

The complaint

Mr H is unhappy with the handling of his mortgage account by The Mortgage Business Plc. His complaint stems from a sub-account set up by the bank to deal with unpaid rent and charges relating to his mortgaged property. He has also raised concerns with the reporting of certain information to credit reference agencies.

What happened

Mr H has raised a number of concerns. For reasons I shall explain, it is not possible for this service to consider some these. As such, I have not provided full details of the events in the past few years. And the following is only a brief summary of the main issues.

Mr H and his wife mortgaged a property with The Mortgage Business Plc (TMB). Unfortunately, in 2014 Mr H's wife sadly passed away.

As Mrs H had been responsible for handling elements of the finances, certain charges were then not paid to the property's maintenance company. TMB set up a sub-account on the mortgage to make these payments, and wrote to Mr and Mrs H's previous address to inform the of this. The payment of these charges led to arrears building on the mortgage account.

Mr H discovered this some months later and complained to TMB. TMB sent Mr H its final response to this complaint in December 2015.

Around this time Mr H also had a phone conversation with TMB, which apparently included comments about the account being placed on hold. Due to the passage of time, TMB doesn't have a recording of this conversation, so it isn't possible for me to know exactly what was discussed. TMB did though send Mr H a letter on 14 December 2015 which said, in part:

"Further to our telephone conversation on the 11 December 2015, I confirm your account has been placed on hold with our collections team for 30 days... Please continue with your mortgage payments to prevent the arrears from increasing."

It seems TMB dealt with a second complaint from Mr H around this time as well, and issued a separate final response letter in February 2016. TMB apparently paid Mr H £980 in relation to the issues raised across both of these complaints. But said that the creation of the sub-account and payment from this of the property maintenance charges was not inappropriate. Around this time, the term of Mr H's mortgage also came to an end.

Due to the emotional difficulties Mr H was experiencing during this time, he had passed the responsibility for dealing with most of his affairs to a solicitor. But the issue with his mortgage account was not one of these. However, he has said that issues with his health meant he was unable pursue this matter for some time.

Mr H took up his complaints with TMB again in 2018, and TMB reopened the original complaints. Mr H and TMB discussed the issues over the phone. Again, TMB hasn't been able to provide a recording of this conversation. But it has provided the internal notes made by the call handler. These state, in part:

"agreed hold for 7 days, have adv DOC breach of T&C and potential legal action".

TMB has said that, during this part of the conversation, the call handler would have followed a process flow. And TMB has provided us with details of this.

Mr H says it was agreed that his credit record would not be damaged as the problem had not been caused by his 'delinquency'. He's said he:

"asked roughly this "If I now redeem the whole account will my credit be affected by the history?" and [the call handler's] response was that it would not."

TMB sent Mr H a further final response letter on 13 September 2018. TMB said that arrears had continued to accrue on the account and explained what Mr H needed to do next to repay these and the mortgage balance. This final response letter said that Mr H had the right to refer his complaint to this service, but that he needed to do so within six months of that letter or TMB would not consent to this service considering the complaint.

Mr H paid the mortgage off and the accounts were closed. Mr H has said that in February 2019 he discovered that details relating to the arrears had been added to his credit record.

Mr H complained about this and TMB provided him with its final response letter in relation to this issue in July 2019. TMB said that the notes and letter relating to his previous complaint made no reference to Mr H's credit file being amended. And that TMB had provided the credit reference agencies with an accurate reflection of the account, as it was obliged to do.

Mr H had by this point brought his complaint to this service, and as he remained unhappy he asked us to investigate. Mr H wanted us to investigate all of the issues raised, including both the situation with the sub-account being created and the reporting to his credit file.

TMB did not consent to us considering any part of the complaint other than that relating to the credit file. TMB said that Mr H had received its final response letter in relation to the other points more than six months before Mr H had referred his complaint to this service.

Our investigator explained that this service only has jurisdiction to look at complaints if they are referred to us within six months of a financial business' final response letter. And that as Mr H had referred his complaint, about the earlier issues, outside of this time period the investigator didn't think we could consider this part of the complaint. He noted that Mr H had been through an extremely traumatic time. But felt that, as Mr H had been able to communicate with TMB, he would have been able to refer the complaint to us.

Our investigator did think we could look at Mr H's complaint about the credit file issues. But he didn't think this complaint point should be upheld. The investigator thought that, although we do not have a recording of the 2018 phone call, the notes and process flow did not suggest that Mr H would have been told all existing entries on this credit report would be removed. He also thought that it would be standard practice when arrears are paid off for the account to show as settled, but for the previous arrears to show as having existed. And that, as this was what Mr H's credit report showed, he was not persuaded that TMB had provided incorrect information to the credit reference agencies.

Mr H remained unhappy. He provided medical evidence and explained that his health issues had meant that he was unable to pursue his complaint until the summer of 2018. So he felt there were exceptional circumstances that meant this service should consider the whole of his complaint. His complaint has now been passed to me for a 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.

The jurisdiction of this service

Before I can consider the merits of any of Mr H's complaint points, I need to determine whether this service has the necessary jurisdiction to do so.

The rules in the Dispute Resolution: Complaints (DISP) section of the FCA Handbook set limits to the extent of this service's jurisdiction. We are bound to follow these rules and so can only look at a complaint if allowed by the rules.

I can only apply the rules as they exist – I have no discretion to change or set them aside on a case by case basis. When considering our jurisdiction I have no power to decide what is fair and reasonable – I only have that power if a complaint is in our jurisdiction.

So at this stage I am simply deciding whether the rules, and the law they are based on, mean this is a complaint we can consider, based on the relevant facts of the complaint. And if those facts are in dispute I must decide on the balance of probability what happened.

In this particular case, the key question around jurisdiction is whether Mr H referred his complaint to this service in time. The time limits for referring a complaint are set out in DISP 2.8.2 R, which states, in part:

"The Ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service:

(1) more than six months after the date on which the respondent sent the complainant its final response...

unless:

(3) in the view of the Ombudsman, the failure to comply with the time limits in DISP 2.8.2 R or DISP 2.8.7 R was as a result of exceptional circumstances; or...

(5) the respondent has consented to the Ombudsman considering the complaint where the time limits in DISP 2.8.2 R or DISP 2.8.7 R have expired..."

Mr H, as the complainant, has raised various complaint points at various times since 2015. And TMB, as the respondent, has sent Mr H a number of final responses. But all of the complaint points Mr H had raised prior to 2019 were covered by TMB's final response of 13 September 2018.

I have not considered it necessary to determine whether or not this letter actually extended the relevant time limits provided in earlier final response letters.

Unless there were exceptional circumstances which prevented him doing so, Mr H had to refer his complaint to this service, at the latest, within six months of this letter - i.e. by 13 March 2019. But Mr H didn't approach this service until July 2019, which is outside of this period.

As Mr H has commented on the information he was provided at the time of this final response letter (which I will consider in more detail below), it should also be noted that in

February 2019 he discovered his understanding of the situation was different to what it actually was. This was within the period in which his complaint could have been referred to this service, and I have not been provided with a persuasive reason why this could not have happened at that point.

I have considered Mr H's comments about his health and the unfortunate events he has had to deal with in the last few years. He has my every sympathy in terms of this. And I can understand that he may not have been best placed to pursue his complaint between 2015/2016 and the summer of 2018. But this does not provide a satisfactory reason why he was not able to refer his complaint to this service after TMB's final response of September 2018. So I do not consider there to have been any exceptional circumstance preventing the referral of his complaint between September 2018 and March 2019.

As Mr H referred his complaint to this service more than six months after TMB's final response letter of September 2018, and TMB has not consented to us considering the complaint referred outside of this time limit, I do not consider this service has jurisdiction to consider a complaint covered in that final response letter. This includes the creation of the sub-account and the building up of arrears on this account.

The credit file

Mr H raised concerns about TMB having provided information about the arrears to credit reference agencies and not having this information removed after the settlement of these arrears. TMB dealt with this in its July 2019 final response letter, and Mr H's complaint was referred to this service within six months of this, so I consider this service does have jurisdiction to consider this issue.

There are two aspects to this issue. Firstly, was the information passed on correct. Secondly, was Mr H led to believe the information would be removed.

As Mr H's complaint about whether the creation of the sub-account and the events prior to 2018 were fair and reasonable does not fall within the jurisdiction of this service, I have to consider the facts as they are. A sub-account was created and arrears accrued when Mr H did not make regular payments on his mortgage debt. This started in 2015 and continued until Mr H repaid the arrears, and the rest of the mortgage, in 2018. I am not able to consider the reasons behind these events.

Mr H has provided copies of his credit report. These show that, for Mr H's TMB mortgage, there were payment issues for this period, but that the account is now settled. No default is shown as being recorded.

This is an accurate reflection of what actually happened on Mr H's account. And there is no indication that different information has been provided to other agencies. So I am persuaded the information TMB provided to credit reference agencies was correct.

I now need to consider whether Mr H was led to believe this information would be removed.

I should firstly say that if I am persuaded that Mr H was given incorrect information here, it is unlikely I would direct TMB to make changes to the credit file. As I've noted above, the details provided to the credit reference agencies were correct. So any directions here would likely be limited to addressing the distress caused to Mr H by having received incorrect information in the phone call.

It is unfortunate that TMB has not been able to provide the recording of the conversation that took place in 2018, when Mr H says he asked about the impact on his credit file.

I have considered the content of the call note and the process flow TMB says was relevant to a call of this nature. The call note refers to the call handler advising Mr H of "DOC" and the process flow includes a number of points under the heading "Duty of Care". The process flow is based on a number of potential situations; for example where arrears are going to be quickly paid off, where there is no intention to pay the arrears, etc. Under every one of these situations, one of the points is that there will be an impact on the customer's credit rating.

Where arrears are to be paid off promptly, the relevant statement is:

"Credit Rating will reflect arrears status".

For the situation where there is no intention or ability to repay, the statement is limited to:

"Credit Rating effect".

But another point listed under this situation is that there may be court action, and an option is provided for a hold/breathing space to be given.

Given the call notes refer to a short 7 day hold, and refer to a breach and potential legal action, it seems most likely to me that the points being referred to in the call related to a situation where Mr H was potentially unable/unwilling to repay the arrears. I note Mr H was at the time considering his options. And I consider it most likely TMB was giving him some time to allow this and providing a warning about what would happen if he decided not to repay the arrears.

So I also think it most likely that, where the call handler noted they were advising under DOC, they would have been referring to the points listed under this situation. This included that non-payment would have an effect on Mr H's credit file.

I do note Mr H's comments about the question he asked in the call, and I have no reason to doubt he made some enquiry here. The settling of his arrears in full would not have an adverse impact on his credit rating in itself though, and it is possible the call handler was referring to this in any response they gave. They may have referred to the explanation under the relevant situation above, saying that the credit rating would reflect that the arrears had been cleared.

Without a recording of the call, it isn't possible to know whether the call handler was as clear on this point as they could have been. But, significantly, I am not persuaded Mr H was led to believe that the historical record of the arrears having existed would be removed from his credit file if he paid them off. The record would show the arrears had been cleared, not that they had never existed.

As well as there being nothing in the call notes, or the process flow, suggesting Mr H would have been led to believe the record of arrears would be removed from his credit file, there is nothing in the written communication to suggest this either. The 2018 final response letter gave an explanation as to how the arrears had accrued and asked for full repayment of these, it did not mention Mr H's credit report. Given TMB is required to report this information accurately, had it taken the decision to do something other than this, I would expect this to have been noted. In the absence of any such note, I am not persuaded TMB made such a decision or communicated it to Mr H.

Mr H has my fully sympathy in relation to the events of the past few years. However, I do not consider TMB has acted inappropriately in relation to his credit file, and I am unable to consider the events leading up to this.

My final decision

My final decision is that I do not uphold Mr H's complaint about the information The Mortgage Business Plc provided to credit reference agencies. And Mr H's complaint about the handling of his mortgage account does not fall within the jurisdiction of this service.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 10 June 2020.

Sam Thomas
Ombudsman