

The complaint

Mr M's unhappy that The Mortgage Business Plc ("TMB") is chasing him for the shortfalls that occurred when two of his properties were sold in possession in 2013 and 2014 respectively.

He says because his credit file showed the debts had being marked as 'satisfied' he didn't bother going bankrupt at the time, and it's unfair that his credit files are now to be amended to show the correct information, and that he's being asked to pay the shortfalls.

What happened

Mr M had two properties that were taken into possession:

- Flat 1 was taken into possession in October 2012 and was sold in June 2013. There was a resulting shortfall of around £95,000.
- Flat 8 was taken into possession in September 2013 and was sold in April 2014. There was a resulting shortfall of around £42,000.

There was an error with Mr M's credit file, as the Equifax report he's provided shows the debts were marked as satisfied; Flat 1 on 31 July 2013 and Flat 8 on 5 June 2014.

Mr M complained to TMB in 2019 that he was being chased for the shortfall debts when his credit file showed them as satisfied. TMB apologised – and offered £200 compensation - for the inconvenience caused by the wrong information showing on Mr M's credit file. However, it confirmed Mr M did still owe the money and it had the right to request repayment of it.

Our investigator agreed that TMB that it could still request repayment of the debts and said the offer of £200 was fair. Mr M didn't agree and so the matter's been passed to me to decide.

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 appreciate Mr M's frustration, but customers do have responsibilities. TMB, and two debt collection agencies acting on its behalf, sent numerous letters to Mr M explaining that the debts were outstanding and needed to be repaid. I'll refer to the first debt collection agency as D1 and the second debt collection agency as D2.

Mr M has said (I quote) "... they registered the Debt as satisfied on the 22/05/2014. So as far as i am concerned that is was the end of the matter.the fact that [D2] then tried to write to me, then this must have been a mistake as the debt was satisfied."

But that doesn't make sense. At no point was Mr M notified by TMB or the debt collection agencies that the debts had been written off, and he'd ignored all attempts to contact him.

These were substantial debts and I don't consider it reasonable that Mr M – as a home finance professional – should believe TMB had written the debts off without him making contact to check that, especially so soon after the properties had been taken into possession and sold.

In any event it wasn't just the debt collection agencies that contacted Mr M after the debts had been marked as satisfied. Mr M was sent a letter on 24 June 2014 by Bank of Scotland (which TMB is part of) which said:

"IMPORTANT NOTICE

*We are writing to you regarding your mortgage shortfall debt with **Bank Of Scotland Plc (halifax Division)**.*

We have withdrawn your account from [D1] and transferred it to [D2] with immediate effect. You should be aware that the decision to instruct them specifically relates to a process change within the bank.

Their contact details are:

[D2 name]

[D2 address]

[D2 phone number]

In order to minimise any disruption caused by this transfer we enclose a letter from [D2] which sets out how to contact them and how to make future payments towards your account. It is important that all queries, payments and correspondence in this matter are now referred directly to [D2] who will be able to assist. Any attempt to contact Bank Of Scotland Plc (halifax Division) regarding the above account will result in you being referred straight back to [D2] for them to help you directly.

*Please note [D2] have been duly instructed to recover the balance outstanding of **£95083.75** by agreeing a suitable arrangement and it is important that you contact them as soon as possible to agree an affordable repayment plan for this outstanding account. If your account is being managed by an authorised third party, for example a relative or a debt management company, please ensure you inform them of this change or show them this letter."*

On the same day, a letter was sent to Mr M by D2, which said:

"Outstanding amount: £95083.75

*We have been instructed by **Bank Of Scotland Plc (halifax Division)** in relation to the above account. The account relates to the sale of your previously mortgaged property [property address]. The sale value was insufficient to cover the outstanding balance on the mortgage leading to a mortgage shortfall.*

We understand that this account is not in dispute and that there is no valid legal reason for it to remain unpaid. If you believe this not to be the case you must contact us immediately to advise us of the details. We now request that all communications and payments are made directly to us.

It is very important that we receive an offer of repayment from you. We will assess your personal circumstances before accepting it. This is to ensure that the amount you pay is affordable and fair and will not have a detrimental impact on your personal finances. If

you are in a position to make a lump sum payment or payments to settle the account then we will be happy to discuss acceptable terms which could save you substantial amount of money.

Please contact us on [D2's phone number] *quoting* [reference] **within 14 days of the date of this letter.**

If we do not hear from you in this time we will have no choice but to progress with further collections activity and would use this letter as evidence that we have made every effort to help you address this debt in a fair and affordable way."

I understand, across the two mortgage shortfalls, letters were sent to Mr M on the following dates from either the lender, D1 or D2, and all were correctly addressed:

- 30 October 2013
- 18 November 2013
- 30 December 2013
- 20 January 2014
- 7 February 2014
- 16 May 2014
- 18 June 2014
- 24 June 2014
- 15 July 2014
- 18 July 2014
- 5 August 2014
- 14 January 2015

TMB has acknowledged there was an error with Mr M's credit file, as shown by the June 2018 Equifax report he's sent us, but TMB isn't bound by that. This debt is owed to TMB and it is entitled to request the repayment of it from Mr M.

Mr M has told us he would have gone bankrupt back in 2014 if he'd known the debts weren't satisfied. But as I've already concluded I don't think it was reasonable for Mr M to assume the debts *had* been satisfied then that's not something I can consider here.

If Mr M had made contact with TMB, D1 or D2 in response to one of the numerous letters they'd sent him then he would have been told the correct situation, and that was that he owed around £137,000 across the two mortgage shortfalls and that debts hadn't been written off.

Having considered everything I'm satisfied TMB is allowed to pursue these shortfall debts, and that it isn't bound by the errors on Mr M's credit file. I'm also satisfied the £200 compensation offered by TMB for the inconvenience caused is fair.

My final decision

I don't uphold this complaint in the sense I think the offer made by The Mortgage Business in its final response letter was fair. I leave it to Mr M to decide if – on reflection – he now wants to accept that offer directly with TMB (if it hasn't already done so).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 11 January 2021.

Julia Meadows
Ombudsman