

The complaint

Mrs J's complaint is about a mortgage she used to have with Mortgage Express (MX). The mortgage – and the property it was secured on – were in the joint names of Mrs J and her then husband, Mr A.

Mrs J is unhappy that MX was been granted a charging order over the property she later owned jointly with her second husband, Mr J, to secure a judgement debt in favour of MX for a mortgage shortfall following repossession of the property she used to own with Mr A.

Mrs J is also unhappy that MX has only pursued her for the outstanding debt, and not Mr A.

What happened

In 1988 Mrs J and Mr A took out a mortgage with MX on their home. The property was repossessed in 1990 and after it was sold there was a shortfall debt owed to MX.

On 12 April 2006 the court gave judgement to MX for £65,861.05.

On 19 September 2006 MX was granted a final charging order over the property in which Mrs J was then living to secure the judgement debt.

Mrs J says MX then forced her to sell the property. On 25 September 2009 it was sold. Mrs J agreed a reduced settlement with MX of approximately £45,000, and Mrs J was taken off the mortgage account in relation to the balance of the shortfall debt.

In September 2020 Mrs J complained to the Financial Ombudsman Service that she'd been treated unfairly by MX. Mrs J didn't think it was right that MX had only pursued her for the outstanding debt, rather than Mr A.

Initially MX didn't consent to us looking at the complaint, saying it was out of time. But one of my ombudsman colleagues was satisfied there were exceptional circumstances to explain the delay, and MX agreed we could look at the complaint.

An investigator looked at what had happened. He explained to Mrs J that we couldn't look at anything relating to the charging order, as that was a matter for the court. He also clarified that, without Mr A's consent, we weren't able to look at any dealings MX might have had with him. But he was satisfied that liability for the shortfall debt was joint and several, and so MX had done nothing wrong in pursuing Mrs J for the outstanding balance on the account.

Mrs J asked for an ombudsman to review the complaint.

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've taken careful note of everything Mrs J has told us. Because our decisions are published, I will not repeat any of the details here, as I must take care not to include any information that might identify Mrs J.

I can see that Mrs J has had a very traumatic time, and I agree with my ombudsman colleague that, despite the passage of time, there are exceptional circumstances that allow us to consider this complaint. But I'm afraid I have disappointing news for Mrs J; even though we're not applying the time limits in our rules, much of what she has complained about isn't something we can look at for other reasons. And in relation to the one issue we *can* consider, I don't think MX has done anything wrong.

We can only look at complaints about activities that are covered by our rules, and this has implications in relation to the concerns Mrs J has raised with us.

A possession order was granted in favour of MX in 1990, after Mrs J and Mr A fell into financial difficulty. I don't have any power to look into this, as I can't interfere with an order made by a court.

The court also granted judgement in favour of MX in 2006 for the shortfall debt of over £65,000, which was secured by a charging order over the property in which Mrs J (and Mr J) were living. So although I've taken account of everything Mrs J has said about how unfairly she feels MX treated her in pursuing the shortfall debt, a court decided that she owed the money, and I don't have any power to interfere with that.

Furthermore, action taken by a lender to recover a judgment debt by way of a charging order and an order for sale isn't something that's covered under our rules. This is because of a legal doctrine called the "merger principle". Basically, once the court granted judgement to MX, recovery of the debt could only be enforced via the courts, which takes it outside the scope of the Financial Ombudsman Service. As a result, I have no legal power to consider a complaint about MX's actions in relation to the charging order, the application for an order for sale or the settlement agreement between Mrs J and MX. That's because none of those things are activities that are covered under our rules.

I can look at whether or not MX treated Mrs J fairly – before the court judgment was granted against her – in relation to recovery of the debt. Mrs J says that she doesn't think it's fair that MX has only "gone after her" in relation to this joint mortgage and has taken no action against Mr A. Liability for the mortgage was joint and several – which means that both Mrs J and Mr A were equally liable for the whole of the mortgage debt, not half each.

I don't have Mr A's consent to access his data, so I don't know – and can't ask – what steps, if any, MX took to recover the debt from him before it obtained judgement for the shortfall debt. But because of the joint and several nature of the mortgage contract, as unfair as this may seem to Mrs J, MX didn't do anything wrong in looking to her for payment.

I know this isn't the outcome Mrs J was hoping for, and I am truly sorry if my decision adds to her distress. But, for the reasons given above, I can't look at any actions of MX in relation to the charging order, as this is a matter for the courts. And, because this was a joint mortgage, MX was allowed to seek recovery of the mortgage debt from Mrs J alone.

My final decision

My final decision is that I don't uphold this complaint.

This final decision concludes the Financial Ombudsman Service's review of this complaint. This means that we are unable to consider the complaint any further, nor enter into any correspondence about the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J to accept or reject my decision before 30 July 2021.

Jan O'Leary
Ombudsman