

The complaint

Mr M complains about Leeds Building Society in relation to his mortgage. He said he has a joint mortgage with his ex-wife and Leeds won't remove her from the mortgage. He said he has also been unable to secure a new interest rate and his mortgage payments have increased significantly.

What happened

Mr M has a joint interest only mortgage with his ex-wife, and he is now divorced from her. Mr M and his ex-wife have a number of properties. The property in question is a buy-to-let (BTL) which Mr M has since moved back into and is using as his residential home.

He said he has some concerns as he wanted to remove his ex-wife from the mortgage and also take out a new interest rate as the one that he was on, expired. Mr M said as per the terms of the divorce settlement in 2019, he retained the property and his ex-wife had to be removed from the deeds within 90 days of the court order - but Leeds won't remove the other party.

Leeds said there are cladding issues with the property and remediation work is yet to start and they do not know when these will commence. They said they will not remove Mr M's ex-wife until the cladding issue has been successfully resolved as the current value of the property is zero. They said due to the cladding issues, there was a requirement for an EWS1 form but in addition to this, Mr M would need to meet their lending criteria and he doesn't do so. Leeds said there is government support over the remediation work needed but Mr M is not eligible for that as it's restricted to three properties and he currently has six. They also said there were some affordability concerns too.

Mr M is concerned because he was on a fixed interest rate of 1.48% on the mortgage which came to an end on 31 March 2023. Mr M said he made an appointment to discuss what other rates were available and because the mortgage only had a little over one year remaining, the only available product that he was offered was a one year fixed at 6.64%. Leeds also offered to put Mr M on their standard variable rate (SVR) of 6.29%.

Mr M told Leeds that both these options were too expensive for him as the monthly payments were too high. Leeds said they were unable to extend the term of the mortgage to be able to offer Mr M other mortgage products as they needed Mr M's ex-wife's consent in order to do so.

Mr M said that when the interest rate expired in March 2023, his former wife refused to sign to get the mortgage term extended because she wanted to be removed from the mortgage as per the court order. He said that she had also told him she didn't want to disclose her income and expenditure to Leeds.

Leeds offered to provide an interest reduction of 4% as a forbearance option for 12 months but said they would need Mr M's ex-wife's consent for this because it would impact her credit rating.

Mr M hasn't accepted any of these options and would like his ex-wife to be removed from the mortgage. He would also like the term extended in order to obtain a lower interest rate. Mr M feels that Leeds is making excessive profit from increases to the Bank of England Base rate because he used to pay around £360 but his mortgage payments have now increased to

over £1,100 per month. Mr M said he would like Leeds to review his situation and provide him with an affordable solution until he is able to sell his home – because he said at the moment, he is unable to do so due to the cladding issues.

Mr M brought his complaint to the Financial Ombudsman Service where it was looked at by one of our investigators who upheld the complaint. He thought that Leeds should grant Mr M the reduced interest rate of 4% without the need to obtain his ex-wife's consent. He also thought that Leeds should pay Mr M £200 for the trouble and upset he had been caused.

Leeds told our investigator that they needed Mr M's ex-wife's consent as it will affect her credit rating because the reduction in the interest rate was an agreement. They said there was a way that it could be done but Mr M's ex-wife would need to be aware of it and potentially log a dispute with the credit reference agency in order to get anything removed in relation to the mortgage.

After our investigator sent his opinion on the matter, Leeds said they would contact Mr M's ex-wife to obtain her consent in order to give Mr M the reduced interest rate.

Leeds responded to the investigator and said any concessionary interest rate would impact Mr M's ex-wife so they need her consent for any such arrangement. They said they contacted her and explained what they were willing to offer and also explained the implications on her credit file and she told them that she would not provide her consent. Leeds explained to Mr M's ex-wife that if the mortgage account should fall into arrears, this will also impact her credit file. They said that if she wanted a concessionary interest rate in the future, she can ask for one subject to Mr M's consent.

Leeds said the mortgage account has been on the SVR with a 1% discount since 1 April 2023 and to date all payments have been made on time and in full. They said there is no indication at this stage that Mr M or his ex-wife are unable to meet their current obligations.

In summary, they said they are not able to apply the 4% concessionary interest rate to the mortgage without Mr M's ex-wife's consent as it would not be acting in her best interests.

Leeds asked for the complaint to be reviewed by an ombudsman, so it's been passed to me to decide.

I issued a provisional decision on 15 February 2024. I said:

I've considered the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having considered everything very carefully, I've come to a different conclusion to our investigator, and I'll explain why below.

In considering what is fair and reasonable in all the circumstances of the case, I have taken into account law and regulations, regulator's rules, guidance and standards and what I consider to have been good industry practice at the time.

Mr M has explained the difficult situation that he finds himself in. He has divorced from the other party who is still on the mortgage and wanted her to be removed from the mortgage – but this hasn't been possible because Leeds said it was unaffordable.

As it stands, Mr M is unable to make any changes to the mortgage which include getting a new interest rate or to apply for a term extension because the other party is still on the mortgage – and Leeds require her consent for any changes.

Mr M initially wanted to apply for a new interest rate when his previous fixed rate came to an end but because his mortgage term is due to end on 31 July 2024 – Leeds were not able to offer him anything as he didn't have a long enough term left on the mortgage. Leeds gave Mr M two options of interest rates around 6% but he said these were still too high for him as he said he is conscious that his monthly payments have increased and wants to be able to get these reduced.

However Leeds did explain they could offer Mr M a one-year fixed rate at 4% as a forbearance option which Mr M was willing to accept – but this didn't go ahead because the other party to the mortgage wasn't willing to give her consent to arrange for this to happen.

As I've already explained, Mr M's mortgage term is coming to an end in July 2024. This mortgage is currently a buy-to-let and although Mr M is living in it, he has had to do so due to the divorce and Leeds are aware that he is residing at the property. This mortgage is interest only so the balance will become payable in July 2024. Both parties are aware that the property is affected by cladding so it's unlikely that this property is going to be sold in its present condition as I've been told that the remediation works have not started yet. So this is also a risk for Leeds as they have security over a property where the outstanding balance is due, but it won't be able to sell because of the issues associated with it – if Mr M is unable to repay the balance.

Based on the difficult circumstances that Mr M finds himself in, I asked Leeds what they could propose based on his situation, they said that it would be best for Mr M to contact them about the term coming to an end to see what options are available to him. And they confirmed they are unable to apply the one-year forbearance interest rate (which they explained is now 5%) because the other party will not consent to it.

Leeds also confirmed that they completed an income and expenditure on Mr M in March 2023, and this showed a deficit based on the incomings and outgoings that Mr M had. So they didn't think he could afford the mortgage on his own which is why Leeds were unable to remove the other party from the mortgage.

Having considered everything carefully, I don't think that Leeds is treating Mr M fairly. He has found himself in an almost impossible situation which I accept isn't the fault of Leeds, but I don't think that Leeds have done enough to try and help him.

Under Principle 6 of the Financial Conduct Authority's handbook – customer's interest's – I don't think they are treating Mr M fairly.

Mr M has had to move back into a property which he was previously renting out and as I've said, Leeds are aware of this. This property is therefore a buy-to-let property as it was purchased with the intention of renting it out. Buy-to-let mortgages aren't regulated mortgage contracts so the rules will differ if we compare this to a residential mortgage – so Leeds have more flexibility in what they can do around this mortgage.

Mr M is living in this property because he has to, but I understand it's not classed as a residential mortgage yet. If we thought about this from the position of it being a regulated mortgage, Mr M asked previously to remove the other party from the mortgage so this would be seen as a material change to the mortgage contract.

I need to decide what is fair and reasonable in the individual circumstances of this complaint. The rules we operate under say that in doing that I must take into account, amongst other things, the relevant rules and regulations. The rules for regulated mortgage contracts are set out in the Financial Conduct Authority's Mortgages and Home Finance: Conduct of Business sourcebook (MCOB).

Whilst this is a buy-to-let mortgage, so not subject to MCOB as it isn't a regulated mortgage contract, we generally feel that the MCOB provisions are good industry practice and so it isn't unreasonable for a business to take those into account.

MCOB 11.7.1 says that a lender doesn't need to carry out an affordability assessment if the proposed transaction would be in the customer's best interests.

I think this is highly relevant because as the change that Mr M has asked for is in his best interests. He is unable to apply for a term extension or arrange a new interest

rate – albeit the forbearance option that Leeds are offering – because the other party to the mortgage will not consent.

Mr M's mortgage payments have increased significantly but he has been managing to keep on top of them. The mortgage account is up to date, but Mr M has said that this is becoming increasingly difficult for him and he would like options in order for him to bring those payments down. But he is unable to proceed with anything because the other party is on the mortgage and will not agree to anything.

The fact of the matter is that Mr M is affording to keep the mortgage up to date on his own and has been doing so for a while. The other party is not contributing to it at all and she would also like to be removed from the mortgage as per the court order which I have seen.

The court order clearly shows that the property that Mr M is living in has been awarded to him and the court order states that the other party should be removed from that property. It's not up to Leeds to remove the other party from the property title but they should remove her from the mortgage. Mr M has demonstrated that he is able to afford this on his own and Leeds have also confirmed that the mortgage account is up to date and paid in full each month. He has been making the mortgage payments by himself and I'm satisfied that he can afford the mortgage on his own. What is best for all parties here is that Mr M takes over the mortgage on his own so Leeds should remove the other party to enable Mr M to utilise the options that are available to him.

This will enable Mr M to see what options there are in him extending the term of the mortgage to secure a new interest rate on his mortgage or at least be in a position to take up the forbearance option that Leeds is offering.

The other crucial thing for consideration here is that this mortgage is due to end in July 2024 and as it's an interest only mortgage, the balance will become payable. Mr M and Leeds both know that this property cannot be sold due to the cladding issues on it so there is another unavoidable situation that both parties find themselves in. Mr M cannot sell it to repay the mortgage and Leeds although could take the property into possession if it's not repaid, it's unlikely to be in their interests to do so as they may not be able to sell the property either. So there has to be further engagement around this matter to see what will work best for everyone involved.

Allowing the other party to be removed from the mortgage will open up options for Mr M which will ultimately end up benefiting Leeds at the same time. And as I've said, it is in Mr M's best interests for Leeds to allow this to happen.

Leeds have not been able to propose a solid solution to help the matter other than asking Mr M to contact them to see what options are available, but I think that this option is best for both parties involved.

I am therefore minded to direct Leeds to remove the other party from the mortgage seeing as Mr M is managing to keep up with his mortgage payments on his own and allow him to decide, while engaging with Leeds – what his best options are.

Developments

Leeds responded to the provisional decision and said they had some concerns regarding the approach we were proposing.

They said that we had asked for the other party to be removed from the mortgage but not from the title deeds. And they are in agreement to considering removing the joint party from the mortgage but think it needs to be done in conjunction with her removal from the title as

there are risks to both Mr M and Leeds if Mr M becomes solely liable for the mortgage but both Mr M and his ex-wife benefit from legal ownership of the property.

Leeds said it would be preferable to re-assess Mr M's application for a transfer of equity, to remove the joint party, and for Mr and his ex-wife to be engaged in her removal from the mortgage and title to the property. Leeds said in accordance with their regulatory responsibilities, they would not want to expose Mr M to the liability of having the mortgage in his sole name, without fully assessing his affordability. They said they would still need to consider affordability going forwards as the mortgage is fully regulated because it was originally submitted on a residential basis before being converted to a BTL. They do not agree that just removing Mr M's ex-wife from the mortgage alone without carrying out an affordability assessment would be in Mr M's best interests.

Leeds also said that cladding issues for existing borrowers have now moved on from when Mr M previously requested a transfer of equity so this in itself would no longer be a barrier to the transfer of equity providing that Mr M understands and accepts the risks and costs associated with remediation should he become solely liable for the property.

Leeds also said they have recently received a request for a redemption statement from a firm of solicitors who are acting in respect of a remortgage, so they think it's possible that Mr M has found an alternative mortgage lender and may soon be redeeming his mortgage with Leeds.

Mr M responded to the provisional decision and said he didn't agree with it. He said I have ignored the investigators initial outcome that his complaint should be upheld and that his monthly payments should be reduced from £1,200 to £800 and backdated to 1 April 2023.

Mr M said he accepted the investigators outcome as he thought it was the best deal he could get. He doesn't believe the provisional decision is accurate and says that it is not relevant to the core issues.

Mr M said the core issue is that Leeds have aggressively and arrogantly exploited him which the Financial Ombudsman Service has disregarded. Mr M said it was noted in the provisional decision that he can afford the increased payments, but the fact is he has paid the extra £800 per month because he was forced to by Leeds and has done so using his savings which are diminishing.

Mr M also commented that the decision said he has income from eight properties which he does not and doesn't think it's relevant that I comment on his 'global' financial situation. Mr M said if the decision stands, he has wasted 12 months of his life, been overcharged £8,800 in 11 months by Leeds and suffered incredible stress and sleepless nights.

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 understand that Mr M feels very strongly about his complaint and have noted that he doesn't agree with the provisional decision. He would like the outcome that the investigator had reached initially.

I appreciate this is what he would like to resolve this complaint, but this is not going to be possible. Leeds have contacted Mr M's ex-wife to explain the situation and the impact that the concessionary interest rate would have on her credit file – and she is not going to give her consent for that arrangement to be put in place. So we cannot ignore that.

As I have explained in the provisional decision, Mr M is currently not able to secure a new interest rate or apply to extend the term of his mortgage because Leeds requires both the consent for Mr M and his ex-wife to allow these changes to happen – and now that Mr M's

ex-wife is aware of what the proposal was and doesn't agree to it – it's not reasonable to proceed on that basis.

The reason for my decision to remove the other party from the mortgage was to enable Mr M to then be able to make the changes he requires to the mortgage without worrying about having to get consent from his ex-wife. He could then apply to extend the term which would mean he may be able to obtain another interest rate on the mortgage which would help to reduce his payments. But we cannot ask Leeds to apply the 4 or 5% rate they offered without the other party's consent. So this means we will not be asking Leeds to back date any payments because Mr M's mortgage is currently being charged as it should be.

I appreciate that he is very unhappy and believes that Leeds is exploiting him but this is not the case. The fixed interest rate his mortgage was initially on has expired so his mortgage has reverted to the standard variable rate which is much higher. The issue here is that Leeds do not have any other mortgage products they can offer Mr M because the term of the mortgage is too short – it's due to come to an end in July 2024. So the concessionary interest rate of 4% was there to try and help him – but we now know this is not going to be possible.

Mr M argues that the core issues of his complaint are not being dealt with. But I disagree with this. This complaint has dealt with the core issues at hand, but we cannot give Mr M what he wants. Removing the other party from the mortgage is the best way of moving things forward and is in Mr M's best interests.

Leeds has explained the concerns they have about removing Mr M's ex-wife from the mortgage but not the title deeds. And their concern is a valid one, however what was said was that it's not Leeds responsibility to remove Mr M's ex-wife from the title deeds – they just need to remove her from the mortgage. And this will need to be done in conjunction with Mr M arranging to remove her from the title deeds – but this cannot happen until Leeds agree to remove Mr M's ex-wife from the mortgage.

This is in Mr M's best interests because of the reasons that have already been given. Mr M cannot move forward on anything to do with the mortgage because of the situation that he finds himself in. And while it would be beneficial for both Mr M and his ex-wife to engage with her removal from both the title deeds and the mortgage, I don't think it's that simple – which is why we have asked that Leeds proceed to remove the other party to give Mr M options.

I have already given my reasons as to why an affordability assessment does not need to take place and that's because Mr M has been maintaining his mortgage payments, albeit from his savings (like he has said) but the mortgage still appears to be up to date. And allowing Mr M to take over the mortgage is a fair way for him to see what other options are available to him rather than not being able to either apply for a new interest rate or apply to extend the term of the mortgage.

The other thing to think about here is that Leeds have told us that Mr M – via his solicitor – has requested a redemption statement. I asked the investigator to find out from Mr M if he has now managed to find an alternative lender and if this is proceeding – as this will make a difference to what we ask Leeds to do.

Mr M has said he has 'potentially' found a new lender but will not provide any further information in relation to this. So we could be in a position where we ask Leeds to start the process of removing the other party to the mortgage, only for the mortgage to be redeemed.

So I think the best way of moving things forward is for Mr M to engage fully with Leeds and let them know in the next month if he is intending on redeeming his mortgage with them, and if he isn't, then Leeds should start the process of removing Mr M's ex-wife from the mortgage subject to Mr M also removing her from the title deeds at the same time.

I still think that Leeds should pay Mr M £200 for the stress and inconvenience he has been caused.

I know that Mr M will be disappointed with my decision, but this is the best way of moving things forward for him. I will not be asking Leeds to backdate any interest rate on his mortgage as this is not possible as the other party will not agree to it.

My final decision

For the reasons given above and in my provisional decision, I uphold this complaint and direct Leeds Building Society to:

- Remove the joint party from this mortgage, in conjunction with Mr M also removing them from the title deeds. This will enable Mr M to see what options are available to him. Mr M should let Leeds Building Society know within one month if he intends to remortgage to another lender and if not, then Leeds will need to proceed with the above.
- Pay Mr M £200 for the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 8 April 2024.

Maria Drury
Ombudsman