

## **The complaint**

Mr H complains that UCB Home Loans Corporation Ltd (UCB) is unable to provide evidence to support the valuation it relied on when agreeing to lend.

## **What happened**

Mr H purchased a buy-to-let property in 2005. The interest only mortgage was provided by UCB who arranged for a valuation to be undertaken by an independent surveyor. The surveyor valued the property at £165,000 in 2005.

The property is now valued at around £110,000. Mr H has exceeded his original mortgage term and the balance remains outstanding. UCB has appointed receivers to act on Mr H's behalf to sell the property and recover the outstanding debt.

Mr H thinks UCB worked with the surveyor and developer to inflate the value of the property in bad faith. And he thinks its inability to now provide comparable valuations from the time to support this conclusion. He has referenced other developments across the UK which have had similar stories of negative equity at the point of sale and points to UCB being involved in a number of these.

UCB responded to say it had appointed an independent, suitably qualified surveyor in 2005 so it disagrees it has done anything wrong in regard to the valuation of the property. It also explained that it was appropriate that it had appointed receivers to recover the debt owed by Mr H now that the mortgage had been out of term for some time.

Dissatisfied with UCB's response, Mr H referred his complaint to our Service.

I issued my last provisional decision on this case in August of this year. I explained that Mr H had brought his complaint about UCB's acceptance of the valuation too late under the rules this Service must follow. And while his complaint that this has led to an ongoing unfairness was something I could consider, I did not uphold it. I also thought UCB had acted fairly in appointing receivers, so I did not propose to uphold this element of Mr H's complaint.

UCB responded to say it agreed with my provisional decision and had no further comments to make.

Mr H did not respond to my latest provisional decision.

As the deadline for the parties to respond has now passed, it is appropriate for me to issue my final decision.

## **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.

At its crux, Mr H is complaining that the valuation in 2005 was inaccurate and UCB's reliance on it and its subsequent inability to produce the evidence it reviewed in 2005, has led to him

having a higher mortgage balance than he should have. He therefore feels UCB's action to recover the debt are unfair.

#### UCB's reliance on the valuation in 2005

As I set out in my provisional decision, Mr H's complaint that UCB relied on an inaccurate valuation is out of time as per DISP rule 2.8.2R. As neither party have contested my conclusion on this point, I see no reason to depart from my provisional conclusion on this element of the complaint.

So, it follows that Mr H's complaint that UCB relied on an inaccurate or otherwise inflated valuation in order to lend relates to an event in 2005. As such, Mr H had until 2011 to bring his complaint under the first part of rule 2.8.2R. As Mr H didn't make his complaint until 2023, it is clear he did not bring this aspect of his complaint within six years of the event complained of.

I am also satisfied that Mr H knew or ought reasonably to have known he had cause to complain by 2016 at the latest when he discussed the fall in value of the property with UCB. And as he waited until 2023 to bring his complaint, I must conclude that he is also out of time under the second part of rule 2.8.2R.

I can set aside the time limits set out in DISP 2.8.2R where there are exceptional circumstances to explain the delay in complaining, but I find nothing to indicate exceptional circumstances apply here.

#### Mr H's complaint that UCB's reliance on this valuation has led to him having an inflated mortgage balance

I've explained that I can't consider the fairness of UCB choosing to rely on the valuation in 2005 because that matter is out of time. But one of the driving forces behind Mr H's complaint is that UCB's reliance on the alleged incorrect valuation means it is demanding a higher mortgage balance than should otherwise be due had the valuation been accurate.

This is a complaint about a continuing issue – that UCB has allegedly participated in and perpetuated an unfair relationship where it had a responsibility to put that unfairness right.

Complaints about unfair relationships between debtors and creditors are a matter the courts have the power to deal with under s.140A of the Consumer Credit Act (CCA). It is for the courts to deal with claims under s.140A of the CCA, but it is also relevant law for me to consider as Mr H's mortgage is a buy-to-let mortgage and therefore not exempt from its provisions.

Although s.140A hasn't been explicitly mentioned by Mr H, it is a matter for me to decide what is relevant law for me to take into account and I think s.140A is relevant to this case because Mr H has complained, in effect, that the relationship between him and UCB is unfair because of UCB's actions in 2005 and the ongoing impact of this.

In this case, the relationship between Mr H and UCB is continuing, and therefore if there is any unfairness, UCB has an ongoing obligation to put it right. To decide whether or not the relationship is unfair, I will need to consider all matters relevant to that, whenever they occurred. Even though some of those matters may have happened more than six years ago, that does not mean I cannot take them into account for the purposes of considering whether the ongoing relationship is unfair. I'm therefore satisfied that this part of Mr H's complaint is not out of time under the rules.

It is not for me to make a finding that there is an unfair relationship contrary to s.140A CCA – that is a matter for the courts. But in deciding what is fair and reasonable in all the circumstances it's relevant for me to consider what the law says and the approach a court may take to this question.

I set out in my provisional decision that I was not persuaded UCB's acceptance of a valuation from a suitably qualified surveyor in 2005 with or without supplementary evidence led to any ongoing unfairness. Nor did I think Mr H had been treated unfairly by being asked to repay the full mortgage balance. Particularly as the valuation was for UCB's purposes and not Mr H's.

I set out that UCB was entitled to rely on the valuation provided in 2005 and was not obligated to request the supporting evidence. The subsequent fall in the value of the property either within or outside of national norms is not within UCB's control or indicative that it in some way colluded with the developer or the surveyor. To do so would be detrimental to UCB. It is in its interest to have accurate valuations upon which it bases its lending decisions.

I also found it relevant that the courts have determined that a lender's surveyor owes no duty of care to a buy-to-let investor. It considers such buyers to be commercially astute and aware of the need to undertake their own survey and enquiries about the property they are buying.

As neither party provided any further comments on this point, I see no reason to depart from my provisional conclusions on this element of Mr H's complaint. While it is unfortunate that Mr H's buy-to-let property has declined so significantly in value and this has left him needing to make up the shortfall in order to clear his mortgage debt, I do not agree this is as a result of an act or omission on UCB's part in its role as a lender or that it has led to any unfairness that would lead me to uphold this complaint.

Finally, Mr H has previously sent in a summary of what the overseeing body required surveyors to consider when carrying out valuations. But this does not speak to UCB's responsibility as a lender. And if Mr H maintains that the surveyor did not follow the relevant rules and guidance at the time, that is not a complaint for UCB to answer – rather it is something he should direct to either the surveyor or the overseeing body.

#### UCB's inability to provide evidence relied on by the surveyor in 2005

Mr H says this complaint relates to UCB's current inability to provide evidence relied on by the surveyor in 2005 – or to demonstrate that such evidence was taken into account. As Mr H's request for this information and UCB's inability to provide it has only recently happened, it follows that this part of Mr H's complaint has been brought in time.

Mr H feels strongly that UCB's inability to provide this evidence suggests collusion between it and the other parties linked to the sale in 2005. I disagree.

I set out in my provisional decision that I would not expect UCB to necessarily have been provided with the evidence in 2005 so I am not surprised that it is unable to produce it now. And businesses are not required to keep records indefinitely. So even if UCB had ever had the details of any comparisons used by the surveyor, it would not be surprising or unreasonable for it not to have them now.

For these reasons, and in light of neither party providing any new submissions on this point, I do not uphold this aspect of Mr H's complaint.

### UCB's decision to appoint receivers

Mr H is unhappy with UCB's decision to appoint a receiver to act as his agent with a view to selling the property in question and recover the outstanding debt.

I set out in my provisional decision that the terms and conditions of Mr H's mortgage allow it to appoint a receiver in certain circumstances. I also set out that in this case, Mr H's mortgage has ended and despite informal term extensions, Mr H is no closer to being able to repay the outstanding amount due.

UCB has tried to engage with Mr H about repaying the debt to no avail and while I appreciate Mr H is disputing the valuation of the property, I did not think this negated the contractual obligation to repay the debt when it fell due or UCB's right to appoint a receiver.

As neither party have provided any further submissions in response to this point, I see no reason to depart from my provisional conclusions. So, it follows that I am satisfied UCB acted fairly and reasonably in its decision to appoint a receiver and I do not uphold this element of Mr H's complaint.

### **My final decision**

For the reasons set out above, I do not uphold Mr H's complaint against UCB Home Loans Corporation Ltd.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 8 October 2024.

Lucy Wilson  
**Ombudsman**