

The complaint

Miss E and Mr P complain about their second charge mortgage (secured loan), currently owned by Paragon Finance PLC trading as Idem Servicing. They complain Idem hasn't honoured an agreement to release Miss E from the loan.

What happened

In 2007 Miss E and Mr P, who were in a relationship at the time, took out a loan secured over their property, borrowing £91,000. Shortly after the loan was taken out they separated and Mr P agreed to take on responsibility for the lending. Miss E says that she has never actually lived in the property or made any payments to the loan.

The loan wasn't originally taken out with Idem, but was transferred to Idem in around 2011. Miss E and Mr P say that prior to the transfer the previous lender agreed to remove Miss E from the loan in return for an overpayment of £10,000 but Idem wouldn't honour that agreement.

More recently, Mr P has come to sell the property, but there is not enough equity to repay the remaining loan balance, and Idem has said that it will hold both Mr P and Miss E liable for any shortfall. I understand the sale was to avoid repossession by the first charge mortgage lender.

Miss E and Mr P brought this complaint. They say that Miss E should have been removed from the loan many years ago and it's not reasonable for Idem to expect her to make payments or hold her liable for it. Miss E believes that she is not in fact liable because of the agreement with the previous lender, and so Idem is statute-barred from taking action against her because of the passage of time. They want Idem to accept the proceeds of the sale of the property in full and final settlement. They referred to an email from Idem to Mr P in 2018, agreeing to accept £50,000 in settlement of the loan.

Idem didn't agree it had acted unfairly. It did offer to accept £101,000 to release its charge, with the shortfall of around £40,000 to be dealt with following the sale.

Our investigator didn't uphold the complaint, so Miss E and Mr P asked for it to be reviewed by an ombudsman.

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.

I've seen the agreement entered into by the previous lender. It said, on 4 February 2010, that on receipt of a lump sum payment of £10,000 it would release Miss E from the loan and then accept £500 per month from Mr P over 175 months in settlement of the remaining balance. But it made clear this would not be implemented until the £10,000 had been received. In 2012, Idem said it would still honour the agreement if the £10,000 was paid and the monthly payments were maintained – but would not reduce the balance or remove Miss

E until the lump sum was received.

The transaction history provided by Idem shows no evidence of a payment of £10,000 – in 2010 or at any other time. Monthly payments of £500 were made from March 2010 to November 2013, but because the settlement hadn't been implemented or the loan re-scheduled, this was not enough to cover the interest being charged each month. By the time of the last payment in November 2013 the balance had reached £130,000.

There have been previous complaints made about this loan:

- In 2015, Mr P complained that Idem hadn't honoured the agreement with the previous lender. Idem said it had been prepared to honour the agreement, and had written to Mr P about it several times, but the £10,000 lump sum had never been paid and no monthly payments had been made since 2013.
- In 2019, Mr P complained that the reduced settlement agreement was no longer available. Idem said that it had revoked the offer and was no longer prepared to honour it because no payments had been made. But it said that as a separate concession it had not been charging interest since 2016.
- In 2022, Miss E and Mr P complained that Idem had not implemented the agreement with the previous lender. Mr P also complained that Idem was asking for more in settlement of the debt than had been agreed. He was trying to sell the property and disputed the amount Idem required to redeem.

Idem said that it had been prepared to honour the agreement, but Miss E and Mr P had not kept to it. The agreement was for a £10,000 lump sum payment, followed by 175 monthly payments of £500. But no payments had actually been made since 2013, so Mr P had not kept to the agreement. Idem had therefore notified him in 2019 that he had breached the agreement and so the reduced settlement was no longer valid, and payment in full would be required.

This time Miss E and Mr P brought that complaint to us. One of our investigators said we couldn't consider the complaint about whether Idem had acted fairly in not implementing the 2010 agreement, because it was substantially the same complaint as Mr P had made in 2015 and 2019, and he hadn't referred that complaint to us within six months of Idem's response, as required by the time limit rules. He said that the redemption amount quoted by Idem appeared to be correct on the basis that the agreement hadn't been implemented.

- In 2023 Mr P made a further complaint. He said that the previous lender had agreed a settlement which Idem wouldn't honour and wanted the full amount paid in redemption. He said he was concerned that would leave a shortfall balance if he sold the property, which he was trying to do to avoid it being repossessed by his main mortgage lender.

Another investigator said we couldn't consider the complaint, because it was about the implementation of the agreement with the previous lender – which we'd already said we couldn't look at because it was out of time.

I'm not going to go over the previous complaints – as we explained at the time, we can't consider them because they weren't referred to the Financial Ombudsman Service. So instead I'll focus on what has happened more recently – and in particular Idem's refusal to agree to a reduced settlement balance, and that it continues to hold Miss E liable for the loan and shortfall as well as Mr P.

I've said above that I've seen that the original lender agreed to remove Miss E from the loan in return for a lump sum payment of £10,000, and to accept a reduced settlement of £500 per month over 175 months.

Idem agreed to honour that offer – even though, at the time it said so in 2012, two years had passed and the £10,000 still hadn't been paid. But the £10,000 wasn't paid after Idem said it would honour the agreement either. And from 2013, the monthly payments also stopped being paid.

I'm therefore satisfied that it wasn't unreasonable for Idem to withdraw that offer and proceed on the basis that the full contractual amount was outstanding. Miss E and Mr P hadn't done what they agreed to – not having paid £10,000, and not having maintained £500 monthly payments after November 2013 – and so Idem did not remove Miss E or reduce the loan balance. That's not unreasonable, and I don't think Miss E and Mr P can fairly expect Idem to keep to the agreement when they themselves didn't.

That means that Miss E has not been removed from the loan agreement, and there's no basis on which I can fairly find that she ought to have been. It follows that she remains jointly and severally liable for the full loan balance and any shortfall, and Idem will be entitled to pursue her, Mr P or both of them for the outstanding balance. The loan is not "statute-barred".

Mr P has given us an email from 2018, in which Idem agreed to accept £50,000 in full and final settlement. But it's now said it won't agree to that. I don't think that's unreasonable. The offer of £50,000 was made in 2018, but Mr P and Miss E didn't actually pay £50,000 to settle the loan balance at the time. I don't think Idem is required to hold that offer open indefinitely, or agree, six years on, to still accept settlement on that basis.

However, Idem has not charged interest since 2016, and the balance is therefore much lower than it would otherwise have been given that no payments have been made since 2013. I think that's fair. I also think that it was reasonable for Idem to agree to accept £101,000 in return for releasing its charge over the property and dealing with the rest as a shortfall, as this meant Idem wouldn't be stopping the sale of the property from going ahead, helping avoid repossession by the other lender.

Idem has ongoing obligations to treat Miss E and Mr P fairly in collecting the remaining balance. But I'm not persuaded that it has acted unfairly to date, and so I don't uphold this complaint.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss E and Mr P to accept or reject my decision before 22 August 2024.

Simon Pugh
Ombudsman