

## The complaint

Mr O complains about his buy-to-let (“BTL”) mortgage with Mortgage Express. Mr O is unhappy that Mortgage Express appointed a Law of Property Act Receiver (“Receiver”) and then took his property into possession.

He would like the property returned to his control so he can sell it himself.

## What happened

I issued my provisional decision earlier this month which stated:

### “What happened

*Mr O has an interest-only BTL mortgage with Mortgage Express. At various times over the term Mortgage Express has been contacted by the freeholder as Mr O hadn't paid the ground rent and/or service charges for the property. Mortgage Express has paid these and added the debts onto the mortgage account.*

*Mr O says the freeholder was writing to an incorrect address, but I can't consider that here as this complaint is just about Mortgage Express and its actions. I also can't consider whether the amounts the freeholder said were due were correct, for the same reason. On 5 June 2018 Mortgage Express received notification from the freeholder's solicitor that £2,683 was owing.*

*Mortgage Express wrote to Mr O on 6 June 2018 saying that if it didn't hear back from him in 7 days then it would pay that amount to the freeholder. It said, if it did so then Mr O should repay that amount within 12 months. It also said that if Mortgage Express had to make the payment then it would be a breach of the mortgage conditions which meant it could then take legal remedies, such as taking possession of the property or instructing a Receiver.*

*As nothing was heard from Mr O then the payment was sent on 13 June and that amount was added to Mr O's mortgage debt. Mortgage Express wrote to Mr O to remind him that the amount should be repaid within 12 months.*

*On 18 July 2018 Mortgage Express wrote a further letter to Mr O. In this Mortgage Express said the amount must be paid no later than 12 June 2019, and if it wasn't then it would be entitled to issue a formal demand for the full balance and apply legal remedies.*

*As the amount remained outstanding, on 13 June 2019 Mortgage Express wrote to Mr O again. It said he'd breached his mortgage conditions and so it would be issuing a formal demand for the repayment of the full balance of the mortgage. It said that would lead to enforcement procedures if the full balance wasn't paid. It gave Mr O until 27 June 2019 to rectify the breach (that is, pay the £2,683) otherwise the formal demand would be issued.*

*The amount wasn't paid and so the formal demand was issued on 1 July 2019.*

*Mortgage Express sent a further letter to Mr O on 9 July 2019 which said it would be appointing a Receiver if the full debt wasn't repaid by 16 July 2019. As the debt wasn't repaid a Receiver was appointed.*

*On 12 November 2019 Mortgage Express set out the terms upon which it would consider handing control back to Mr O. It said:*

- *the mortgage accounts needed to be brought up to date,*
- *monthly payments had to be maintained by direct debit,*
- *all the Receiver's costs had to be repaid, and*
- *the outstanding ground rent and/or service charges needed to be repaid.*

*In addition, Mortgage Express said it would also look at reducing the term by approximately five years as well as requiring overpayments each month, both upon completion of a financial disclosure document.*

*The Receiver was stood down, and Mortgage Express took the property into its possession on 6 December 2019. It was due to market and sell the property, but it put that on hold so Mr O's complaint could be considered.*

*Our investigator thought Mortgage Express' criteria for handing back the property was unfair. He didn't think Mortgage Express should insist on a shortening of the mortgage term, or the overpayments. He also felt as Mr O wanted to sell the property, it should be returned to him so he could do so. He said if the property remained unsold for three months (or Mr O didn't maintain his monthly mortgage payments) then Mortgage Express could take the property back into possession at that time.*

*Mortgage Express didn't agree. It said both it and Mr O appeared to want the same thing, which was to sell the property and so it made sense for it to retain possession and sell it as it felt that option would be easier and cheaper for Mr O. It said, if it handed control back to Mr O and then he didn't sell it within those three months, then there would be more costs involved when it retook possession.*

*As an agreement couldn't be reached it has been passed to me to decide.*

### **What I've provisionally decided – and why**

*I trust Mr O won't take it as a discourtesy that I've condensed his complaint in the way that I have. Ours is an informal dispute resolution service, and I've concentrated on what I consider to be the crux of the complaint.*

*Although I've read and considered the whole file I'll keep my comments to what I think is relevant. If I don't comment on any specific point it's not because I've not considered it but because I don't think I need to comment on it in order to reach the right outcome.*

*Before I address the underlying merits of the complaint in detail, there are some observations I need to make about the extent of my remit to consider this complaint. Where, as here, a lender decides to appoint a Receiver, the Receiver once appointed doesn't act as agent for the lender, but for the borrower. What that means in practical terms is that I'm unable to consider any concerns Mr O may have about the actions of the Receiver, because it isn't covered by the jurisdictional scope of the Financial Ombudsman Service.*

*Mr O was in breach of his mortgage conditions when he didn't pay the ground rent and/or service charges on his property, so Mortgage Express was entitled to take legitimate steps to recover the money owed to it. The steps it took in appointing a Receiver, and then in taking possession of the property, were commercial decisions that Mortgage Express was entitled to take. Generally speaking, we won't interfere in the way a financial business exercises its commercial judgement, and I'm not persuaded there are grounds for me to do so here.*

*Mr O has said that Mortgage Express was hasty in appointing a Receiver, but I don't agree. The payment it made in June 2018 wasn't the first ground rent and/or service charges payment that Mortgage Express had to make for Mr O's property; similar things had happened over the years running up to that point. Each time that had happened Mr O was in breach of his mortgage contract, so Mortgage Express could have taken this action much sooner than it did. It's just that in 2018 Mortgage Express decided to take the actions it was entitled to take under the terms and conditions of Mr O's mortgage account. But even then, it still gave Mr O a further year – that is until 12 June 2019 – to pay the £2,683. The 2018 letters said about the legal remedies that could follow (that is, the instruction of a Receiver and/or the property being taken into possession) so it seems Mr O had plenty of notice that the sum needed to be paid, and what could happen if it wasn't.*

*Then on 13 June 2019 Mortgage Express gave Mr O a further two weeks to pay the £2,683 before it would take any action. All things considered I'm not persuaded Mortgage Express acted with undue haste in appointing the Receiver.*

*I understand our investigator thought Mortgage Express' request for a shorter mortgage term and overpayments was unfair. But I don't agree, and I can understand why Mortgage Express put those requests in there. This is an interest-only mortgage and the balance was significantly higher than had been agreed when the mortgage was taken out due to the amount of times Mortgage Express had to pay the ground rent and/or service charges for the property. All those extra amounts were also held on an interest-only basis.*

*If the position carried on the way it was, the equity in the property would be eroded each time Mortgage Express had to take similar action, so by shortening the term and requiring overpayments be made, it would be protecting its security. Put simply, the more years the mortgage was to run for, the more potential ground rent and/or service charge payments that would be added to the debt, increasing it still further. And any overpayments made would mean the mortgage debt would start decreasing back down to the level that had been agreed to by Mortgage Express.*

*In any event, all that is moot. That's because, once the formal demand was issued on 1 July 2019 then the full mortgage debt became due. At that point Mortgage Express didn't have to accept anything other than full repayment, so its offer in November 2019 to look at handing control back to Mr O if he met the list of terms it put forward is more than fair because it simply didn't have to make that offer.*

*Having considered everything, I'm satisfied Mortgage Express acted within the terms of Mr O's BTL mortgage account and didn't act with undue haste. The decisions it made it was entitled to make, and it simply wouldn't be appropriate for me to interfere with those however much Mr O may want me to.*

*I understand Mortgage Express will be looking to market and sell the property, and as Mr O has said he also wants the property sold I would hope the parties can work together productively to reach their mutual aim*

Mortgage Express accepted my provisional findings. Mr O didn't accept my findings and asked that I reconsider my decision, making some further points.

### **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.

As I explained in my provisional decision, I'm unable to consider any acts or omissions by the freeholder so whilst I've a great deal of sympathy for Mr O's situation, I won't be commenting on anything that relates to the freeholder and their part in matters.

If Mr O is able to provide a ruling from a tribunal that the debts weren't owed then he can claim the money back, but without that I don't think Mortgage Express acted unreasonably in paying the amounts requested to protect its security. Mr O may think there were no legal grounds for those amounts to be paid but my role is to look at what is fair and reasonable, and I'm satisfied Mortgage Express didn't act inappropriately in making the payments when it did.

Mr O has accepted he made a bad judgement in thinking the amount would be added to his mortgage debt as it had previously, and he could just repay it when he came to sell the property in the future. It is unfortunate that Mr O did think that, but I can't hold Mortgage Express liable for his assumption. Mortgage Express gave Mr O fair warning that the amount had to be repaid within 12 months and set out the potential legal remedies that it could use if the money wasn't repaid. Even after those 12 months were up Mr O was given a further month, with fair warnings of the consequences of non-payment.

Mr O has said that he wants to sell the property as he has a very good relationship with the estate agent, as well as family members in the trades who can get the property up to a high standard to attract the best price when sold. I understand Mr O wants me to order Mortgage Express to return the property to him, but I simply can't do that however much he may want me to. I can only order Mortgage Express to do something if I first find that it has done something wrong that led to the situation. As Mortgage Express did nothing wrong here, and gave Mr O fair warning, then I can't order any remedy such as the property being returned to his control.

### **My final decision**

I don't uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 20 April 2021.

Julia Meadows

**Ombudsman**