

The complaint

Mr R and Mrs R complain that they'd asked The Mortgage Works (UK) Plc ("TMW") to consent to a transfer of their Buy To Let mortgage (and the equity in the property) to Mrs R alone, as they were separating. But they said TMW had refused without explanation.

What happened

Mr R and Mrs R have previously complained about the time TMW took to reach a decision on their request for a transfer of equity ("TOE") on their Buy To Let ("BTL") mortgage. I won't comment on that issue here.

Mr R and Mrs R complain now about the decision that TMW eventually reached, which was to decline the transfer. They said they hadn't been given any reason for this decision.

TMW says it doesn't have to give a reason for a decision to refuse a TOE request. But in fact, TMW did give the following reason for its decision—

Declined due to the current living arrangements, low savings and reason for the transfer. We will be unable to consider the transfer at this time.

TMW said it didn't have to offer more than that. A letter of 5 February 2024 said TMW was sorry it had taken so long to look into this complaint for Mr R and Mrs R, and it offered £100 in compensation for that. A later letter, dated 16 April 2024, noted that Mr R and Mrs R hadn't received the February letter, said TMW couldn't show it had been sent, and said TMW was also sorry it had initially said it had no record of investigating this issue for Mr R and Mrs R. In the light of these further mistakes in dealing with the complaint, TMW raised its compensation offer to £200.

Our investigator thought this complaint should be upheld. She said Mr R and Mrs R asked for a TOE, and said the reason for this was due to separation. But TMW declined the application. Mr R and Mrs R wanted to know if the application was considered fairly, and for us to help them get to the bottom of exactly why the application has been declined. Our investigator said she wouldn't comment on the delays in TMW reaching a conclusion.

Our investigator said TMW mentioned three concerns which led to the decline of the TOE, but stated the main reason was regarding Mr R and Mrs R's current living arrangements. Although they were separating, Mr R and Mrs R confirmed that they would continue to live in their residential property. TMW expressed what it said were plausibility concerns.

Our investigator wasn't satisfied the application was fairly considered. She didn't think Mr R and Mrs R deciding to continue to reside together was a fair reason to decline the application, and she didn't think things had been properly explained to Mr R and Mrs R. She thought TMW needed to reconsider Mr R and Mrs R's request, and pay compensation of £250 to recognise the inconvenience this caused to Mr R and Mrs R.

Mr R and Mrs R accepted that recommendation, but TMW did not.

TMW said it hadn't yet charged for this application, and wouldn't waive the charge if the application was ultimately successful. It said it could continue the application, but listed a number of outstanding concerns about affordability, including verifying Mrs R's other investments and her employment income. TMW said it would also need to check whether Mrs R remains resident in the UK, as it only lends to UK residents.

TMW said these concerns would need to be resolved before it could agree to a TOE. And TMW said the information it had received to date left it concerned that Mrs R could not afford this property on her own.

TMW said it also wanted to flag that Mr R and Mrs R had originally complained they weren't given a reason for the refusal to transfer the property, and TMW said it had shown they were given a reason.

TMW said its concern about Mr R and Mrs R's living arrangements was based on a worry that Mrs R might move into the BTL property in future. And it said if it has concerns that an applicant will live in the property, it has a right to decline the application.

TMW said for all these reasons, it didn't agree that £250 in compensation was fair, and it proposed a payment of £100 instead.

Our investigator didn't change her mind. She said there was no guarantee whether one party will move into the property, but there was also no guarantee about this whether the TOE takes place or not. So she didn't think it was fair to use this as a reason to decline the application. She didn't think the application should have been refused on speculation, and repeated her view that TMW had not been able to show the application was fairly considered.

In response, TMW said that it would like this case to be considered by an ombudsman. It said the information it had received provided a sufficient basis to decline the application, because Mrs R's income appeared to be less than her outgoings, she had offered no evidence of savings and had high utilisation on a credit card.

Mr R and Mrs R didn't want to accept the £100 that TMW had offered, so this case was then passed to me for a final 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.

I've reached the same overall conclusion on this complaint as our investigator.

I should note that, given the previous consideration of delay in this case by our service, I will not comment on the issue of delays in this TOE application here.

Like our investigator, I don't think TMW has made a fair decision here. But I should also note that TMW has shown us indications that it may have been able to fairly reject this application for TOE on the basis of affordability. It has also shown us that it had other concerns, including about Mrs R's country of residence, which would have needed to be resolved before it could have approved this application. So, if TMW does reconsider Mr R and Mrs R's application for TOE, there is no guarantee that it will reach a different conclusion in future.

However, that said, I have looked carefully at the internal notes that TMW has shared with us for this application, and its responses to our investigator's questions. And I think she was right to say that this application doesn't appear to have been considered fairly. TMW has asked repeated questions about Mr R and Mrs R's future residence, and why Mr R doesn't appear to be asking Mrs R for a payment in exchange for the transfer of equity in this property. As TMW was apparently unhappy with the responses it received, it declined this application on the basis of what it said were "*plausibility concerns*".

TMW has said it has the right to turn down an application for a BTL mortgage if it thinks the applicant is going to live in the property. But there doesn't seem to be a particularly strong reason to suspect that might be the case here – Mrs R says she already owns other property, and TMW has expressed concerns that she may not be resident in the UK at all. And, more importantly, this isn't a new application. It's an application to transfer the property from two existing borrowers, to one. So, to the extent that there's any risk that Mr R or Mrs R may move into the property that TMW holds as security for its lending, that risk already exists. I haven't been able to see that it would be fair for TMW to reject a TOE application on this basis, and that does seem to be one of the reasons it has done so.

The other reason TMW gave, was that Mr R apparently wasn't receiving a payment in return for transferring this equity to Mrs R. But TMW hasn't explained why it thinks this would affect the lending relationship between TMW and Mr R and Mrs R, or why it would mean that it wasn't acceptable for TMW to lend to Mrs R alone. Again, I haven't been able to see that it would be fair for TMW to reject a TOE application on this basis, and this does also seem to have been a factor in its decision-making.

So, whilst I do think it may ultimately have been possible for TMW to reach a fair decision to decline the application for TOE, I don't think that's what TMW has done. And for that reason, I agree with our investigator that TMW should pay Mr R and Mrs R £250 in compensation now. For the avoidance of doubt, that payment is in addition to the sums TMW has already offered Mr R and Mrs R, in the complaint response letters it sent to them.

TMW has said it will accept a new TOE application from Mr R and Mrs R, and will consider it afresh. I understand Mr R and Mrs R would like TMW to consider their application on the information it already holds, but I don't think it's unreasonable for TMW to say it would like to see up to date copies of documents like bank statements, or to say it's likely to have further requests for information from Mrs R, on matters like her income and outgoings, as well as her employment and residency.

I should also note here that, whilst Mr R and Mrs R may reapply for TOE, I am not directing now that this application should be accepted. TMW will need to make its own decision on that, in due course.

My final decision

My final decision is that The Mortgage Works (UK) Plc must pay Mr R and Mrs R £250 in compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R and Mr R to accept or reject my decision before 30 September 2024.

Esther Absalom-Gough
Ombudsman