Mr and Mrs D took out their buy-to-let mortgage with TMB in 2008. They borrowed just under £300,000 on an interest-only basis, on a fixed interest rate until October 2011. The interest rate has since then been TMB's standard variable rate (SVR).

Mr and Mrs D have been estranged for some time and, although Mrs D has agreed to this complaint being brought, Mr D says he has been dealing with the mortgage and TMB on his own for years, including making the mortgage payments. Mr D also says his parents, who are elderly and vulnerable, have been living in the mortgaged property for many years.

The mortgage has been in significant arrears for more than ten years. Mr D says he has asked TMB for help many times but it has done nothing to support him and has instead ignored his letters and sent threatening letters and field agents to the property. He says he has had to borrow from local money lenders and sell personal items in order to pay the mortgage. He is now finding it increasingly difficult to afford the monthly mortgage payments as TMB has increased its SVR.

Mr D has made multiple complaints to TMB over the years, and some of those complaints have also been dealt with by the Financial Ombudsman Service. Some complaints made since 2020 have been referred to us but our Investigator said we could only look into Mr and Mrs D's complaints about TMB's treatment of them between June 2022 and the referral of this complaint to us in September 2023. He thought Mr and Mrs D hadn't referred the complaints TMB sent final responses to in 2021 and 2022 to us in time, and that they had taken an unreasonable amount of time – more than two-and-a-half years – to provide the signed authority we had asked for twice in order to look into their complaints in 2020 and 2021.

The Investigator went on to consider what had happened between June 2022 and the referral of this complaint to us in September 2023, and didn't recommend that the complaint be upheld.

Mr D didn't accept either that we wouldn't look into all of his complaint or the outcome the Investigator reached about more recent events, so he asked for an Ombudsman's review.

The complaint was referred to me. I issued a decision to confirm the scope of the complaint I would be considering. I came to the same view as our Investigator and said that Mr and Mrs D's complaint about TMB's treatment of them before June 2022 was time-barred in part and should be dismissed without further consideration in part.

I've now considered the parts of the complaint I can look into – that is, that TMB didn't treat Mr and Mrs D fairly or offer appropriate support during a period of rising interest rates when they have struggled to afford the mortgage payments between June 2022 and September

2023.

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.

Mr D has complained to TMB many times over the years about how it has treated him when he has been in financial difficulty and the mortgage has been in arrears. I recognise that Mr D sees this as an ongoing complaint but, for the reasons I explained in my earlier decision about the limits on what I can look at, I'm only considering what happened between June 2022 and September 2023 – although in doing so I have kept in mind earlier events and the background in this case.

Mr D complains that he wants specialist assistance from TMB because he has been in financial difficulty due to interest rate rises. He wrote to TMB many times between June 2022 and September 2023: each month he sent it a letter enclosing a cheque for that month's mortgage payment and asking for its help and for an answer to his complaints.

TMB wrote to Mr and Mrs D multiple times during the period in question as well. It asked Mr and Mrs D to call it so that it could discuss their mortgage with them and try to come to an arrangement for payment of the arrears. It provided details of sources of free debt advice, and a third party authority form which it invited Mr and Mrs D to fill in and return if they would prefer someone else to act on their behalf. It also said it had instructed a field agent to visit, although I understand that visit didn't go ahead.

I don't consider that TMB was wrong to send Mr and Mrs D letters about the mortgage arrears and the next steps it might take, or to ask Mr and Mrs D to call to discuss their situation with it so that it could gather information about their circumstances in order to see what it could do to help. This is what I'd expect a lender to do in a situation like this one where there are substantial mortgage arrears and no agreed plan in place to repay them.

An arrangement for repayment of the arrears agreed by TMB and Mr and Mrs D would result in collections activity stopping while the arrangement is in place and being kept to – and it's entirely reasonable for TMB to want to understand Mr and Mrs D's circumstances, including their income and expenditure, before putting such a plan in place.

It's not unreasonable, in principle, for TMB to ask Mr and Mrs D to contact it by phone in order that it can discuss their circumstances with them and try to agree a way forward to clear the arrears. However, Mr D has said that he doesn't want to talk to TMB on the phone and would prefer all communication to be in writing. He has also told us that he has a disability, TMB should know that, and he's entitled under the Equality Act 2010 to request written communication only.

I can see from TMB's records and Mr D's letters that he has told TMB he would prefer written communication. But I've found nothing to say that he told it he couldn't talk to it on the phone because of his disability. TMB staff aren't medical specialists and nor would I expect them to be. It's also not the case that everyone who has a long-term, chronic health condition chooses to or can't communicate in a particular way, for example by phone. So I think it would be wrong to say that TMB should infer from Mr D's health condition and/or the medication he takes that he necessarily has difficulties processing information on the phone or that he has a 'protected characteristic' as defined by the Equality Act.

The Equality Act is designed to prevent discrimination against people with a 'protected characteristic'. Protected characteristics include certain disabilities. It's unclear from what

Mr D has said whether his medical condition would be considered a protected characteristic under the Act and that TMB would therefore be required in law to make reasonable adjustments for him. In any event, it's not for the Financial Ombudsman Service to make a decision about whether there has been a breach of the Equality Act. That's a matter for the courts. While I'm required to take into account relevant law, amongst other things, ultimately I must decide what I think is a fair and reasonable outcome to this complaint in all the circumstances.

I note that Mr D was able to discuss this complaint with our Investigator on the phone, but if he requires TMB to make adjustments to the way it communicates with him due to his health condition, he should let it know what adjustments he needs so that TMB can assess what it can reasonably do, bearing in mind its obligations under the Equality Act. The mortgage is however held by Mr and Mrs D jointly, so while I note what Mr D has said about their estrangement, TMB may decide to approach Mrs D to discuss the matter. Alternatively, Mr and Mrs D may choose to appoint someone to talk to TMB on their behalf.

During the period I can consider in this complaint, I can see that the monthly mortgage payments have been made and some inroads have been made into the arrears through small overpayments each month. So, even though there is still a significant arrears balance, it may well be that there is a solution to be found so that Mr and Mrs D can clear the arrears. In order to find a solution there will, however, need to be a dialogue between the parties and as a starting point Mr and Mrs D will be expected to give TMB information about their financial situation – as TMB has explained in its letters to Mr and Mrs D.

In deciding a fair resolution to this complaint, I also have in mind that the mortgage is buy-to-let. It's therefore unregulated and rules applicable to residential mortgages don't apply, so TMB will ultimately be entitled to appoint receivers to manage the property without the need for a court order if a solution isn't found. In terms of how it treated Mr and Mrs D during the period I'm considering in this complaint, I make no order or award. I recognise that maintaining the mortgage payments has been difficult for Mr and Mrs D, particularly in the light of interest rate rises, but I don't consider that TMB has failed to offer appropriate support.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D and Mr D to accept or reject my decision before 17 April 2024.

Janet Millington
Ombudsman