

## The complaint

Mr M complains that The Mortgage Works (UK) Plc (TMW) froze his buy to let mortgage accounts when it learned about his financial status, causing him to pay additional interest, and to pay additional costs to resolve the situation.

## What happened

Mr M owns several buy to let properties mortgaged to TMW. In 2022, via a broker, he applied for a new interest rate on one of his mortgages. At the same time, he asked to add another party to the mortgages. Because of the change of borrower application, TMW asked for Mr M's financial information

On review of this information, TMW learned that the properties had been purchased using a loan from a trust of which Mr M was the sole beneficiary, rather than using funds owned by Mr M himself. And the rent was being paid to the trust – not Mr M. TMW said that it did not accept this sort of arrangement, and had it known about it at the time it would never have lent. Now that it was aware, it said that it would not be able to offer Mr M any new interest rate products.

Mr M said that as the sole beneficiary it was up to him to decide how the trust funds were invested, and he had decided to invest in property. But because of TMW's stance, and the additional costs caused by higher interest rates, he decided to wind up the trust and take ownership of the properties directly. He said that closing down the trust cost him around £5,000 in legal fees and other expenses.

Mr M complained to TMW. He said that he'd never been made aware this was an issue and that TMW could have asked for information about this at any time. He said that he'd incurred significant costs, and had also lost out on preferential interest rates. He wanted TMW to compensate him for his losses.

TMW didn't uphold Mr M's complaint. It said that its policy on trusts was not set out in the mortgage terms and conditions, but was part of its lending criteria. It said that it had never been told that there was a trust or non-standard tax arrangement in place. It only discovered this when it requested Mr M's tax return in 2022 to satisfy itself of his finances following information provided by the broker – as he was also applying to change borrowers, so financial information was necessary.

Once TMW became aware of Mr M's trust arrangement, it said that the mortgages fell outside its lending criteria and while it would let them continue as they were it wouldn't agree to any new applications such as rate switches or further borrowing. Once Mr M confirmed the trust had been dissolved, it removed the block and Mr M was able to apply for new rates again. Earlier product switches had been granted before it learned of the trust arrangements.

Our investigator didn't think TMW had acted unreasonably. So Mr M asked for an ombudsman to review his complaint.

## **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.

It appears that funds were held in trust with Mr M as the beneficiary. The trust lent money to Mr M which – along with the mortgages – Mr M used to purchase the properties. The property titles were registered in Mr M's own name rather than that of the trust. But rents paid by the tenants were paid to the trust rather than to Mr M personally.

I think TMW's concerns about this arrangement were reasonable. It sits outside what TMW is prepared to accept, as it's not a standard buy to let arrangement. In the first place, the funds used to purchase the properties came from the trust, not Mr M direct. And the rents were being paid to the trust not Mr M. Even though Mr M held legal title, this may create difficulties should it be necessary to enforce the mortgage and the trust asserted a beneficial interest in the properties. And TMW would generally expect rents to be paid to – and be the tax liability of – the property owner and borrower, not a third party.

I agree that this is a relatively unusual arrangement. I'm satisfied that if TMW had known of this at the start, it's likely it wouldn't have agreed to lend. And I don't think that there's any way it could reasonably have known of this arrangement when it agreed to lend. I don't think it was required to explain every possible scenario it wouldn't accept when making an offer. TMW is not responsible for what the broker who originally arranged the mortgages may or may not have said to Mr M – since mortgage brokers act as agents of borrowers, advising on and arranging mortgages for borrowers. They don't act as agents of lenders. If Mr M made his broker aware of the arrangement, I'd have expected the broker to have checked whether it would be acceptable to TMW at the time. But there's no evidence that happened.

Once TMW did become aware of the arrangement, it decided that it wouldn't agree to any further applications. Again, that's reasonable. By then the mortgages existed. If Mr M had transferred legal title to the properties to the trust he would have been in breach of the mortgage terms and conditions. But he hadn't done that. And he wasn't in breach in any other way, so there were no grounds for TMW to call in the lending. But nevertheless, lending in this situation was outside TMW's risk appetite. So while it wouldn't call in the mortgages, it wouldn't agree to make future discretionary changes to them either.

Once an interest rate expired, Mr M wasn't contractually entitled to a new interest rate. As his mortgage offers make clear, once a preferential rate expires he moves to the reversion rate. There's no guarantee that TMW will make future preferential rates available.

In these circumstances, where TMW discovered after the fact that it should never have lent but wasn't intending to call the mortgages in, I think it's reasonable that it said it wouldn't agree to new preferential rates or other applications – such as adding another borrower. While Mr M continued to operate in a way that was outside TMW's risk appetite it would allow the mortgage to continue on existing terms, but wouldn't agree to new preferential terms or further applications.

No lender has to offer new interest rates, or agree to changes to a mortgage. Lenders are entitled to set criteria they will accept. It was fair for TMW to say that it would only offer new rates to Mr M if he operated the mortgages in a way that was acceptable to TMW.

This left Mr M with a choice. He could remain with TMW on the reversion rates and retain the trust structure. He could move to another lender which would accept that arrangement. Or he could unwind the trust structure and operate the mortgages in a way acceptable to TMW – and in that eventuality TMW would then agree to consider future preferential rates and

other applications.

Mr M chose the latter option. TMW then agreed to consider new rate applications. But I don't think it would be fair to require TMW to refund the costs Mr M incurred in unwinding the trust, or the additional interest charged because he couldn't take new rates for a while. I've explained that it was reasonable for TMW to decide, once it discovered that the mortgages were being operated in a way that it wouldn't accept, that it wouldn't offer future preferential terms to Mr M. It wouldn't be fair to require TMW to refund the costs of Mr M moving to an acceptable arrangement, or additional interest charged in the meantime.

### **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 Mr M to accept or reject my decision before 30 July 2024.

Simon Pugh  
**Ombudsman**