

## **The complaint**

Miss B complains about her mortgage with Derbyshire Home Loans Ltd (DHLL). She complains she was led to believe it's a buy to let mortgage when it's actually a residential mortgage. She complains about the interest and payments. And she complains that requirements around letting out the property are unreasonable.

## **What happened**

Miss B has a mortgage with DHLL – DHLL is her lender, but the mortgage is administered on its behalf by DHLL's sister company The Mortgage Works (TMW). As that's the firm Miss B has dealt with and that she's referred to in her complaint, for ease I'll mainly refer to TMW in this decision when talking about Miss B's interactions. But it's important to note that even where TMW is acting as its agent, DHLL remains responsible for Miss B's mortgage and is ultimately responsible for this complaint, and it's DHLL that charges the interest which TMW collects.

Miss B has made many complaints, both to DHLL and TMW and to the Financial Ombudsman Service, over the years. And the things she's unhappy about go back many years too. As a result, there are limits on what I can consider as part of this complaint.

Another ombudsman has issued a decision defining the scope of this complaint and what we can consider. The ombudsman said that Miss B's complaint was made as follows:

"In January 2023 Miss B set her complaint out as:

- She made Derbyshire [DHLL] aware she was renting the property out from the start.
- She had concerns about the mortgage from the start and reported those to the Financial Ombudsman Service in 2008, 2012, 2018, 2020 and 2022.
- She was led to believe this was a buy to let ("BTL") mortgage.
- The interest rate was extortionate and was why she switched from repayment to interest only.
- She only found out this was a residential mortgage in July 2021 when she wrote to Derbyshire as she was having trouble with her tenant.
- Derbyshire wanted to backdate the £150 annual letting fee to 2010, albeit it has since waived that.
- Derbyshire has always done its best to mislead her about the mortgage and has kept her mortgage payment inflated.
- She'd not been able to get a better rate in 2020 because Derbyshire reported that she had missed payments, and because of the discrepancies on her

account.

- She recently informed Derbyshire that a new tenant had moved into the property in March 2022 and she'd provided a copy of the tenancy agreement, but Derbyshire had failed to acknowledge it.
- She's not received an up to date mortgage statement that she'd requested to show all the relevant information, such as what type of mortgage this is, what monthly payments are due, what payments she's made and any credit/arrears on the account.

In May 2023 Miss B clarified this complaint with our Investigator saying her complaint points were:

- The interest rate is extortionately high.
- She has been telling Derbyshire that there seemed to be major discrepancies over the years but it ignored her concerns.
- Derbyshire led her and the Financial Ombudsman Service to believe this was a BTL mortgage and it only came to light in July 2020 that it was a residential mortgage.
- The interest rate is still higher than even a BTL mortgage of a similar value as she can compare it to another BTL that she owns.
- The opening and closing balances keep increasing, especially over the last 5 years where it has increased by £2,500.
- There were issues in taking out a new fixed rate product in 2020.
- Derbyshire wanted to charge her an annual letting fee which it then waived up until March 2021, but it was still due even when the property was uninhabitable from August 2021 until March 2022."

The ombudsman said we couldn't consider a complaint about whether this was a residential or BTL mortgage, or whether Miss B had been misled about that. And she said we couldn't consider the fairness of the interest rate before 1 July 2020. But we could investigate the other matters Miss B was concerned about.

Following that decision, our investigator considered the merits of those parts of Miss B's complaint that were in jurisdiction. The investigator said:

- This isn't a buy to let mortgage, it's a residential mortgage where DHLL has given Miss B permission to rent the property out. In return for giving permission it's added 1% to the interest rate. Since 1 July 2020 Miss B's mortgage has been on a variable rate with the 1% letting premium.
- In July 2020, DHLL offered Miss B a new fixed interest rate. There was a deadline for accepting this offer and Miss B didn't accept it in time. So the fixed rate didn't go ahead. Miss B told TMW that she wanted to consider options with other lenders instead. TMW reminded Miss B of the offer of a rate but she still didn't accept it. So it's not unfair that the fixed rate wasn't put in place and Miss B remained on a variable rate.

- There was nothing to stop Miss B applying for another fixed rate with DHLL, or to stop her exploring moving her mortgage to another lender. DHLL wasn't treating her unfairly in this respect.
- The balance of the loan was increasing because Miss B didn't always make the full payments due. The unpaid interest was added to the mortgage balance. This is why the opening and closing balances on the annual statements show the balance increasing.
- As well as the 1% premium on the interest rate, DHLL charges an annual fee of £150 for renewing the permission to let. This is charged for giving permission – even if the property was unoccupied for a period, Miss B still had permission to let it out. So the fee is not unfair.
- There is a fee of £90 referred to on the annual mortgage statements. This is an administrative fee payable at the end of the mortgage when it's repaid. DHLL includes this in illustrations of how much it would cost to repay in full and that's not unfair.

Miss B didn't agree. She said:

- She had always been led to believe this was a BTL mortgage, until this was clarified in July 2020.
- The mortgage payments and interest rate have been extortionately high – DHLL has charged much more than 1% above what Miss B considers to be the standard mortgage rate, and much more than would be charged for a standard BTL mortgage. This contributes to the balance increasing each year.
- TMW wouldn't let Miss B do a rate switch in 2020 and blocked her account. It has actively prevented her from taking a new rate. It also wrongly reported information to her credit file to prevent her taking a new rate.
- TMW adds a fee of £90 to her mortgage each year – it's set out on her annual statements.
- TMW told Miss B that it would start charging her £150 per year for letting the property out. It also asked for a copy of a tenancy agreement – but Miss B didn't have an up to date tenancy agreement as the same tenant had been in place for a number of years and so there was now a periodic tenancy in place.
- DHLL and TMW have always known Miss B was renting the property out and shouldn't have suggested she was doing so without authorisation.
- The property was unoccupied between June 2021 and March 2022 because of problems with the previous tenant. But Miss B was still charged £150 and 1% on the interest rate in this period even though she wasn't letting the property out.

The complaint therefore comes to me for a final decision to be made.

### **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.

For ease, and to ensure that I deal with all the issues Miss B has raised, I'll deal with her complaints in the same way as I've set them out above. But I'll only be dealing with those parts the previous ombudsman said fell within our jurisdiction as I agree with her decision.

- I agree with our investigator that this is not a BTL mortgage; it is – and always has been – a residential mortgage. That's been clear from the start, and I don't think there's evidence Miss B has been misled about that – certainly not in the period I can consider.

However, the reality is that Miss B has not been living in the property, and has been renting it out, for many years. That's not permitted with a residential mortgage. It's a term of a residential mortgage that the borrower must live in the property and must not rent it out. But DHLL, and TMW on its behalf, have given Miss B permission over the years to let the property out even though it's a residential mortgage.

However, where a property is let out on a residential mortgage, there is a charge of an extra 1% on the interest rate. This represents the increased risk to the lender of the property being let rather than being lived in by the owner. It's not unusual for lenders to increase the interest rate in these circumstances, and it's not unfair that DHLL / TMW did so.

I'm satisfied that only 1% has been added to the interest rate. Miss B has referred to a "standard mortgage rate", but there's no such thing. If she means the Bank of England base rate, that's not a mortgage rate that lenders are required to stick to. Lenders can set their own interest rates. Miss B has been charged the applicable variable interest rate for a DHLL residential mortgage from time to time, plus a 1% additional premium for it being a let property.

If that's resulted in an interest rate higher than Miss B might have been able to get on a BTL mortgage elsewhere, that doesn't mean DHLL or TMW have charged an unfair rate. Miss B doesn't have a BTL mortgage, she has a residential mortgage with permission to let. There's been nothing to stop her applying for a BTL mortgage elsewhere if she was unhappy with this one.

- I don't think TMW has stopped Miss B taking a new interest rate. It offered one in 2020, but Miss B chose not to take it. That wasn't TMW's fault, it was Miss B's decision.

TMW did write to Miss B asking for more information about her tenancy, and told her it had "blocked" her account when she didn't reply. However, this block didn't prevent her getting a new interest rate since she hadn't applied for one at this time – this was after the 2020 offer that TMW had made had expired.

So I'm not persuaded there's any evidence that TMW has prevented Miss B taking a new rate. When she applied, it offered her one but she didn't accept the offer. And at other times it's not required to make an offer if she hasn't applied – and as Miss B asked it to confirm, it wouldn't impose one without her consent. There's nothing to stop Miss B making a further application now if she wants a new interest rate.

TMW did wrongly report information to Miss B's credit file in 2020. She was in arrears at the time, but the arrears were below the threshold for making a report. TMW has since removed the arrears markers from Miss B's credit file and offered her compensation. I think that was fair, and I've not seen any evidence that this was done deliberately or with the intent of stopping her getting a new interest rate. In any case, as I've said, when Miss B did apply TMW made an offer but she didn't accept

it.

- TMW hasn't added a fee of £90 to Miss B's account each year. It does appear on her annual statements, but not in the list of transactions on the account. It appears in the separate section illustrating what Miss B would need to pay to redeem her mortgage in full. She is required to pay a one-off £90 administration fee at the end of her mortgage, so TMW includes it in the redemption illustration. So this fee appears on her statements each year – but that doesn't mean she has been charged it each year, it just means that TMW has given the same illustration of what would happen if she ended her mortgage each year.
- It was reasonable for TMW to start charging an annual fee of £150 for renewing the permission to let. This covers its administration costs. TMW told Miss B in 2021 that it would only charge the fee from then on, it wouldn't backdate it to cover past years in which she had been letting the property out. This is a residential mortgage, not a BTL mortgage, so Miss B doesn't have permission to treat it as a BTL for the rest of the term. But TMW will review the permission to let, and may well extend it for another year, annually. It charges a fee for doing so. It's not unusual for lenders to charge fees to cover their administrative costs, and not unfair TMW has done so in this case.

It's also not unreasonable that TMW has requirements about the type of tenancy it would accept, and that it asked Miss B to provide evidence that the tenancy she had granted complied with those requirements. If there's a non-standard tenancy in place, it can be harder for Miss B to remove the tenant if TMW ever stops giving permission to let. And it can be harder for TMW to remove the tenant if it ever has to repossession and sell the property. When Miss B explained that she didn't have a recent tenancy agreement because her longstanding tenant was now on a rolling periodic tenancy, TMW accepted that but asked for some evidence of it. That wasn't unreasonable.

- DHLL and TMW have known that Miss B has been renting the property out for many years. More recently, TMW has changed its process and now says that it has to agree to any letting rather than simply be aware of it. It wrote to Miss B to inform her of its new requirements. Again, that's not unfair. Ultimately this is a residential mortgage so by not living in the property and letting it out, Miss B is acting in breach of the mortgage terms she agreed to. It's not unfair that TMW imposes conditions for agreeing to accept Miss B doing that rather than taking action for breach of the mortgage contract.
- I don't think it makes any difference that the property was empty for a period of time. Miss B still wasn't living there, and still had permission to let it out in place – whether or not she was actually doing so. I don't think I can fairly require TMW to refund the administration fee or DHLL to reduce the 1% interest rate premium for this period.
- I've not seen any evidence that the balance of the mortgage is incorrect. To the extent that the balance has increased over time, that reflects periods where Miss B hasn't paid the full payments due, and where additional interest has been charged (because the balance is higher) as a result.

### **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 Miss B to accept or reject my decision before 28 March 2024.

Simon Pugh  
**Ombudsman**