

The complaint

Mr H complains that Mortgage Express is unfairly pursuing him for repayment of a mortgage shortfall resulting from its sale of his property in 2009.

What happened

In 2007, Mr H took a buy to let remortgage with Mortgage Express for approximately £93,500 plus fees. The mortgage had a term of 20 years and was set up on an interest only basis.

The mortgage started to fall into arrears towards the end of 2007 and Mortgage Express instructed a receiver to manage the property in September 2008. The receiver sold the property towards the end of 2009 and the mortgage was partially redeemed from the proceeds of the sale – £55,612.79 – on 1 January 2010. That left a debit balance of approximately £55,000.

Mr H called Mortgage Express in October 2010 complaining that he thought the property was sold substantially below market value. Mortgage Express wrote to Mr H on 2 February 2011 saying it didn't uphold Mr H's complaint and confirmed he could refer the matter to this Service, but had six months in which to do so. It said the receiver's actions – which would have been the decision to take possession and sell the property, including the timing of the sale – would need to be addressed by the receiver.

Mr H wrote to Mortgage Express in September 2011, saying his property was sold at too low a price and he refuses to acknowledge the debt. Mortgage Express's contact notes indicate that it unsuccessfully tried to trace Mr H for several years but made contact in 2019.

On 16 July 2021 Mr H complained to Mortgage Express saying he was disappointed it had decided to resurrect the issue – it's pursuit of Mr H's outstanding debt with it.

In its final response letter dated 15 September 2021, Mortgage Express said it was satisfied that it was still able to pursue the debt. It said Mr H was still liable for the outstanding shortfall and it hadn't acted incorrectly by sending him a letter in that regard. The final response letter confirmed that Mr H had six months to refer that complaint to this Service if he didn't agree with Mortgage Express's findings.

Mr H didn't agree so he asked us to look into his complaint. Our investigator didn't uphold Mr H's complaint. She said she didn't find that Mortgage Express acted unfairly or unreasonably in taking Mr H's property into possession. And she thought Mortgage Express could pursue Mr H for the shortfall.

Mr H didn't accept our investigator's opinion so the complaint has been passed to me for a final decision. However, I noticed that Mr H expanded on the complaint he made to Mortgage Express when asking us to consider it. He complained to Mortgage Express about its current pursuit of him for repayment of the debt. But, during our consideration of his complaint, he said he's unhappy about when Mortgage Express "*issued a default notice*" and

other issues that occurred around the time of it taking the property into possession, including:

- its decision to take possession of the property,
- the amount of money it accepted in selling the property,
- and fees charged to the mortgage account when Mr H couldn't make payments.

While our investigator addressed those issues, Mortgage Express had only consented to us looking into Mr H's complaint about its current pursuit of the outstanding debt. Having checked with Mortgage Express, it confirmed that it did not consent to us looking into any aspect of Mr H's complaint that happened around the time of it taking possession of his property, including the issues listed above. Mortgage Express said Mr H made those complaints too late.

That meant, before I could consider the merits of any of the complaint points Mr H has made, I had to decide whether I have the power to do so. I wrote to both parties with my decision in that regard on 2 September 2022. I concluded that we only had the power to consider the merits of Mr H's complaint about Mortgage Express's pursuit of him for the balance outstanding.

I passed Mr H's case back to our investigator to consider that part of his complaint. She found that Mortgage Express hasn't acted unreasonably or unfairly. She said she's satisfied Mr H took the mortgage and that Mortgage Express tried to search for him until 2018. She said the court order Mr H has referred to says nothing about him not being liable for the shortfall debt.

Mr H disagreed so his complaint has been referred back to me for a final 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.

Mr H says his debt would be limited by statute by now had Mortgage Express applied the "default" in 2008 rather than 2010. As confirmed in my decision about our jurisdiction, we don't have the power to consider Mortgage Express's decision to take possession of Mr H's property. That includes the timing of that decision.

The Mortgage Conduct of Business (MCOB) rules say, if a lender decides to recover a sale shortfall, it must ensure that the borrower is notified within six years. But Mr H's mortgage was unregulated, so the MCOB rules don't apply.

Instead, I can consider whether Mortgage Express's pursuit of Mr H for the repayment of the debt was fair and reasonable, mindful of what might be considered good industry practice. So, that's what I've thought about to decide Mr H's complaint.

Mr H hasn't told us that he didn't take out a mortgage with Mortgage Express for the property it went on to take possession of and sell. Mortgage Express has provided copies of a mortgage application containing his details and a mortgage offer addressed to him from 2007. I've seen no reason to doubt that the mortgage in question was applied for by Mr H and used for the remortgage of the property in question.

Mr H hasn't claimed that he repaid the mortgage. Mortgage Express has provided a copy of a mortgage statement from 2009 showing a balance of approximately £105,000 and showing that no mortgage payments had been made over that 12 month period. A transaction list

shows no payments were made since March 2008. And Mortgage Express's contact notes show that receivers were appointed in September 2008 and the property was sold leaving a shortfall of approximately £51,000 in January 2010. So, while I'm not able to consider whether those actions were reasonable or the amounts are correct, I'm satisfied that there was a significant shortfall on Mr H's mortgage from the sale of his property.

Persuaded that it's likely Mr H did take out the mortgage and that the sale of the property left a significant shortfall, I've looked at what evidence is available to consider whether Mortgage Express has acted reasonably in its pursuit of Mr H for repayment.

Mortgage Express's contact notes show that, in February 2011, it gained confirmation from the Crown Prosecution Service that it had "*no issues with the action we have taken.*" I understand that action to be the sale of Mr H's property and using the proceeds to partially redeem his mortgage. From that time, the notes show that Mortgage Express had difficulty contacting Mr H and it tried intermittently, carrying out traces, until 2018 when a likely address was identified. A speculative home visit was arranged in January 2019, but the notes say Mr H "*was spoken to but declined to be interviewed. He was advised to contact the lender direct and agreed to do so.*"

Mortgage Express received a letter from Mr H on 22 January 2019 saying he did not acknowledge the debt and would not enter into further correspondence until he'd settled another priority debt. The contact notes indicate that Mortgage Express wrote to Mr H to gain a copy of the court order relating to the other priority debt in July 2019. The notes suggest that if the court order said what Mr H had said it did, Mortgage Express would cease pursuit of Mr H. In August 2019 Mr H responded saying he'd try to obtain a copy of the order from the court and provided Mortgage Express with a copy later that month.

For several months Mortgage Express gathered information on Mr H's potential assets – his main residence – and considered the court order he'd provided and in June 2020 decided it would proceed with its efforts to recover the debt. But it delayed litigation due to the Financial Conduct Authority's guidance in relation to the covid pandemic. Mortgage Express wrote to Mr H again on 5 July 2021. That letter confirmed the amount outstanding and asked Mr H to pay it or contact Mortgage Express to discuss income and expenditure with a view to agreeing a repayment plan.

Mr H responded on 11 August 2021, saying he was unhappy with being chased for the debt. Mortgage Express dealt with that as a complaint and issued a final response letter on 15 September 2021. In that letter it said it was satisfied that it was still able to pursue the debt and Mr H should make contact to discuss it.

Having carefully considered its actions – as outlined above – I haven't seen anything to make me think Mortgage Express's pursuit of Mr H for repayment of the debt has been unreasonable.

I've seen that it did consider the court order Mr H drew to its attention and I've seen that it sought legal guidance before proceeding and writing to Mr H on 5 July 2021. I think that Mortgage Express seeking legal guidance before acting upon it was a reasonable step to take with regard to the court order. Given the notes I've seen, I think Mortgage Express would have ceased its pursuit of Mr H if the legal advice it received suggested that was the correct action.

In its letter to Mr H, dated 5 July 2021, Mortgage Express offered to set up a repayment plan should he not be able to repay the full amount outstanding. I also think that was reasonable as it would have appeared unlikely to Mortgage Express that Mr H would have been able to make the full repayment, given the amount owed.

Overall, given the power I have and the evidence I've seen, I don't think Mortgage Express has acted unfairly in its pursuit of Mr H for repayment of the outstanding debt.

My final decision

My final decision is I don't uphold Mr H's complaint about Mortgage Express.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 21 October 2022.

Gavin Cook
Ombudsman