

The complaint

Mr M's complaint is that Coutts & Company has refused to remove him from a joint mortgage account. Mr M is also unhappy that Coutts granted a payment holiday and a new interest rate product on the account without his consent.

To settle the complaint, Mr M wants Coutts to remove him from the mortgage, amend his credit file and pay him compensation.

What happened

The evidence in the case is detailed, running to over a thousand pages of documents. I've read everything, and it's apparent that some parts of the evidence are less relevant to the underlying case than others. There are also a lot of duplicated documents and repetition of arguments. In what follows, I have, by necessity, summarised events in rather less detail than has been presented.

No discourtesy's intended by that. It's a reflection of the informal service we provide, and if I don't mention something, it won't be because I've ignored it. It'll be because I didn't think it was material to the outcome of the complaint. This approach is consistent with what our enabling legislation requires of me. It allows me to focus on the issues on which I consider a fair outcome will turn, and not be side-tracked by matters which, although presented as material, are, in my opinion peripheral or, in some instances, have little or no impact on the broader outcome.

Furthermore, the history of the matter is set out in correspondence between the parties, and in the investigator's letter dated 14 June 2022. All parties have a copy of that letter, so there is no need for me to repeat the entire history here. I will instead concentrate on giving the reasons for my decision. In addition, our decisions are published, so it's important I don't include any information that might lead to Mr M being identified. So for these reasons, I will keep my summary of what happened quite brief.

In 2011 Mr M took out a mortgage with Coutts, jointly with his wife, Mrs M, from whom he is now divorced. In 2017, as part of their divorce, Mr M was ordered to transfer all his legal and beneficial interest in the property to Mrs M, subject to the mortgage. He was also ordered to indemnify Mrs M for the monthly mortgage payments until such time as certain other conditions ordered by the court had been fulfilled. (I do not know if those conditions have been met, but nothing turns on this in relation to this complaint.)

In 2018 Mr M was declared bankrupt, and was discharged from his bankruptcy in 2019. The Trustee in bankruptcy has confirmed that, because the court had ordered the transfer of the property prior to Mr M's bankruptcy, it didn't form part of his bankrupt estate. In March 2021 the court suspended Mr M's obligation to indemnify Mrs M for the mortgage payments.

Mr M's complaint to Coutts is that:

- the bank refuses to remove him from the mortgage account;

- a COVID payment holiday was agreed with Mrs M without his consent;
- a new interest rate product was taken out by Mrs M, again without his consent.

Coutts didn't uphold the complaint. Although the bank acknowledges Mr M isn't liable for the mortgage, the bank says it is under no obligation to remove him from the account. In relation to the payment holiday and new product, Coutts said it was reasonable to take this action.

Mr M brought his complaint to our service where an investigator looked at what had happened. She was satisfied that it was reasonable for Coutts to have granted the payment holiday and to apply a new interest rate product to the account, because neither of these had caused any detriment to Mr M.

However, she thought Coutts should remove Mr M from the mortgage account, because he has no liability for it and so it is unfair for this to still show on his credit file. The investigator also asked Coutts to pay Mr M compensation of £350.

Neither party agreed with the investigator's outcome, so it falls to me to issue a 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.

Removal of Mr M from the mortgage:

Coutts has accepted the Mr M has no liability for the mortgage. The title to the property is in the sole name of Mrs M.

The right to enforce the security in the event of discharge from bankruptcy is preserved by section 281(2) of the Insolvency Act 1986. However, section 281(1) says that where a bankrupt is discharged, the discharge releases him from all the bankruptcy debts.. At the time of his bankruptcy, Mr M had no beneficial interest in the property, and he no longer has any liability for the mortgage debt.

Given this, I find it is unfair and unreasonable for Coutts to refuse to remove Mr M from the mortgage account. He's not liable for the repayments or any shortfall debt should Mrs M default, and so keeping him on the mortgage account is of no benefit to Coutts. But it is of considerable detriment to Mr M, as this mortgage still shows on his credit file. In all the circumstances, I'm satisfied that Coutts should remove Mr M from the mortgage account. Any legal issues arising from their divorce about whether or not Mr M should indemnify Mrs M for the mortgage repayments are, of course, between them, and don't involve either Coutts or this service.

I also think it's unreasonable, given what I have said above, for Coutts to continue reporting data about this mortgage on Mr M's credit file. Mr M's credit file should show the mortgage as 'defaulted' on the date of the bankruptcy and 'settled' on the date of the discharge.

Payment holiday: I find it was reasonable for Coutts to grant a payment holiday on the account, due to the pandemic. I can't see that Mr M has been caused any detriment by this, as it wasn't reported on his credit file (as per guidance from the regulator), and it is Mrs M, not Mr M, who is responsible for making the payments in any event. I don't uphold this part of the complaint.

New interest rate product: In October 2021 a new mortgage product was taken out, which resulted in reduced payments on the account. There was no fee added, and the new product is not subject to any early repayment charge. Therefore the overall debt has not increased.

I find there was no detriment to Mr M in Coutts offering this product to Mrs M, but Coutts can't have it both ways – if Mr M is on the account he should be informed of what is going on. Coutts should have told Mr M what was happening in relation to the new product, given that the bank still considers him to be an account holder.

I think Mr M has been caused trouble, upset, distress and inconvenience by Coutts' actions, and so a payment of compensation is appropriate. I endorse the investigator's recommendation of £350, as I think this is fair, reasonable and proportionate in all the circumstances. I've noted what Mr M has said about the difficulties he's been caused because the mortgage is on his credit file. But I'm not persuaded that this is the only reason why Mr M hasn't been able to make certain financial arrangements. In the circumstances, I'm not ordering any increased compensation for trouble and upset.

Putting things right

To settle this complaint, I direct Coutts to do the following:

- remove Mr M from the mortgage account;
- amend Mr M's credit file to show the mortgage as defaulted at the date of his bankruptcy and settled at the date of discharge;
- pay compensation of £350 to Mr M for distress and inconvenience.

My final decision

My final decision is that I partly uphold this complaint. In full and final settlement I direct Coutts & Company to settle the complaint as directed above. I make no other order or award.

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 Mr M to accept or reject my decision before 21 November 2022.

Jan O'Leary
Ombudsman