

The complaint

Mr C complains about his buy to let mortgage with The Mortgage Business Plc (TMB). He complains about the amount he owes now the mortgage has come to an end, and says that TMB shouldn't have allowed the balance to escalate, but should have stepped in sooner.

What happened

Mr C took out this mortgage in 2004. He borrowed around £129,000, which was used to purchase the property. The mortgage was a buy to let mortgage on interest only terms, with a lifetime tracker rate of 1.35% over the Bank of England base rate. In 2006 Mr C replaced the interest rate with a tracker of 0.49% above base rate for five years, to be followed by TMB's standard variable rate (SVR) from 2011. The term of the mortgage was due to end in 2024.

Mr C fell into arrears in 2007, and has been in arrears ever since. TMB obtained a possession order in 2012 but didn't enforce the order. Instead it added legal fees and other costs to the account – along with additional interest, this meant that the balance had risen to £256,000 by the end of the mortgage (when TMB sold the property) in 2022.

Mr C is represented in this complaint by a third party I'll call Mr F. Mr F says that Mr C is a vulnerable adult with low literacy and numeracy skills, and a relatively low income, as well as mental health concerns. Mr C understood that TMB had repossessed the property in 2012 and since then he has received no income from it. Mr F says that Mr C has made a series of complaints about his mortgage, which turned out not to be justified, but that Mr C has a firm belief that he has been the victim of various fraudulent conspiracies.

Mr F says that TMB should have repossessed the property in 2012, in line with the court order, and brought the mortgage to an end at that point. In fact it only repossessed it in 2021, and because the balance had increased so much, by the time it was sold in 2022 Mr C was left with a shortfall of around £45,000. In 2012 there was a money judgment for £143,500 but by 2022 the balance had increased to £256,000. Mr F says that almost all of this increase is because of legal fees added to the balance by TMB. He says that TMB failed to follow the regulator's rules as set out in the Consumer Credit Sourcebook (CONC). And he referred to action taken by the regulator against TMB in respect of failings in handling mortgage arrears. Mr F says that TMB failed to properly manage the account or comply with its obligations, which led to Mr C being left with such a large shortfall amount.

TMB said that CONC didn't apply to mortgages. In any case it didn't think it had acted unfairly. It said that it hadn't enforced the possession order in 2012 because Mr C had resumed making payments. TMB wasn't aware that Mr C might be a vulnerable customer. It had managed the mortgage appropriately in the circumstances.

Our investigator didn't think the complaint should be upheld. Mr F didn't agree and the complaint came to me for a final decision to be made.

I agreed with the investigator's outcome. But to give the parties a final chance to comment on my thinking, I issued a provisional decision setting out my reasons for reaching that view.

My provisional decision

I said:

“There’s a long and complex history to this mortgage, which in my view explains why things ended up as they did.

When Mr C took the mortgage out in 2004, he owned and was dealing with other properties at the same time. Unfortunately, his conveyancing solicitor made errors in dealing with this and other properties. In short, the charge securing the mortgage loan for this property was mixed up with another of Mr C’s properties, and there was also a mistake in registering ownership following the purchase.

The result was that this property, purchased using TMB’s mortgage, ended up with another lender’s charge registered over it instead. And a second property owned by Mr C, against which he had borrowed from the other lender, ended up with TMB’s charge against it. Mr C’s then partner was also wrongly registered as joint owner (but was not on the mortgage) of this property.

This meant that TMB didn’t have a charge over this property, it had a charge over another of Mr C’s properties instead.

Separately, Mr C fell into arrears and TMB secured a possession order in 2012. Despite what Mr F says, however, that doesn’t mean that TMB ended the mortgage or took control of the property at that time. A possession order gives the lender the right to repossess a property, but doesn’t mean it has actually done so. Following a possession order, if a lender wants to enforce the order it has to go back to court to get a warrant for eviction and appoint bailiffs to attend the property and physically take possession of it. It’s only at that point that the mortgage comes to an end and the lender is in possession of the property and able to sell it.

It frequently happens, however, that this second stage doesn’t take place. Following a possession order, lender and borrower reach agreement and payments are made. If the borrower then keeps to the agreement, then the lender no longer needs to enforce the possession order or apply for a warrant for eviction. That’s what happened in this case; following the possession order Mr C resumed making payments and TMB didn’t apply for a warrant. So it’s not the case that the mortgage was brought to an end in 2012 and that Mr C was not responsible for it from then on.

The problems with the title further complicated matters. TMB couldn’t rely on its charge over the property to repossess and sell it – because it didn’t have a charge over this property; it had a charge over a separate unrelated property because of the conveyancing error.

I’ve seen reference in the notes of contact between TMB and Mr C that Mr C was taking legal action against the conveyancer because of this error. I don’t know what came of that action. But at any rate the problems with the title complicated TMB’s ability to repossess the property and call in the debt.

Mr C began making a series of complaints to TMB and to the Financial Ombudsman Service, as well as – I understand – to other parties including the police.

The Financial Ombudsman Service has issued final ombudsman decisions in respect of two previous complaints brought by Mr C, and a third was dealt with by one of our investigators:

- In August 2015, an ombudsman issued a final decision. She noted the problems with the property title and the registration of the mortgage charge. She said that the mortgage was in arrears, and said that TMB was entitled because of that to appoint receivers to manage the property on Mr C's behalf. She said that she couldn't consider a complaint about the receivers, as they were acting for Mr C, but she could consider a complaint about the actions of solicitors acting for the bank, including their fees. She said that TMB had offered to refund some charges added to the mortgage balance, which she thought was fair, but didn't think it needed to refund any other fees or charges.

Mr F told our investigator that he didn't think this decision was relevant to this complaint, because it concerned another property owned by Mr C and his former partner. But I'm not persuaded of that. The facts set out persuade me that it relates to this property, and that's also how TMB has recorded the decision in its internal records.

- In March 2020, an ombudsman issued another final decision. She set out a detailed history of Mr C's dealings with TMB across three mortgages and properties, including this one. In respect of this mortgage, she set out in more detail the errors with the original conveyancing. She said that TMB had tried to resolve that error by amending the charges on the two properties but Mr C hadn't been willing to agree. She also found that Mr C had made a long series of baseless complaints. She said that substantial legal fees had been added to the mortgage balance:

"some of these are due to arrears on the T mortgage [that is how the ombudsman referred to this mortgage] which led to legal action being taken. The rest are because the matter has become so protracted – with a lot of correspondence between Mr C, TMB and its solicitors – when a simple solution had been put forward.

...

I've considered the other allegations of wrongdoing that Mr C has put forward. I won't be answering all of them, as they are plentiful and all without merit. Having read through it all, many of Mr C's allegations directly contradict others he put forward, and others he admits to being mistaken about at a later date. And as I said earlier, much of it seems to be a misunderstanding of the internal documents and terminology used."

- In December 2022, an investigator said she wouldn't look at the previous matters we'd considered. But she said TMB should give Mr F more information about the mortgage so he could understand what had happened. Having received that information, Mr F made the complaint I am considering now.

When complaints are brought to and decided by us, the parties are entitled to regard our decisions as final in respect of the matters complained about. Under the rules of the Financial Ombudsman Service, we have the power to refuse to consider new complaints if we have already considered the subject matter of the complaint, unless there is material new evidence which has subsequently become available to the complainant and which would impact the outcome.

That means I don't think I can consider again the complaints we've dealt with previously. The ombudsman decided in 2020 that the reason the balance had increased so much was partly because of legal fees due to past arrears, but primarily because Mr C didn't agree to TMB's proposals to resolve the legal problems with the registration of the charge and because he had made a series of complex but meritless complaints which TMB had had to deal with.

Mr F says that I shouldn't take account of that decision, because it was reached before the publication of the regulatory finding he's pointed to. Under our rules, I can reconsider the previous complaint if there is material new evidence likely to impact the outcome. But I don't think this information falls into that category.

Mr F says that TMB has breached the regulator's CONC rules, and that this is a regulated mortgage contract. But that's not correct. It's a buy to let mortgage, and buy to let mortgages are and always have been unregulated. The copy of the mortgage deed Mr F sent to the investigator merely shows this is a mortgage – it doesn't say it's a *regulated* mortgage. In any case the mortgage was taken out before mortgages became regulated – but as a buy to let mortgage it wasn't covered by the earlier voluntary Mortgage Code either. Mr F has also provided a copy of a regulated credit agreement. But that's for a related agreement for flexible features associated with the mortgage, not the mortgage itself. The mortgage isn't a regulated credit agreement any more than it's a regulated mortgage contract.

As a result, neither CONC nor the regulator's mortgage rules (known as MCOB) apply here. The regulatory finding Mr F refers to is about TMB's breaches of MCOB rules and guidance – and that's therefore the first reason the regulatory finding wouldn't change the outcome of the complaint we looked at before; this isn't a regulated mortgage and the same considerations therefore don't apply.

The second reason the regulatory finding wouldn't make a difference to the outcome of the previous complaint is that it was about failings by TMB in handling mortgage arrears and the consequences to borrowers – including legal costs – of that. But as I've explained, the previous ombudsman was primarily concerned with the issues around the charge, the impact of that, and the many other complaints Mr C had made about the validity of his mortgage and what he saw as TMB's involvement in a conspiracy to defraud him. The regulatory finding isn't about that, and so isn't relevant to the matters the ombudsman was deciding.

That means I'm not going to re-open the previous complaints, or reconsider the matters looked at by the ombudsman. I don't think the regulatory finding is material new evidence – because it's not material to the issues the ombudsman decided – and for the same reasons I don't think it's likely to change the outcome.

Mr F says that he doesn't want to complain specifically about legal fees added to the mortgage balance since the last ombudsman's decision. But he does want to complain about the approach TMB has taken, which meant that the mortgage continued after 2012 and resulted in Mr C ending up with a large shortfall. And he complains that TMB hasn't included Mr C in the remediation exercise it carried out following the regulatory finding.

I think there is a new complaint here, which hasn't been considered before by the Financial Ombudsman Service. The previous ombudsman was primarily dealing with Mr C's complaints about the enforceability of the mortgage and the problems with the charge. Although she noted that there had been historic arrears, she didn't make findings about the current arrears which had arisen since Mr C first brought that

complaint. To that extent, Mr F's complaint that TMB allowed matters to run on too long – inflating the balance in 2022 beyond what it would have been had action been taken sooner – hasn't been considered.

I've therefore reviewed this part of Mr F's complaint.

I don't think there's evidence that TMB has treated Mr C unfairly, or that it ought to treat the mortgage as having been brought to an end in 2012. I've explained that that's not the effect of a possession order, and in this case the mortgage continued by agreement between Mr C and TMB following the possession order. In the years after the order, with Mr C making regular payments, TMB offered to capitalise the arrears several times, but Mr C said he didn't want that because he held the conveyancer responsible for his situation and was taking action against the conveyancer.

The increase in the mortgage balance was – as the previous ombudsman said – driven by TMB's efforts to put right the problem with the charge registration, compounded by Mr C's refusal to agree to its proposals and by the many complaints he made. Mr F now accepts that those complaints were groundless. But the fact is that Mr C did make them, and TMB had to deal with them. There's no evidence that TMB was aware or should have taken into account Mr C's vulnerabilities until recently, and even if it was it still had to respond to Mr C's complaints and the way he chose to manage the account.

Ordinarily, I would expect a lender – especially one dealing with a buy to let account – to have taken recovery action far sooner than TMB did. There's always a balance to be struck between allowing forbearance and preventing matters getting worse. The purpose of forbearance is to allow a borrower in arrears time to get things back on track and resume making the mortgage payments. But if that proves not to be possible in the longer term, the time may come when it's reasonable to take action to bring the mortgage to an end – because there's no prospect of the borrower getting things back on track, the balance is increasing, and the longer things are left the worse things get. Repossession should be the last resort, but when all other options have been tried without success, it may still (while a difficult and unpleasant process to go through) be in the borrower's best interests to stop a bad situation getting worse.

By the time TMB did take action, culminating in the sale of the property in 2022, a bad situation had got worse. Not just because of the legal fees, but also because of the substantial arrears. Mr C had stopped making payments some years before, and by the time of the repossession in 2021 the arrears had reached the equivalent of over four years' worth of payments. This means that not only was four years' worth of interest unpaid and added to the balance, but also that additional interest was charged because the balance was higher as a result. Mr C was in negative equity and left with a substantial shortfall when the property was sold.

Mr F says that Mr C believed the mortgage had been ended in 2012 and he no longer had any control over it or the property, so wasn't in a position to let it out or pay the mortgage. But I don't think that's right – TMB didn't repossess the property in 2012. And Mr C's regular complaints, and other regular contact with TMB, shows that he was aware that the mortgage was continuing and that he remained liable for it.

As I say, ordinarily I would have expected TMB to have brought the mortgage to an end much sooner than it did. But this wasn't an ordinary case. TMB didn't take recovery action while Mr C's complaints were being dealt with. That's not unusual –

lenders generally pause recovery action during a complaint so as not to pre-empt the outcome.

However, in this case Mr C made many complaints, and while his complaints were being reviewed he didn't make payments. I don't know whether that was because he was unable to, or whether he was withholding payment because he didn't believe the mortgage was valid. But either way, the arrears continued to mount while he complained, and because he had complained TMB didn't take recovery action of the sort it normally would.

As a result, by the time of the previous ombudsman's decision in May 2020, Mr C was in arrears totalling the equivalent of three years' worth of payments. And in May 2020 the first coronavirus lockdown had recently started – including, in the first few months, the complete suspension of the property market.

After the complaint ended Mr C didn't resume making payments and the arrears continued to mount. TMB couldn't take legal action at this time, because court possession proceedings were on hold because of the pandemic.

However, as this was a buy to let mortgage, TMB didn't need to take repossession proceedings. Under the mortgage terms and conditions, and under the Law of Property Act, it could appoint receivers to manage the property. Although appointed by the bank, receivers act as Mr C's agent, managing the property to see whether rent can be collected to pay the mortgage and (if not) considering other options such as selling it to repay the debt. As a previous ombudsman explained in the 2015 final decision (in respect of an earlier appointment of receivers) that means we can't consider a complaint about the actions of the receivers.

The difficulty in this case was that the actions of the receivers were restricted because the property title was still in the joint names of Mr C and his former partner following the conveyancing error when the mortgage was first taken out. That would matter less if there were court proceedings, since the court could order the property to be sold regardless of ownership. But the receivers were only acting as agents for Mr C, not his former partner. So while they could agree to a sale on his behalf, they couldn't do so on hers.

Eventually this was resolved in 2021. The receivers were appointed and visited the property. They found it was vacant. They took the property into possession. The receivers noted that it was in poor condition and needed some work before it could be sold. The receivers said that sale was the best option, because the mortgage was in substantial arrears and because the rent it could command wouldn't be enough to meet the mortgage payments. So while sale would result in a shortfall, it would at least bring things to an end and prevent Mr C's debt from increasing further.

The receivers handed the property over to TMB, TMB placed it on the market and the sale completed in April 2022. By the time of the sale, the mortgage balance was such that Mr C was left with a shortfall of around £45,000.

As I've explained, I'm not going to re-open or re-consider the matters dealt with in the 2020 final decision – which explain a large part of the reason Mr C ended up with such a shortfall. Those reasons included the problem with the way the property title was set up and how the charge was registered. They include Mr C's responses to TMB's attempts to resolve that problem.

But because of those problems, and because of the many complaints Mr C has made

about his mortgage over the years – complaints Mr F now accepts were unfounded – as well as the fact that he didn't make payments for several years while the complaints were ongoing, by the time his complaints were resolved in 2020 the mortgage was in very large arrears. I don't think it was unreasonable that TMB put recovery action on hold while Mr C's complaints were dealt with, and ultimately it was Mr C's choice to deal with his mortgage in the way that he did. Alongside the matters dealt with in the 2020 decision, that was in my view the cause of the shortfall.

By the time those complaints were over the coronavirus pandemic had started. That, and the ongoing complications with the property's ownership (which, it seems, was the fault of Mr C's solicitor when he bought the property, not TMB), meant that even then bringing the mortgage to an end wasn't straightforward. But TMB did do so, and sold the property, to draw a line under the mortgage and prevent Mr C's situation getting any worse.

Mr F says that the right remedy for this complaint is that I should direct TMB to put Mr C into the redress exercise it carried out following the regulatory finding I've referred to above. But I don't think I can fairly require it to do that. As I've explained, that finding primarily related to regulated mortgages – this is not a regulated mortgage. And that finding related to arrears handling processes.

I've taken into account the contents of the finding, because even though this is a buy to let mortgage TMB should still follow good practice in arrears handling. However, I'm satisfied that the reasons for Mr C's situation are the unique circumstances I've outlined above, not general failings in TMB's standard arrears handling process. I'm not persuaded that the failings identified in the regulatory finding were relevant to how TMB handled Mr C's mortgage – and even if they were, given all the other factors unique to this case, I don't think it would have made any difference to the overall outcome.

In all the circumstances, and while – because Mr F made clear that's not part of his complaint – I haven't considered the further legal fees TMB has added since the last complaint in connection with the repossession and sale, I don't find anything to suggest that TMB has treated Mr C unfairly or that it's not entitled to recover the shortfall balance resulting from the sale of the property."

The responses to my provisional decision

TMB said it had nothing further to add.

Mr C replied to say that this was a regulated residential mortgage, and was covered by the Consumer Credit Act. He provided a copy of a regulated credit agreement, and a statement prepared by TMB's solicitors for the 2012 possession proceedings which described this as a residential mortgage. He said that TMB had given false information and delayed responding to a subject access request. He provided various other documents, including a copy of the mortgage deed and the completion statement. He said that the sale and shortfall wasn't valid because of errors TMB and its solicitors had made.

Mr F said that he needed a copy of the mortgage deed and terms and conditions to reply. He said the deed our investigator sent to him – and which Mr C had sent to the investigator – was the original mortgage deed, which was substituted by agreement in 2007. He required the later deed. Mr F then said that TMB didn't have a valid legal charge over the property it sold in 2022 and had no right to sell it and expect Mr C to repay the shortfall.

Mr F said that my provisional decision wasn't accurate, because I said that Mr C had only

missed payments in the last four years – in fact he hadn't made payments for many years before that. He said that the possession order wasn't enforced in 2012 because TMB couldn't do so as its solicitors had misled the court. Anything that happened after that is the fault of TMB and its lies to Mr C. But he also said that TMB had taken possession of the property in 2012 and Mr C had vacated it at that time. TMB should have sold the property to recover its debt at that time.

Mr F said that a recent police investigation had found that TMB's solicitors had made clerical errors but not committed fraud – which showed they had misled the court. And in fact the solicitors had fraudulently altered the mortgage deed to show that the debt was owed by Mr C's ex-partner as well as him. The outcome of that police investigation is material new evidence which means we should look at the complaints in their entirety. At the time it sold the property, TMB did not have a valid charge over it.

Mr F said that Mr C was always willing to co-operate with TMB to resolve things, but TMB tried to cover up its failings and errors and didn't treat him fairly. Mr C has been made a scapegoat for the failings of TMB and its solicitors.

Mr F said it's not reasonable to conclude that TMB has done nothing wrong when it allowed the mortgage to increase from £129,000 to £256,000, and when TMB has been found by the regulator to have treated vulnerable borrowers in financial difficulty unfairly.

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.

Substantial further arguments have been made, and while I've only summarised them above I've considered them carefully. I think the arguments made by Mr C and Mr F can be grouped into the following broad complaint points:

- That TMB repossessed the property in 2012. At that point the mortgage came to an end and Mr C had no further responsibility for it. TMB should have sold the property at that point.
- That TMB has not treated Mr C fairly in running up costs and allowing the arrears to mount in the meantime.
- That TMB had no legal charge over the property it repossessed and sold in 2022 and Mr C should not be liable for any shortfall.

As I said in my provisional decision, CONC doesn't apply to this mortgage. The regulated credit agreement Mr F has referred to is a related agreement for flexible features, not the mortgage loan itself. It doesn't mean that CONC applies to the mortgage.

I've been provided with some further evidence of the background of what happened and the difficulties which were caused. The problem with the titles occurred not in 2004, but in 2007.

In 2004, Mr C took out a residential mortgage with TMB over a property I'll call 37. The property and mortgage were in his sole name.

Mr C then built a second property – 37B – in the grounds of 37. He and his former partner took out a mortgage in 2006, also with TMB, over this property.

At this point, there were two properties and two mortgages:

- 37 – mortgaged to TMB in the name of Mr C only
- 37B – mortgaged to TMB in joint names.

In 2007, Mr C and his former partner re-mortgaged the mortgage over 37B to another lender. This was when the error occurred. The conveyancing solicitor correctly repaid the mortgage over 37B; but incorrectly removed the charge over 37 and secured the new lender's mortgage to 37 not 37B, adding Mr C's former partner to the title deeds.

This meant the situation now was:

- 37 – legal title registered to Mr C and his former partner, lending granted by TMB for this property in the name of Mr C only, but a charge in favour of the second lender not TMB.
- 37B – legal title registered to Mr C and his former partner, lending granted by the second lender but a charge in favour of TMB.

In 2010, once it had realised the situation, TMB registered a unilateral notice on the title of 37, and the second lender registered a unilateral notice on the title of 37B, so that each lender could protect its own interests.

In 2012, TMB took possession action because of the arrears on the mortgage. Although its borrowing was lent in respect of 37, it sought possession of 37B because of the mix-up with the titles. It did so because it still had a charge over 37B in respect of the 2006 mortgage over this property (although this loan was paid back by the second lender, the charge hadn't been removed). Under the terms and conditions, any charge granted is an "all monies" charge – meaning it secured all indebtedness to TMB, not just the specific loan for which the charge was granted. In other words, TMB could rely on the charge wrongly retained on 37B to recover the debt originally lent over 37 even though the charge had been removed, and even though the charge over 37B was in joint names not just Mr C's name.

The court granted a possession order over 37B. But – as I explained in my provisional decision – it did not enforce the possession order by seeking a warrant because Mr C resumed making payments. As I said, a possession order does not mean that the mortgage has been brought to an end or that the property has been repossessed; what it means is that the lender is entitled to move to the next stage – a warrant of eviction – if the borrower still doesn't make payments or surrender the property.

In 2015 Mr C, his former partner, TMB and the second lender all executed deeds of substituted security – effectively swapping the charges back over. This meant that TMB's charge was over 37 and the second lender's charge was over 37B, as should have been the case all along. But this meant that TMB had a possession order in respect of a property over which it no longer had a charge.

In 2017, TMB's solicitor noted that there had been an error in the deed of substituted security. It asked Mr C to agree to a deed of variation. Mr C didn't consent to that. TMB also suggested that Mr C and his former partner could agree to remove her from the title and Mr C could then execute a fresh mortgage deed, but Mr C didn't agree to that either.

The matters relating to the charges over the property were considered by the previous ombudsman in 2020, and she said:

"I can understand how confusing this is to someone that doesn't work within the industry, but I can only seek to reassure Mr C that TMB made absolutely no mistakes

here, and the easiest way to resolve it is as TMB's solicitors have put forward; that paperwork is completed by Mr C and [his former partner] to transfer property [37]'s ownership back into Mr C's sole name and to put a new charge on in favour of TMB... That would put things back in the position they would have been in had the conveyancer not made the mistake in 2007.

I understand there have been substantial legal fees since then, but some of these are due to arrears on the [37] mortgage which led to legal action being taken. The rest are because the matter has become so protracted – with a lot of correspondence between Mr C, TMB and its solicitors – when a simple solution has been put forward. I strongly recommend Mr C and [his former partner] seek the independent legal advice recommended by TLT's solicitors in December 2017 (if they've not already done so) and seriously consider the options put forward. If Mr C and [his former partner] don't agree to the work being undertaken, then TMB can take the matter to court to force an outcome, and the costs for that will be added to the relevant mortgage account(s)."

As I explained, I'm not going to re-consider matters dealt with by the previous ombudsman, for the reasons given in my provisional decision. Mr F has now said that a recent police investigation amounts to material new evidence which means I should re-consider re-opening the earlier complaint resolved by the previous ombudsman's decision. But I'm not persuaded of that either. I've considered the evidence Mr F has provided. It's not a record of the police's investigation, it's the outcome of a complaint to the Police and Crime Commissioner about the outcome of the investigation. The complaint response shows that there was a police investigation which found no evidence of criminal conduct, but that TMB's solicitor had said he made a mistake in court documents.

The letter doesn't set out what that mistake is. Mr F says it was presenting a false mortgage deed to the court in 2012 creating a joint mortgage with Mr C and his former partner. He's given us a copy of that document. But it's not what he says it is. It's a copy of the mortgage deed wrongly completed by the conveyancer as part of transferring ownership of 37 from Mr C to Mr C and his former partner jointly. It does say that she is also a mortgage borrower. But it wasn't TMB that created that document. Notwithstanding what the document says, TMB has never treated this as a joint mortgage and it never has been. TMB didn't suggest to the court that it was either – Mr C's former partner was named as a defendant in the 2012 court proceedings because she was one of the registered owners of 37B, not because TMB suggested she was party to this mortgage. As an owner of the property TMB was seeking to repossess she had to be party to the legal proceedings even though she wasn't party to the mortgage.

I'm not therefore persuaded that there is material new evidence likely to affect the outcome of the previous complaint. There's no evidence that the police found criminal or other misconduct. It's not clear what the "mistake" in the complaint letter refers to. If it is the deed, as Mr F suggests, then that was a mistake by the conveyancer not TMB or its solicitor, and didn't affect the legitimacy of the 2012 court proceedings or any part of the previous ombudsman's findings. And if it was something else, I have no evidence of what that was and nothing to suggest it would have an impact on the outcome of the previous complaint.

I've now seen a copy of the 2012 court order and some of the pleadings from those proceedings. I explained in my provisional decision that a possession order doesn't mean a lender has taken a property into possession, it means that the lender has the right to seek to do so – via a warrant of eviction – if the court order for payment isn't complied with.

It's also important to note that the 2012 court order gave TMB the right to seek possession of 37B – the other property – not this property (because that's the property it had a charge over

at that time). So even if Mr C did vacate and abandon 37 at that time, that wasn't the property covered by the order. And I'm not persuaded that he did do that, or at least that he thought that the mortgage had been brought to an end, since he resumed making payments for a time, as well as discussing the mortgage with TMB. TMB did not take possession of either property in 2012 and did not bring this mortgage to an end.

As the previous ombudsman found, after the 2012 proceedings the position with the incorrectly registered charge was dealt with in 2015. TMB's charge was now back over 37, as it ought to have been all along. But Mr C's former partner was still registered as owner of the property – TMB suggested ways of rectifying that problem too, but Mr C wouldn't agree. The previous ombudsman found that TMB didn't do anything wrong during this period and I'm not going to interfere with her findings.

I explained in my provisional decision why it was that no action was taken to recover the mortgage balance before 2022. I appreciate Mr F doesn't agree with my findings about that, but I've not seen anything that would lead me to change my mind.

TMB eventually repossessed 37 in 2022, it having been taken over by receivers and handed on to TMB. It was entitled to do that because, following the deed of substituted security in 2015, it now had a charge over that property as it should have had all along.

I've not seen anything to suggest that the mortgage was false or didn't exist, and I've not seen anything to suggest that TMB treated it as a joint mortgage – as opposed to a mortgage solely in Mr C's name but over a property later registered as being in joint names.

By the time of the sale, the outstanding balance was around £256,000, of which over £60,000 was legal fees and charges, and the remainder was the mortgage borrowing, plus arrears and interest charged on arrears. I said in my provisional decision that there was around four years' worth of arrears. I'm sorry if this caused confusion; what I meant was that at the time of the repossession, the mortgage arrears amounted to the equivalent of just under four years' worth of repayments (dividing the total arrears by the then monthly payment). However, Mr C had missed payments for much more than four years; but because the monthly payment had increased, the number of months the total accumulated arrears were equivalent to was less than the total number of payments missed. The purpose in referring to the mortgage being in arrears by around four years' worth of payments was merely to show that the arrears were very substantial and growing.

I do appreciate Mr C and Mr F's strength of feeling here. Mr C was clearly in a very difficult situation. Some of that was because of difficulties in his own personal circumstances, some of it was caused by the conveyancer's errors. But it is also fair to say that some of it was caused by the way Mr C chose to respond to TMB and how he managed the situation, and by his unwillingness to accept previous explanations given both by TMB and other ombudsmen. I've very carefully considered everything that has been said, but I'm not persuaded TMB has acted unfairly, for all the reasons set out here and in my provisional decision.

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 Mr C to accept or reject my decision before 28 August 2024.

Simon Pugh
Ombudsman