

The complaint

Mr P is unhappy that a portfolio of buy-to-let (BTL) properties mortgaged to Bank of Scotland plc trading as Birmingham Midshires (and referred to here as BM) is still in his name, and being reported on his credit file where payments are being made late.

To settle the complaint, Mr P wants his name removed from all the properties. Mr P also wants BM to acknowledge that it is not him making late payments and to amend his credit file accordingly.

What happened

The evidence in the case is detailed, running to almost 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.

In addition, our decisions are published, so it's important I don't include any information that might lead to Mr P being identified. So for these reasons, I will keep my summary of what happened quite brief.

In 2006 Mr P took out multiple BTL mortgages with BM (some of which are in joint names). It appears that Mr P and the joint owner formed a limited company (APL), with their property portfolio being held as an asset of the company.

The crux of the complaint is that Mr P is unhappy that the properties mortgaged to BM are still held in his name.

Mr P says that in 2011 he and the other joint owner (in their capacity as directors of APL) entered into a share sale agreement and deed of trust with a company I will call FHL. I've read the terms of the agreement, from which I note that (amongst other things) the following terms were agreed:

- Mr P undertook to sign any documentation provided by FHL to ensure transfer of the interests of APL in the mortgaged properties to FHL;
- FHL agreed to arrange at its own expense to complete the registration of any transfer of title of each of the properties;

- FHL agreed to inform Mr P in writing *“if the lender of any indebtedness relating to the properties in respect of which [Mr P is] liable (whether as principal or guarantor) informs [APL or FHL] of any event of default in respect of indebtedness;*
- FHL agreed to make *“reasonable efforts”* to refinance any indebtedness relating to properties in Mr P’s name, and to complete such refinancing within six years of the date of completion (subject to certain conditions which aren’t relevant to the complaint);
- FHL agreed to meet with Mr P to discuss such refinancing every two years, at Mr P’s request;
- FHL and Mr P agreed to use their best endeavours to ensure that monies made available for mortgage payments were transferred promptly between the parties to ensure payment to the relevant mortgage account.

BM was not a party to this agreement and has confirmed it had no knowledge of it until recently.

In March 2014 Mr P was declared bankrupt.

In 2021 Mr P complained to BM that he was still on the mortgage accounts and that arrears were being reported on his credit file. In its final response letter BM confirmed that the Insolvency Service had confirmed that it still retained an interest in the properties. BM said Mr P was still the registered owner of the properties at the Land Registry.

Unhappy with BM’s response, Mr P brought his complaint to our service. He says that, after his bankruptcy, the Official Receiver (OR) took control of all his assets, but the properties that are in his name and subject to a deed of trust are still in his name and he is still classed as the owner at the Land Registry. Mr P says that the OR has said that the deed of trust is valid, but the OR has no interest in these properties and so can do nothing to resolve the issue. However, FHL (the party who purchased his shares in APL) has not been maintaining the mortgage repayments, which has had a major impact on his credit profile.

In response to the complaint, BM confirmed that in August 2021, after the Insolvency Service confirmed that Mr P’s bankruptcy was discharged in March 2015, his credit file was updated to show the mortgage accounts as partially settled, with the balances set to zero. BM said it would note on its records not to contact Mr P, but would retain his correspondence details in order to issue any regulatory letters, for example if the properties were taken into possession.

However, Mr P wants his name taken off all the properties. Mr P says he can’t afford a solicitor and so would like our service to help him with this.

An investigator looked at what had happened, but didn’t think BM had done anything wrong. She explained to Mr P that the issue appeared to be with FHL not adhering to the terms of the agreement entered into in 2011, rather than any error on the part of BM. The investigator said that FHL would need to arrange for the properties to be transferred out of Mr P’s name.

Mr P said that this wasn’t the point of his complaint. He said that there was still one mortgage being reported on his credit file. Mr P also said that BM had admitted it had made mistakes on his credit file as BM knew when he’d been discharged from his bankruptcy and so should not have reported the incorrect information. The investigator clarified that she had

addressed the complaint set out in Mr P's complaint form, which is that he wanted to be removed from the titles to the properties.

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.

Having done so, I'm afraid I have disappointing news for Mr P; I'm not upholding his complaint. I give my reasons below.

First, BM was not notified by the OR or by Mr P that his bankruptcy had been discharged in 2015. The contact notes show that until August 2021 the OR was still claiming an interest in the properties, and its correspondence made no mention of any discharge from bankruptcy. It's not BM's responsibility to research whether Mr P had been discharged from bankruptcy. It was up to the OR or Mr P to let BM know. I am satisfied that BM wasn't told Mr P had been discharged from bankruptcy until 4 August 2021.

The complaint Mr P asked us to look at was his dissatisfaction that he remained on the title of the properties mortgaged to BM. Because he can't afford a solicitor, Mr P wanted our service to help him sort this out. But we don't act for consumers – we are independent of both consumers and the businesses they are complaining about.

I don't have any power to order BM to remove Mr P from the mortgage accounts. I also don't have any power to order the Land Registry to remove Mr P from the titles to the properties. The Land Registry isn't a member of our service, and removal of one party from the title to a property is a legal matter which Mr P will need to resolve outside of our service.

It seems to me that the actual problem is that FHL (apparently) failed to abide by the terms of the agreement entered into with Mr P in 2011, where FHL had agreed, at its own expense, to arrange for the transfers of the properties to it, and the refinancing of the mortgages on those properties. That's not something I can consider, because FHL isn't subject to the rules of our service.

If Mr P considers that FHL is in breach of contract, and Mr P can't persuade FHL to abide by the terms of the agreement, then I would suggest he takes legal advice about what he can do to remedy this. I'm afraid it's not something the Financial Ombudsman Service can help him with. BM wasn't a party to the agreement, and is not bound by it, so there's no basis on which I can find BM should have taken any steps to remove Mr P from the mortgage accounts arising from the contract between Mr P and FHL.

I know this isn't the outcome Mr P wanted, but there is no basis on which I can fairly order BM to agree to remove Mr P from the mortgage accounts. I also have no power to order the Land Registry to remove Mr P from the legal title to the properties.

BM says it has amended Mr P's credit files to show the mortgages as partially settled as at the date of the discharge of his bankruptcy. Mr P has now raised a new issue – which is that there is still one mortgage showing on his credit file. Because this is a new complaint, Mr P will need to raise this first with BM so that the bank has an opportunity to respond to it. If Mr P is unhappy with BM's response, he will be able to bring a complaint to us about this.

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 Mr P to accept or reject my decision before 4 April 2023.

Jan O'Leary
Ombudsman