

## **The complaint**

Mr W is unhappy that Elderbridge Limited won't remove a charge from the title of a property he owns. He believes the secured loan the charge was associated with was written-off by the original lender, or can't be pursued by it, and so the charge should be removed.

## **What happened**

In 2006 Mr W took advice from a mortgage broker and applied for a secured loan. The lender agreed the loan for £71,000 over 25 years. The loan wasn't administered by the lender, but rather another part of the same business group (which I will refer to as the previous administrator). Unfortunately, shortly thereafter Mr W got into financial difficulties and payments to the loan were missed. In 2008 the previous administrator 'supressed' the interest being charged on the loan. This means that it kept it as a separate balance so that the missed interest payments were not compounded. Payments were made after this happened, but not every month and not always for the full amount due.

In the spring of 2009 Mr W called the previous administrator and told it that he had moved back into the property and would be making the mortgage payments going forward and would also pay something towards the arrears. Whilst he completed an income and expenditure form and a new direct debit mandate, no agreement as to what he would pay was made. In light of that the administrator passed the account to a debt collection agent. Payments were received on a monthly basis until March 2010. No further payments were made to the account after that date.

It would appear Mr W moved out of the property again, but he didn't tell the previous administrator. In 2016 the administration of the loan was passed to Elderbridge. It has been responsible for the administration activities completed since.

Correspondence was sent to Mr W from Elderbridge to the property the loan was attached to as he contacted it in 2017. When he did so he said it was because his ex-wife (who still lived in the property) had told him to. He raised a complaint with Elderbridge about the loan. He said the loan had been mis-sold and so should be written off. Elderbridge rejected the complaint and gave Mr W the option to refer his complaint to this service. He didn't do so and we can't consider any of the issues addressed under that complaint.

In 2019 Mr W wanted to sell the property. He was made aware there was still a charge on the property and contacted Elderbridge. Mr W said the property was his main residence in this country, although he worked abroad. He confirmed that his daughter had been living in the property throughout and when the call handler said that he'd been sent a lot of correspondence, he explained that she was young, she hadn't been organised about putting his correspondence in one place and so he may not have seen it. He proposed that Elderbridge settle the debt for whatever was left of the sale price after the main mortgage was paid off and the selling costs had been paid. Based on the figures he gave the call handler, this would have been in the region of £10-15,000. The full amount owed at the time was a little over £140,000.

When Elderbridge wasn't willing to accept the offer he had made, Mr W complained. He believed that the defaulted debt was statute time-barred and so no longer stood. Elderbridge said it had addressed the complaint in 2017 and wouldn't comment further. In relation to the removal of the charge, it said the previous administrators had 'written-off' the debt and so it was unable to deal with the complaint – it had referred the complaint to the original administrator.

Elderbridge has explained to this service that when it described as debt as being written-off, it meant that the previous administrator had given up trying to get Mr W to make the contractual payments.

A short time later Elderbridge wrote to Mr W again. It said that whilst he thought it couldn't pursue the amount owed as he hadn't made a payment to the loan for 12 years, that wasn't the case. It confirmed that the last payment had been made on 25 March 2010, which had been obtained through debt collectors. It also explained that whilst there was a debt outstanding the charge rightly remained on the property.

One of our investigators considered the complaint, but didn't recommend it be upheld. He explained that it was not for this service to decide if a debt was legally enforceable or not; that was a matter for the courts. We would only consider whether a business had acted reasonably in pursuit of the debt. He was satisfied it had and as such, didn't consider he could ask Elderbridge to remove the charge on the property.

Whilst Mr W initially accepted the investigator's conclusions, he subsequently changed his mind. He said that he wanted to appeal on the basis that Elderbridge had confirmed that the loan was written-off having spoken to the original administrator. He said that he had found a buyer for the property, but that Elderbridge was stopping the sale, which was causing him mental and financial stress. He asked that the complaint was reviewed by an ombudsman.

### **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 W believes that Elderbridge, on behalf of the lender, isn't able to pursue the amount owed under the loan agreement because of how long it has been since he made any payments and it pursued him for the debt. As our investigator confirmed, it is not for this service to decide whether Elderbridge would be able to pursue Mr W through the courts for the amount he owes. What we do is consider what has happened and whether Elderbridge has treated Mr W fairly and in a reasonable manner.

Mr W has mentioned that he believes the loan was mis-sold and that this was accepted in 2007. Elderbridge has said there is no record of a complaint being made about the sale of the loan until 2017. For completeness I will comment on this matter, but I don't consider it key to the outcome of the complaint. If a complaint was made and upheld, I think it unlikely the complaint was made to and dealt with by the lender or the former administrator. Mr W's loan was arranged through a broker, which would have been responsible for the advice he received, and so if a complaint was upheld in 2007, it is most likely the broker that did so. The lender may well not have been aware of the complaint and the outcome of any such complaint wouldn't result in the lender wiping out the debt. Indeed, it doesn't appear that Mr W thought that it did, given he continued to make payments to the loan until 2010.

The previous administrator of the loan attempted to pursue Mr W for the debt, but it seems it gave up on doing so in 2010. I don't have a record of why that was, but given Mr W's comments, this may be because he began working abroad, or at the very least moved away

from the property. I have seen no evidence that the debt was written-off and it would be most unusual for that action to be taken if there was thought to be any equity in the property. Whilst there is a debt outstanding, it isn't unreasonable for the lender and its administrators to maintain the charge on the property to enable it to retrieve at least some of the monies owing in the event of the property being sold.

I note that Elderbridge said to Mr W in one of its letters that the previous administrators had written-off the debt. What it meant was that the previous administrator had given up on getting Mr W to make payments to the loan. This wording was unfortunate as it may have confused the situation and possibly raised Mr W's hopes. However, if it did, I think the misunderstanding was short-lived and didn't have any material impact on the situation.

Overall, whilst I can understand Mr W simply wants to sell the property and walk away from the situation, it isn't unreasonable for Elderbridge to apply the contract terms he signed up to in 2006. I don't think Elderbridge has treated Mr W unfairly.

I note Mr W has said since he asked us to consider his complaint, Elderbridge stopped the sale of his property going through. He was clearly unhappy with that action, but he would need to make a separate complaint about that action to Elderbridge before we could become involved.

### **My final decision**

My final decision is that I don't uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 10 September 2020.

Derry Baxter  
**Ombudsman**