

The complaint

Ms W complains that The Mortgage Business Plc, trading as TMB, didn't tell her when she became solely liable for a mortgage that she had held jointly with her ex-husband following her ex-husband's bankruptcy. As a result, she says she lost the opportunity to step in and manage the mortgage herself before TMB repossessed the property.

What happened

Ms W and her now ex-husband had a joint mortgage with TMB. Ms W says they divorced in 2011, she had moved out of the mortgaged property before that, and she has had nothing to do with it or the mortgage since. As part of the divorce settlement, she says she relinquished any interest in the property and her ex-husband took responsibility for the mortgage.

Ms W tried to have her name taken off the mortgage, but TMB wouldn't allow her to do so. She complained about that in 2019, when she said she was concerned that arrears on the mortgage were affecting her credit file. TMB sent her its final response to that complaint at the time.

In 2017 Ms W's ex-husband was declared bankrupt. He continued making the monthly mortgage payments until October 2018, when payments stopped. By that time the property had been put on the market, but it didn't sell.

TMB took possession of the property in 2021. It was sold in May 2022, but the sale proceeds weren't enough to cover the mortgage debt. A shortfall was left of around £175,000. TMB instructed a debt collection agency to recover the debt.

Following contact from the debt collectors, Ms W found that she was being treated as the sole debtor and her ex-husband wasn't being asked to pay anything because of his bankruptcy. She complained, and says TMB should have told her what her ex-husband's bankruptcy would mean for her liability for the mortgage, so that she could have stopped arrears building up and avoided repossession.

TMB said it had been in regular contact with Ms W about the mortgage over the years, and it was entitled to look to her alone for repayment of the shortfall mortgage debt.

Ms W referred her complaint to the Financial Ombudsman Service. Our Investigator was satisfied that Ms W knew from TMB's correspondence and the earlier complaint she had made to TMB that she was liable for the mortgage debt. He said she also knew about the mortgage arrears and that the property was being sold, so she had the opportunity to prevent the arrears increasing. The Investigator found that TMB had made some administrative mistakes that had impacted Ms W, so he recommended it pay her £200 compensation.

TMB agreed to pay Ms W £200, and Ms W said she would accept that in respect of TMB's administrative failings, but she still thought that TMB should have told her when she became solely liable for the mortgage and that things would have turned out differently had it done so.

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've come to the same overall conclusion as the Investigator did, for much the same reasons. I recognise that Ms W has been left in a very difficult position, with sole liability for a substantial debt for which she says her ex-husband had accepted responsibility. But I don't find that this is because of anything TMB did wrong.

Ms W and her ex-husband were jointly and severally liable for the mortgage they took out, meaning that TMB could ask either or both of them for repayment. While they agreed how their assets and liabilities would be divided when they divorced, TMB wasn't party to that agreement. I can't look into a complaint about any application that was made to it to remove Ms W from the mortgage, because that's not the complaint Ms W has brought to us. I also note that she complained to TMB about that some years ago and it gave her its response then.

Things changed following Ms W's ex-husband's bankruptcy, and Ms W complains that TMB should have told her what the implications of this would be for her – that is, that she would become solely liable for the mortgage and any shortfall debt following the sale of the property.

TMB wasn't responsible for giving Ms W advice or keeping her up-to-date with changes to her ex-husband's circumstances. Ms W knew the mortgage was in arrears – while TMB did make mistakes with some correspondence and didn't always use the right address, Ms W did receive the letter it sent to her in May 2019 saying the mortgage was in arrears of more than £9,000 and TMB was starting legal action to repossess the property. Ms W was in contact with TMB in 2019 – she was worried about the impact of the mortgage arrears on her credit file. She has also said that she and her ex-husband were trying to sell the mortgaged property in early 2020.

In these circumstances, I think it's difficult to see how things would have turned out differently had TMB told Ms W when she became solely liable for the mortgage. She knew she was still party to the mortgage, that she wasn't paying anything towards it, that the mortgage was in significant arrears and that TMB was starting possession proceedings.

So I don't think I can fairly conclude that Ms W has lost out or been left in any worse a position than she would otherwise have been in because TMB didn't communicate with her as she wanted. I think it most unlikely that things would have turned out any differently. And if Ms W considers her ex-husband to have reneged on their divorce agreement, that's a matter between them.

I think that TMB did make some mistakes with Ms W's address and that Ms W was caused some inconvenience and frustration as a result. Both parties have agreed to a settlement of £200 for that, and I think that's reasonable in all the circumstances.

My final decision

My final decision is that The Mortgage Business Plc, trading as TMB, should pay Ms W £200 to settle this complaint. I make no other order or award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms W to accept or reject my decision before 11 June 2024.

Janet Millington
Ombudsman