

The complaint

Ms B's complaint is about a buy-to-let (BTL) mortgage she holds with Clydesdale Bank Plc trading as Virgin Money (referred to here as VM).

Ms B says that in 2022 VM told her she could live in the property, but in 2024 said there was no consent for this.

What happened

In April 2021 Ms B took out a BTL mortgage with VM, borrowing about £405,000 on an interest-only basis over a 25-year term. The mortgage was on a fixed interest rate of 2.24% until 1 March 2026.

In July 2022 Ms B asked VM if she was allowed to live in the property. In August 2022 there were discussions with VM about whether it would grant consent to reside (CTR) in the property. Ms B said that she'd bought another property, but due to a leaky roof she hadn't been able to move in. Ms B also said that two of her children had health issues which meant they couldn't move into the new property.

Ms B said she'd looked for temporary accommodation and had moved in with her mother, but she confirmed to VM that she intended to move into the BLT property permanently. VM considered whether it could grant CTR. However, Ms B wasn't working at the time, and so wasn't able to satisfy VM that the mortgage would be affordable if she lived there. As a result, CTR was declined.

In May 2024 Ms B contacted VM again. She explained that she wanted to sell the mortgaged property, buy another BTL property and port the interest rate product onto a new mortgage on that property. Ms B said that the new property would be rented out, and that she and her children would move in with her mother, but once the interest rate product had expired in March 2026, she would move into the property. VM declined the application, because it was outside its lending policy.

On 28 May 2024 Ms B raised a complaint with VM about the CTR issue. Ms B says that she was told by VM in 2022 that it would agree to her living in the property. In its final response letter dated 2 August 2024 VM said that it had never granted CTR. VM said that in August 2022 it had considered Ms B's request and referred it to underwriters, but the request was declined. For a short delay in responding to the complaint, VM paid Ms B £50 compensation.

Ms B brought her complaint to our service. An Investigator looked at what had happened, but noted that VM had never granted CTR in 2022, and he was satisfied VM had made Ms B aware of this.

The Investigator also noted that Ms B had complained about the decision to decline her request to port the mortgage interest rate product onto another BTL property. However, he explained that VM hadn't had a chance to address that complaint, so it wouldn't form part of this current complaint.

Ms B didn't agree with the Investigator's findings and asked for an Ombudsman to review the complaint. Ms B said that the property was her family home, and she'd moved out when she took out the BTL mortgage. Ms B said that VM had allowed her to reside in the property, albeit without written confirmation. Ms B said that she was aware she'd not passed the affordability checks, but that VM knew she was living in the property. Ms B said she'd asked VM to confirm this in writing, but VM declined to do so.

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.

Having done so, I've reached the same conclusion as the investigator, for broadly the same reasons.

I will begin by explaining that this decision is limited to Ms B's complaint that she believed VM had consented to her living in the BTL property. Ms B has made another complaint about her application to port the mortgage interest rate onto a new property, but VM hasn't had the opportunity to address this yet. I cannot therefore make any findings on the porting complaint until VM has been able to investigate it and issue its final response. I can see that Ms B has been made aware of this, and intends to raise a new complaint with VM about the porting application.

In relation to the issue I am considering, VM has a CTR policy, and will allow BTL borrowers (or their immediate family) as an exception to move into a BTL property, primarily for personal or family reasons. However, the policy states that any request for CTR *"must be assessed as per residential new business affordability"*.

When Ms B asked for CTR, VM assessed this against its residential mortgage affordability criteria. Unfortunately, Ms B failed to meet VM's criteria and so it wasn't possible for VM to grant CTR. It appears from what she's told us that, notwithstanding this, Ms B moved back into the property in any event. She changed her correspondence address in VM's records back to the mortgaged property.

Therefore, whilst VM was made aware after the fact that Ms B was living in the property, albeit in breach of the mortgage terms and conditions, this doesn't mean that VM consented to it. In fact, the contemporaneous records are clear that VM had expressly *not* consented to Ms B living in the property.

In the circumstances, I'm unable to find VM has done anything wrong. It considered Ms B's request for CTR but because Ms B didn't meet affordability criteria, CTR couldn't be granted. This is a decision VM was entitled to make, and I'm unable to find it reached its decision unfairly.

My final decision

My final decision is that I don't uphold this complaint.

This final decision concludes the Financial Ombudsman Service's review of this complaint. This means that we are unable to consider the complaint any further, nor enter into any discussion about it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 25 March 2025.

Jan O'Leary
Ombudsman