

The complaint

Mrs R complains that The Co-operative Bank Plc (trading as Platform) wrongly pursued her for a shortfall debt after her property was sold, and put incorrect entries on her credit file. She'd like it to acknowledge it can't pursue her for the shortfall debt and correct her credit file. Mrs R is represented by a family member, who I'll refer to as Mr R.

What happened

Mrs R and her ex-partner had a mortgage with Platform. They separated and in 2012 Mrs R filed for bankruptcy. Mrs R continued to live in the security property and Platform received monthly mortgage payments until mid-2019.

In 2020 Platform took possession of the security property and filed a default on Mrs R's credit files. Mrs R says the default should have been recorded in January 2012, when she entered bankruptcy. She says she's unable to obtain credit or rent a house due to the adverse data, and this will affect her for some years.

I sent a provisional decision to the parties setting out what I thought about this complaint. In summary, I said Platform was wrong to pursue Mrs R for the shortfall debt. And it should have recorded a default in 2012 when Mrs R entered bankruptcy. I said it should correct Mrs R's credit file and pay compensation of £300.

Platform accepted my provisional decision. It said it had asked the credit reference agencies to record the default in 2012, meaning the mortgage account would no longer appear on Mrs R's credit files. Mrs R agreed with these changes to her credit file. Mr R said on her behalf that this had caused Mrs R difficulties in obtaining credit and services and renting a home. However, as it was difficult to provide evidence that Platform's error was the main cause of these difficulties, Mrs R accepted the 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.

What happened?

Mrs R and her ex-partner had a mortgage with Platform. Mrs R and her ex-partner separated, and Mrs R filed for bankruptcy in January 2012.

Initially, the trustee took a beneficial interest in the security property (in simple terms, the trustee had rights over any value in the property remaining after debts secured on the property were satisfied). However, the trustee's report to creditors said the property was in negative equity, with the outstanding secured debt at about £170,000 and the property valued at about £95,000. The trustee didn't expect to recover any money for the unsecured creditors from the property. The trustee confirmed in late 2012 it would release its interest in the security property. Mrs R's bankruptcy was discharged in 2013.

Contractual monthly payments were made to the mortgage account until mid-2019, with overpayments to reduce the arrears. No payments were received from late 2019.

Platform recorded a default on Mrs R's credit file when it took possession of the property in February 2020. It sold the property in May 2020. There was a shortfall of about £90,000.

Can Platform require Mrs R to pay the shortfall debt?

When Mrs R was declared bankrupt and then discharged her liability for all pre-existing debts was extinguished. That included her mortgage debt. That meant Platform couldn't require her to make more payments to the mortgage (although Mrs R could make payments to avoid the property being taken into possession). And it would have been wrong for Platform to record a failure to make payments on her credit file – she simply wasn't liable to make any payments.

As a secured creditor Platform still had security over Mrs R's property and could take possession of it to recover the mortgage balance. And Mrs R was entitled to make mortgage payments to avoid her home being taken into possession. And for some years mortgage payments were made, and possession was avoided.

Once the property was sold, the shortfall became an unsecured debt. Platform has no right to ask Mrs R to pay the shortfall debt. Her liability for any mortgage repayments ceased as a result of her bankruptcy.

Is the default recorded on Mrs R's credit file accurate and fair?

Where a mortgage borrower is made bankrupt, the account is defaulted at the date of bankruptcy. I think Mrs R's credit file should show the mortgage account as defaulted in January 2012, when she entered bankruptcy. This is in line with the Principles for the Reporting of Arrears, Arrangements and Defaults at Credit Reference Agencies issued by the Information Commissioner's Office (ICO). ICO says the default date must be consistent with that of the bankruptcy, and the default should be filed as being no later than the date of the insolvency order. I can't see anything here that would make it fair to record the default at a later date.

In response to my provisional decision, Mr R said I should deal only with the date the default is recorded as this is the subject matter of the complaint. He says there's no need for me to deal with what should be recorded on Mrs R's credit file about the account being settled or part settled when the property was sold. In its response to my provisional decision, Platform said it had asked the credit reference agencies to record the default at January 2012. It said its understanding was that this would mean the mortgage account Mrs R had with it would no longer show on her credit file. The result here is that Mrs R's credit file will no longer show any information about the mortgage she had with Platform. As both parties agree with this outcome, I don't need to make any findings about what should be recorded on Mrs R's credit file, beyond that the default should have been recorded in January 2012.

Mr R says Platform made errors and it's taken too long to put things right. I understand why he says this and I agree that Platform made errors. However, this service isn't a regulator, and we don't have the powers of a regulator. We offer a dispute resolution service. I can't order an investigation of Platform or issue requirements about its staff training. Mr R can consider raising these concerns with the regulator, the Financial Conduct Authority.

Putting things right

I think Platform made errors here. I think it should have recorded a default in 2012, not when it took possession in 2020, and it shouldn't have tried to recover the shortfall debt. I think this will have caused Mrs R trouble and upset. I think it's fair and reasonable to require Platform to pay £300 to Mrs R for this upset.

Mrs R says she suffered losses and difficulties, such as not being able to obtain credit or services or rent a property. Before I can fairly consider whether Platform should pay compensation for this, I'd need Mrs R to provide evidence that this was due to Platform's errors and not due to her circumstances more generally, bearing in mind that Mrs R was declared bankrupt and had defaults recorded for other accounts.

Platform should amend Mrs R's credit file to show the mortgage account as defaulted in January 2012, as it has agreed to do. And it should pay Mrs R £300 compensation for the upset its errors caused.

My final decision

My decision is that I uphold this complaint. I order The Co-operative Bank PLC to take the steps and pay the compensation set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 26 July 2021.

Ruth Stevenson
Ombudsman