

## **The complaint**

Mr O complains that Southern Pacific Mortgage Limited (SPML) is recording inaccurate information about him on his credit file.

## **What happened**

In 2005, Mr O took out an interest only mortgage with SPML. The mortgage is in joint names with his now ex-partner. The mortgage is administered by Acenden.

In 2020, Mr O was declared bankrupt. He was discharged in 2021. He considers that SPML should amend his credit file to show as partially settled on the date of his bankruptcy.

SPML said the mortgage did not form part of the bankruptcy – only any shortfall after the property was sold would be included in it. It said if the property was repossessed it would mark the account in default at the date of bankruptcy.

The investigator thought the complaint should be upheld. He said that the mortgage was a provable debt in Mr O's bankruptcy. Therefore Mr O was not liable for the mortgage payments and it should not record missed payments on his credit file. So SPML should amend Mr O's credit file to show that it defaulted on the date of bankruptcy and that it was partially satisfied or settled on the date he was discharged from bankruptcy. The investigator also said that SPML should stop contacting Mr O about the mortgage unless it intends to enforce its security – and pay Mr O £300 for the inconvenience Mr O has suffered.

Mr O accepted what the investigator said. SPML did not. It made a number of points, including:

- As the mortgage remains active, Mr O remains jointly and severally liable for the debt regardless of any informal agreement with the joint account holder. So it will continue to contact Mr O regarding the mortgage.
- In order to remove Mr O from his obligation he would need to be formally removed from the mortgage by way of a transfer of equity or a remortgage by the other party in their sole name.
- It is unable to report arrears for one customer but not another.
- As the mortgage is secured it remains payable despite Mr O's bankruptcy. Were the property to be repossessed and sold, any shortfall would be classed as unsecured lending, which Mr O would not be liable for.

## **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 agree with SPML that any agreement between Mr O and the joint party regarding the

liability for the mortgage would not affect its ability to hold Mr O liable for the mortgage. But I do not agree with its interpretation of the impact of the bankruptcy on Mr O's liability. And having considered everything, I agree with the outcome reached by the investigator.

The law is one of the things I must take into account when deciding what I consider to be fair and reasonable in the individual circumstances of this complaint. The Insolvency Act 1986 (the Act) is relevant here. Section 382 (1) of the Act defines a "bankruptcy debt" as:

- a. any debt or liability to which the bankrupt is subject at the commencement of the bankruptcy, and
- b. any debt or liability to which he may become subject after the commencement of the bankruptcy (including after his discharge from bankruptcy) by reason of any obligation incurred before the commencement of the bankruptcy.

Mr O was liable for mortgage at the time he was made bankrupt. So I consider this mortgage and any ongoing liability formed part of the bankruptcy debt.

Section 281(1) of the Act says that once discharged the bankrupt is released from all bankruptcy debts and isn't liable for them. Section 281(2) goes on to say that discharge does not affect the right of any secured creditor to enforce the security.

I consider that Mr O was not liable for the mortgage debt from the date he was discharged from bankruptcy. The information recorded on a credit file should be a true and accurate reflection of how the borrower has conducted their account. In this case Mr O was not liable for the payments due under the mortgage. So I do not see how it was an accurate record that he had made or had not made payments to the mortgage once he was discharged. He had no liability to pay the mortgage. Therefore I do not consider that it was fair or reasonable for SPML to continue to record information about Mr O in respect of the mortgage.

I consider it would be accurate for SPML to record a default against the mortgage debt for Mr O on the date of bankruptcy and for it to show the mortgage as partially satisfied or settled on the date of discharge.

I note SPML has said that it is unable to record different information for each of the joint borrowers on the mortgage. But it has not put forward any persuasive or detailed reasons why it could not do so – and it has not shown that it has explored whether there is a workaround. If Mr O accepts the decision, SPML will be bound to do what I have said.

In view of the above, I do not consider it would be fair for SPML to contact Mr O about the mortgage unless it is taking action to enforce its security. That is because SPML's security is not affected by the bankruptcy. But that does not mean that Mr O remains liable for the debt.

Mr O has had the upset of having incorrect information recorded on his credit file in respect of his mortgage and the inconvenience of pursuing this matter to this extent. I think £300 is fair to reflect the impact of this matter on him.

### **My final decision**

My final decision is that Southern Pacific Mortgages Limited should:

- Amend Mr O's credit file in respect of this mortgage:
  - It defaulted on the date of his bankruptcy.

- It was partially settled or satisfied on the date he was discharged from his bankruptcy.
  - Do not record any ongoing information in regard to the mortgage.
- Do not contact Mr O about the mortgage unless it intends to enforce its security.
- Pay Mr O £300.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 18 November 2024.

Ken Rose  
**Ombudsman**