

The complaint

Mr M complains that Mortgage Express acted unlawfully in transferring his mortgage and his personal information to another lender.

What happened

Mr M took out his mortgage with GMAC-RFC Limited in 2007 over a term of 25 years. The mortgage was subsequently transferred to Mortgage Express.

On 13 October 2023 Mortgage Express wrote to Mr M saying that it would be transferring his mortgage to Topaz Finance Limited, trading as Hyalite Mortgages, on 23 October 2023.

Mr M made a complaint. He said his information is protected under the General Data Protection Regulation (GDPR) and Mortgage Express wasn't entitled to pass it on to another company without his permission. He considers that in doing so Mortgage Express has voided his contract with it and it should treat the mortgage as finished and return his property deeds to him.

He also made a complaint to the new lender, Hyalite, after it recorded arrears on his credit file for mortgage payments he had missed because he didn't consider it to be his mortgage lender. That complaint is being considered separately.

Mortgage Express said it had the right to transfer Mr M's mortgage at any time and it didn't need his consent in order to do so.

Our Investigator said Mortgage Express was entitled to transfer the mortgage and information about the mortgage and Mr M to the new lender, and it had told Mr M in advance what was happening. She didn't think it had done anything wrong.

Mr M didn't accept that and asked for an Ombudsman's review. He said the introduction of the General Data Protection Regulation (GDPR) in 2018 meant that the transfer was unlawful without his consent.

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.

The Financial Ombudsman Service is an informal dispute resolution service, and my role is to decide a fair and reasonable outcome to complaints. We are not a regulator and it's not for me to decide breaches of data protection law. That's a matter for the Information Commissioner's Office. Mr M may wish to contact that Office with his concerns about Mortgage Express's compliance with the GDPR if he hasn't already done so.

I've carefully considered everything Mr M and Mortgage Express have said and provided and all the wider circumstances of this complaint in reaching my decision. That includes Mr M's mortgage contract with his original lender, GMAC, and the mortgage conditions

which formed part of the contract, which Mr M agreed to when he took out his mortgage, as well as what Mr M has said about the obligations on Mortgage Express under the GDPR.

The mortgage conditions say, at Section 7:

1. Our power to transfer

1.1 We can make a transfer of our rights under the mortgage at any time.

1.2 You have consented to transfers in your application form and we can make a transfer using our rights in law or in equity without any further consent from you.

1.3 We may provide to any actual or potential transferee of the mortgage any information or papers about you, the mortgage, the property and any other security held by us or the conduct of the account between you and us.

1.4 If we make a transfer of our rights under the mortgage, the transferee can exercise our rights and enforce your obligations to the same extent as we could before the transfer.

The mortgage conditions provided for Mr M's mortgage and his personal and financial information to be transferred to another lender, by the original lender and also any subsequent lender. In applying for the mortgage, Mr M consented to such a transfer.

As Mr M has pointed out, data protection law has changed since he took out his mortgage. I don't however consider that this means a fair and reasonable outcome to his complaint would be for me to require his mortgage (which in any event is no longer with Mortgage Express) to be 'voided'. I am required to consider all the circumstances of the complaint in making my decision, which include that Mr M still owes money on a mortgage which he agreed to pay back.

Mortgage Express told Mr M what was happening and what the transfer would mean for him and his mortgage. It also explained to him that it was making the transfer because it would no longer be operating as a lender. Mr M's mortgage was transferred to a regulated lender and there was no change to the mortgage terms as a result of the transfer. I don't therefore consider that Mr M has been disadvantaged, and I make no order or award.

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 M to accept or reject my decision before 30 August 2024.

Janet Millington
Ombudsman