

The complaint

Mr E complains that he hasn't any information about the sale of his property by Oakwood Homeloans Limited in 2010 which produced a mortgage shortfall. Mr E is also concerned about different outstanding balances he's been given by the solicitors for Oakwood.

What happened

Mr E had a property and a mortgage with Oakwood which was repossessed in 2010. Mr E wanted to bring a complaint about the shortfall to this service. Our Ombudsman issued a decision dated 27 September 2022 saying that, because of the Rules that apply to us we could not look into the value at which Oakwood sold his property after it was repossessed. But we could look into his complaint that he was given different outstanding balances with no explanation.

The net proceeds of sale of the mortgaged property, according to Oakwood's statement of account was £95,167.95. The shortfall recorded in the account in 2010 was £54,736.87. Oakwood's solicitors obtained a judgement for the shortfall and got a charging order on Mr E's present property. On 12 December 2017, Mr E got a letter from Oakwood's then solicitors claiming an outstanding liability of £55,055.67. He then got a letter from a different firm of solicitors representing Oakwood who told him the liability was £34,457.15.

Our investigator's view

When our investigator asked for an explanation of the difference he was told that this was due to a credit being applied to the account of £19,642.42 as a result of "Title Rectification". As this was credited to the account at the time of receipt and Mr E didn't suffer financially as a result, our investigator didn't recommend that this complaint should be upheld.

Mr E disagreed and our investigator requested further information on how the credit related to title rectification. Oakwood said that when the mortgage was taken out initially, the solicitors acting for Mr E failed to secure the charge in the Land Registry. This would have been a problem in the litigation to repossess the property and there were extra costs involved in doing so. Oakwood said that it added these charges to the account but then refunded them when these costs were recouped.

My provisional decision

As my view of this complaint differed from our investigator's I issued a Provisional Decision as set out below:

"As set out above I'm prevented from the rules that apply to us from looking into the sale of Mr E's former home. But I can look into the different balances he received from Oakwood solicitors. It seems that for many years Oakwood's solicitors were asking Mr E to pay a substantially inflated figure of £55,055.67. The correct figure was apparently much lower - £34,457.15. I say apparently because I've not yet seen a statement of account showing a calculation of this last figure claimed by the solicitors."

I've seen a statement of account in 2010 showing a balance of £54,738.87. I've seen a statement up to 8 December 2021 with a balance of £40,456.08. I've not yet seen a statement showing a balance of £34,457.15.

Oakwood says that there were difficulties in selling the property and that required a title rectification. This meant that in the course of the sale of the property there were extra legal costs involved that were added to Mr E's account and is reflected in the 2010 statement, but that Oakwood was able to recoup these costs. The 2021 statement shows a credit to the account of £19,642.42 on 30 December 2011 and this is reflected in the December 2021 account that I've seen.

But it seems for a long period that Oakwood through its solicitors continued to ask Mr E to pay the larger rather than smaller sum. The smaller sum was not asked for until recently and until our intervention no explanation was given to Mr E as to why the balance was substantially reduced. So, it seems that for a long period following the repossession of his property that Oakwood asked Mr E to pay a figure it wasn't entitled to and didn't provide Mr E with the correct statement of his account. Oakwood should have provided information to Mr E about the state of his account that was "clear, fair and not misleading". Oakwood didn't meet that standard and on that basis I'm upholding this complaint.

What effect did this have on Mr E? Mr E says that he was unable to borrow £25,000 for the past several years because of the inaccuracy on his account and that he has been mentally affected by it. But Mr E would have a substantial debt in any case and a charging order on his property. I've seen no evidence and am not convinced that Mr E could have got a loan if the debt were in the £30,000s rather than the £50,000s. So, I don't consider that Mr E suffered any financial loss as a result of the debt being overstated. But I will consider this matter if Mr E can supply me with evidence that he suffered a financial loss because of the balance being overstated.

But as I say above Mr E has an expectation that Oakwood would keep a proper account of his debt and provide information that is clear, fair, and not misleading and if failed to do that. It told him for years that he owed substantially more than he did, then told him he owed less but didn't provide him with an explanation of the difference. Mr E would have been distressed by this and I believe that an award of £500 reasonable reflects Mr E's distress and inconvenience. Mr E has yet to be provided with a statement of account showing how the figure of £34,457.15 is arrived at and I would require Oakwood to provide a full statement of how it arrives at that figure. Subject to any further evidence or submissions I receive from Mr E or Oakwood my intention is to uphold this complaint and require Oakwood to pay Mr E £500 and to provide him with a statement of account showing how the account balance of £34,457.15 is arrived at."

Further submissions

I invited further submissions from Mr E and from Oakwood before coming to my final decision. Oakwood told me that it agreed with my Decision. Mr E raised a number of matters which I deal with below.

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.

Whilst Oakwood agreed with my Decision, Mr E raised a number of matters:

- Mr E asks me again to again look into the sale of his property in 2010.
- Mr E regards it as suspicious that Oakwood used two different firms of solicitors
- Mr E says that he applied for a loan but that the two charges registered by Oakwood on his house made it difficult to get one.
- Mr E feels that Oakwood should not enforce the payment from him.

In response to Mr E's further submissions: I've already set out why I can't look into the sale of Mr E's property in 2010. I don't regard it as suspicious that Oakwood changed the solicitors it was using in respect of the debt owed by Mr E to Oakwood. This matter stretches over a decade, and I don't consider it abnormal that Oakwood may have wanted to use another firm of solicitors during that time.

I said in my Provisional Decision that I would consider any evidence that Mr E had that the misstatement of the outstanding balance caused him financial loss and his inability to raise money for home improvements. Mr E hasn't produced any such evidence but now says that it was Oakwood obtaining two charges that affected his ability to obtain a loan. I've no doubt that a charging order – there is an interim and a final charging order registered on the property – would affect Mr E's ability to obtain a loan but I don't see that Oakwood has done anything wrong in obtaining those orders and I note that the actual amount does not appear on the register. So, again. I've no evidence that the misstatement of the debt caused Mr E any financial loss. Finally, I don't agree that result of the debt being mis-stated means that it becomes statute barred. I note that in the final part of his recent email to us, Mr E has indicated that he would like to put a proposal to Oakwood about a potential settlement of the debt. If Mr E wants to do so I will leave it to him or his representatives to contact Oakwood directly.

I've considered these further submissions and reviewed the evidence on file, but I consider that, for the reasons stated therein, my Provisional Decision represents a fair outcome to this complaint, and I uphold this complaint for the reasons set out above.

Putting things right

Oakwood Homeloans Limited should:

1. Pay Mr E £500,
2. Provide Mr E with a full statement of account explaining how it calculates the outstanding balance to be £34,457.15

My final decision

My Decision is I that I uphold this complaint and require Oakwood Homeloans Limited to:

1. Pay Mr E £500,
2. Provide Mr E with a full statement of account explaining out how it calculates the

outstanding balance to be £34,457.15

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Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 14 March 2023.

Gerard McManus
Ombudsman