

The complaint

Mr and Mrs E have complained about two buy to let (“BTL”) mortgages they took out with Mortgage Express.

What happened

Mr and Mrs E applied for these two mortgages through two separate mortgage brokers.

The mortgage offer for the first property, which I will refer to as property M, was issued on 31 March 2006. The mortgage offer showed:

- It was to facilitate the purchase of a property with a purchase price of £128,500.
- Mr and Mrs E were borrowing £109,225 (plus fees) over a 25-year term on an interest only basis.
- The interest rate was noted to be fixed at 4.99% until 31 March 2009, after which it would revert to the BTL variable rate which was 6.25% at the time of the offer, for the rest of the mortgage term.

I understand the purchase completed in May 2006.

The mortgage offer for the second property, which I will refer to as property B, was issued on 22 May 2006. The mortgage offer showed:

- It was to facilitate the purchase of a property with a purchase price of £109,995.
- Mr and Mrs E were borrowing £93,495 (plus fees) over a 25-year term on an interest only basis.
- The interest rate was noted to be fixed at 4.99% until 30 June 2009, after which it would revert to the BTL variable rate which was 6.25% at the time of the offer, for the rest of the mortgage term.

I understand the purchase completed in June 2006. We have on file a copy of the valuation for property B that had been undertaken in March 2006 by an independent surveyor.

Mr and Mrs E have told us that soon after they bought property B it became apparent that it was part of a wide-spread fraud on the part of the developer and other third parties and the property wasn't worth the amount they'd paid for it. This has been the subject of correspondence between Mr and Mrs E, a firm of solicitors they appointed and Mortgage Express over the years. Mr and Mrs E say they have exhausted all their options in terms of taking action against – or trying to reclaim funds from – all the third parties involved.

Mr and Mrs E raised a complaint in 2015 which Mortgage Express responded to in September 2015. It summarised that complaint as ‘You have raised concerns in regard to the valuation used by Mortgage Express, during the underwriting of the mortgage we agreed to allow you to purchase the above property. You believe it may have been intentionally

overvalued...’ As part of its response, it said that, if appropriate, a full investigation will be carried out with a view to considering the validity of any professional negligence action.

Overall, Mortgage Express didn’t uphold the complaint and said Mr and Mrs E had six months from the date of the letter to refer the complaint to us, and if they didn’t refer the complaint in time it said we wouldn’t have its permission to consider the complaint.

Over the next few months Mr and Mrs E – and their solicitor acting on their behalf – continued to correspond with Mortgage Express about property B, and in March 2016 Mortgage Express confirmed it hadn’t pursued any of the third parties involved in the property purchase, and that it wasn’t obliged to do so.

In October 2018 Mr and Mrs E were looking to sell property M, but when they spoke to Mortgage Express about that they were told that the lender held the right to consolidate, and it wasn’t willing to release its charge over the title of property M unless Mr and Mrs E paid a lump sum to reduce the balance on the mortgage held over property B.

Mr and Mrs E say that led to the sale of property M falling through and then, because the property had external cladding, a sale couldn’t be achieved for a number of years until that situation had been resolved.

On 4 July 2023 Mr and Mrs E’s solicitor wrote to Mortgage Express at a Durham address. It’s letter said Mr and Mrs E can’t make a claim against the solicitor, surveyor or broker, and they wanted to sell both properties and make an arrangement with Mortgage Express in regards to the mortgage shortfall that would be left. The solicitor sent four chaser letters over the next four months; the first two – in July and August - to the same address, and then the last two – which were sent at the end of September and in mid-October - to a Skipton address. All the letters had the original mortgage account numbers on them, albeit the last letter sent in mid-October also included the current mortgage account numbers.

On 23 October 2023 Mortgage Express ceased to operate, and it transferred Mr and Mrs E’s account – along with all its other live customer accounts – to Hyalite Mortgages, which is a trading name of Topaz Finance Limited.

Mr and Mrs E wrote a letter of complaint to Mortgage Express on 17 November 2023, sending that to the Skipton address. In summary their complaint was:

- Mortgage Express hadn’t responded to the letters that had been sent by their solicitor since July 2023.
- The mortgage had been transferred to Hyalite with the minimum of notice, despite Mortgage Express being aware of the history of property B and the pleas for help.
- Property B had been overvalued, which had left them as mortgage prisoners due to the negative equity.
- The sale of property M had been blocked in 2018 (albeit the letter said, in error, that had happened in 2017).
- An approach where Mortgage Express and Mr and Mrs E shared the burden of the mortgage shortfall on property B was pragmatic.

Mortgage Express explained that Hyalite would undertake an investigation into any complaints following the mortgage transfer, albeit it did keep some issues to respond to itself. It sent a final response letter on 9 January 2024 in which it said it was allowed to transfer the mortgage to Hyalite under the terms and conditions of the mortgage.

Hyalite had separately responded to the other concerns, and the complaints were referred to our service at the end of January 2024.

Two separate complaints were dealt with by our Investigator; this one which is against Mortgage Express, and another which is against Hyalite. Although the same Investigator dealt with both complaints – and I have both complaints to reach a decision on – we have to deal with them separately as different legal entities are responsible for answering different parts of the complaint.

Our Investigator said this complaint against Mortgage Express would deal with the issues relating to the alleged fraud involved in the purchase of property B, what actions Mortgage Express has taken against the third parties involved, and that the mortgage was transferred to Hyalite.

In respect of the alleged fraud he said Mortgage Express had responded to a complaint about that in September 2015 and that complaint hadn't been referred to us within the six months allowed under our rules and so we couldn't now consider it. He said we could consider a complaint about the transfer to Hyalite, but he didn't uphold that element as he didn't think Mortgage Express had done anything wrong.

Mr and Mrs E didn't agree with our Investigator's findings and so the case was passed to me to decide.

Earlier this month I issued a decision about our jurisdiction in which I said:

'We can't consider a complaint about the alleged fraud when property B was bought or what actions Mortgage Express has taken against the third parties involved.

But that we can consider a complaint about whether Mortgage Express acted fairly when it transferred the mortgage to Hyalite. I'll now consider that point and issue my findings in due course.'

I'm now issuing this decision as the final stage of our process for this complaint against Mortgage Express.

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 and Mrs E have said that Mortgage Express transferred their mortgages to Hyalite at short notice.

The right of transfer is set out in the terms of Mr and Mrs E's mortgages, with the relevant section saying:

- a At any time we may transfer our rights (or some of our rights) under the agreement, or the conditions, to any other person.
- b Unless the terms of the transfer say otherwise, any person we transfer our rights to (under general condition 7a) will be able to exercise the transferred rights just as we could before the transfer.
- c Where general condition 7a allows us to transfer our rights, we may instead:
 - dispose of our rights in some other way (for example, by using them as security to raise money); or

- agree to transfer or dispose of our rights in the future.

In either of these cases, general condition 7b will apply, with the necessary changes.

- d You agree that, at any time, we may transfer all or some of our responsibilities under the agreement, or the conditions, to any other person.
- e If we transfer any of our responsibilities to another person under general condition 7d, you will be able to enforce the transferred responsibilities against that person just as you could enforce them against us before the transfer.
- f We may take any of the steps described in general condition 7a, c and d without consulting you first. If we take any of those steps:
 - it will not affect your legal rights or responsibilities under the agreement, or any of the conditions; and
 - it will not reduce the guarantees (if any) we gave you in the agreement, unless you agree in writing.

Having considered all this I'm satisfied that Mr and Mrs E agreed to be bound by those terms when they took out these mortgages. I'm also satisfied that under those terms Mortgage Express was entitled to transfer the mortgages to Hyalite at any time and without needing to seek Mr and Mrs E's permission.

The transferring of a mortgage from one lender to another isn't unusual and Mr and Mrs E's mortgages were transferred as part of a large portfolio of loans. The mortgages simply transferred over on the same terms, the only difference being that the mortgage lender was now Hyalite rather than Mortgage Express. Nothing else changed. Whilst it was unfortunate timing as Mr and Mrs E were corresponding with Mortgage Express, Mortgage Express ceased trading and so needed to transfer its mortgage book to another company at that time.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E and Mrs E to accept or reject my decision before 13 January 2025.

Julia Meadows

Ombudsman