

The complaint

Mrs F makes several complaints against Mortgage Express including that in 2022 she wanted to sell a property to redeem the mortgage on it and reduce the balance she owed but was prevented from doing so by Mortgage Express. Topaz Finance Limited has advised us that after the recent purchase of mortgages it is now responsible for this complaint.

What happened

Mrs F had ten buy to let mortgages with Mortgage Express which she took out in 2007. Mrs F brought a number of complaints to us by phone in 2023. I issued a decision on 15 March 2024 in which I said that because of the rules that apply to this service there were some of those complaints we could not consider and some that we could. I told Mrs F that I would consider the following complaints and I will do so now. Those complaints are:

1. In May 2022, Mrs F wanted to sell a property to redeem and reduce the balance due. Mortgage Express refused to allow the sale because it was owed money from the shortfall following the sale of other properties and claimed a right to consolidate. Mrs F says this is unfair.
2. Mortgage Express has refused to respond to her data subject access request ("DSAR").
3. Mrs F says she sought help from Mortgage Express when one of her mortgages came to an end in 2022 but didn't get any.
4. Mrs F complains that with interest payments increasing, she's been unable to maintain her monthly payments.

Our investigator has already considered those complaints, but her view was that except for one complaint they shouldn't be upheld. But our investigator felt that Mortgage Express was responsible for the delay and inconvenience in complying with the DSAR request and recommended compensation of £100 for that. Mrs F disagreed and asked for a review.

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 will deal with the complaints in turn:

1. In May 2022, Mrs F wanted to sell a property to redeem and reduce the balance due. Mortgage Express refused to allow the sale because it was owed money from the shortfall and claimed a right to consolidate. Mrs F says this is unfair.

I note from the file that in May 2022, Mrs F wanted to sell one of her properties and her solicitors wrote to Mortgage Express asking for a redemption statement. But Mrs F says that Mortgage Express refused to accept the sale without enforcing its right to consolidate which she says she never agreed to. Mortgage Express in the final response letter says it has this right to consolidate which it says means:

“that a surplus arising following the sale of a mortgaged property can be consolidated into another mortgage account held with the same mortgage lender and is known as lender’s Right to Consolidate. It also means that if you want to repay one of your mortgages within your portfolio, we may insist that you repay all other mortgages held with the same mortgage lender.”

Mortgage Express says that there is a right to consolidate in the mortgage conditions that Mrs F agreed to at the start of the mortgage. I note that Mrs F doubts that Mortgage Express has a right to consolidate and on several occasions refers to Mortgage Express suggesting she agree to new T&C’s which she understands has that right and which she hasn’t agreed to. A consolidation clause would not be unusual in a commercial transaction such as this. I asked Mortgage Express for their terms and conditions relevant to when this mortgage was taken out in 2007 which it provided me with.

I note that within those terms and conditions, at Section D paragraph 15 under the heading *“If you have more than one mortgage with us”* it says

“a Our right to combine mortgages is not restricted in England and Wales by section 93 of the Law of Property Act 1925, (or in Northern Ireland by section 17 of the Conveyancing and Law Property Act 1881).

b If you have more than one mortgage with us, and you want to pay off just one of those mortgages, we have the right (except where the money is owing under a regulated agreement) to stop you paying off the mortgages separately, and to insist that you pay them all off.”

Although not headed as such that seems to me to be a consolidation clause. On 20 June 2022 Mortgage Express wrote out to Mrs F’s solicitors in response to their request for a redemption statement to say

“We would like to take this opportunity to advise you of our Right to Consolidate in accordance with our Mortgage Terms and Conditions which were agreed to by the customer when they completed their mortgage with us.

This means that if the customer wants to pay off one of their accounts with us, we have the right to insist that they repay all of their mortgages held with us and refuse to release one mortgage in isolation.”

That seems to me to fairly set out what’s in the terms and conditions. The June 2022 letter from Mortgage Express’s solicitors said that although Mortgage Express has the right to consolidate, as an alternative to help reduce the customer’s portfolio’s debt it was willing not to enforce it provided the full sale at market value proceeds were paid to Mortgage Express and providing the account paid repaid that account balance in full.

The balance is quoted as £89,46.14. The letter ends *“The object of retaining additional monies is to ensure that the security position across the customer’s portfolio is safeguarded and the risk of them being left with negative equity is minimised.”*

There the correspondence ends and I’ve no information as to what in fact the intended sale price was or why it didn’t proceed. I don’t see that Mortgage Express was requiring Mrs F to pay, in this particular case, the full shortfall payments over all the mortgages - as Mrs F suggests in her email to us of 28 September 2023 - but the net market value on this particular property if higher than the outstanding balance of the property. But I do consider that Mortgage Express had the right to consolidate as set out in that letter and I can’t see to as being unfair to Mrs F if it was prepared to offer her an alternative to that which wouldn’t

require all the mortgages to be repaid. So, I can't fairly uphold that part of the complaint.

2. Mortgage Express has refused to respond to her data subject access request ("DSAR").

According to the notes on Mortgage Express's file dated January 2021, Mrs F made a DSAR in October 2020 by phone and this had been responded to by Mortgage Express on 31 December 2020. My assumption is that Mrs F received that as there is a record of the information going out and no indication of it not being received by her as there is no reference to it not being supplied in subsequent phone calls that Mrs F had with Mortgage Express staff.

Mrs F made a further DSAR in March 2022. There appears to have been an issue in processing Mrs F's authority and an issue with a change of address as Mrs F had moved abroad. Mortgage Express says the DSAR was sent to the address that Mrs F asked it to use in England (in the expectation it would be forwarded) on 21 July 2022. I note that our investigator in her view listed the chronology of the process for the DSAR request and held that Mortgage Express hadn't processed the application in a timely manner and that Mortgage Express should compensate Mrs F by paying her £100 as a result. Mortgage Express accepted that.

Mrs F says she didn't get a response to the DSAR. I'm assuming that she didn't get a response to the second request although there is evidence that Mortgage Express sent it. Mrs F refers to getting a partial response. As I understand it Mrs M's complaints are that "*Mortgage Express has failed to respond to our DSAR to show the actual accounting losses but yet they demanded payment of the alleged shortfalls on sale*". But Mrs F has supplied me with evidence of the calculation of post-sale shortfalls on individual properties - such as closing down statement of repossession on account ending 518 - so those figures would have been available to Mrs F. In addition, for many years she was in close contact with staff at Mortgage Express about repaying the shortfall amounts so I would have thought that the calculation of the shortfall amounts would have been available as presumably that's what the discussion was about.

I also note that when Mrs F specifically requested information on the shortfalls on the properties that were sold, that information was supplied to her. For instance, I note that in a call about the DSAR on 23 May 2022 the system notes say that Mrs F passed the phone to her husband to discuss accounts. The note goes on to say that "*Mr wanted to offer full and final settlement figure for both shortfall accounts, provided balances but confirmed they are not redemption figures*". The notes go on to say that Mr wanted the number of another employee to discuss putting a proposal forward and this was supplied. So, although there may have been a delay in supplying the DSAR - and I note the issue about the change of address, it doesn't seem that this would have prevented Mrs F accessing any information on the account she required or accessing persons to speak to about the accounts. So, whilst I acknowledge that there was a delay in Mortgage Express's part in responding to the DSAR I find like our investigator that £100 represents fair compensation for that.

3. Mrs F says she sought help from Mortgage Express when one of her mortgages came to an end in 2022 but didn't get any.

I noted that in March 2021, Mortgage Express reminded Mrs F that the mortgage on one of her properties was coming to an end in July 2022. Mrs F expressed herself "*a little surprised*" given that this was a shorter term than with her other mortgages and asked about options such as extending the mortgage term. Mortgage Express said that it didn't increase mortgage terms as it doesn't have a licence for new lending. So, Mortgage Express had reminded Mrs F that her term had about 15 months left to run and was unable because of restrictions to its licence to facilitate an extension. I consider that allowed Mrs F time to

explore other options that might be available, and I couldn't require Mortgage Express to explore extending the mortgage term or remortgaging if under its licence it was prevented from doing so. So, I can't fairly uphold this part of the complaint.

4, Mrs F complains that with interest payments increasing, she's been unable to maintain her monthly payments.

Mrs F entered these buy to let mortgages with Mortgage Express which were on an interest-only basis. As interest rates generally increased, so did the interest rates on Mrs F's mortgages in accordance with Mortgage Express's variable rate as set out in the mortgage offers. The variable rate was the rate agreed that appears in the mortgage offer that I've seen. I've also seen letters going out to Mrs F advising her of changes to the variable rate and advance notices of future monthly increases following increases in the Bank of England base rate. I was unable to see any references to Mrs F complaining about the rate of interest in the file notes I read. So, as these increases appear in line with what was agreed under the terms of the mortgages I don't consider that Mortgage Express acted unfairly in increasing the rates and I don't uphold this part of the complaint.

Putting things right

Topaz Finance Limited should pay Mrs F £100.

My final decision

My decision is that I uphold his complaint in part and require Topaz Finance Limited to pay the compensation set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs F to accept or reject my decision before 19 April 2024.

Gerard McManus
Ombudsman