

The complaint

Mrs H complains that her mortgage with Monmouthshire Building Society (MBS) was mis-sold, because she was misled about its nature. She also complains that MBS is taking legal action to repossess the property.

What happened

Mrs H and her husband, Mr H, took out a joint mortgage with MBS in 2004, adding further borrowing in 2007. The mortgage was on interest only terms and the capital fell due for repayment in July 2024.

Mrs H and Mr H have separated and Mr H is no longer living in the property. Mrs H says that she was a victim of domestic abuse and controlling behaviour. The parties are currently going through a divorce – the financial dispute resolution proceedings are yet to conclude and Mrs H and Mr H have not reached agreement on their finances.

Mrs H says that the mortgage was mis-sold. She was pressurised by Mr H into agreeing to it and wasn't aware it was on interest only terms. She says MBS didn't do enough to make sure she understood what was being agreed. She says that she only recently discovered, on the breakdown of the relationship, that the mortgage was on interest only terms and coming to an end shortly – and that it had been allowed to fall into arrears. Since becoming aware, Mrs H had struggled to manage the monthly payments alone and Mr H wasn't contributing.

Mrs H managed to clear the arrears with the help of a family member in late 2022, to avoid MBS taking possession proceedings. In early 2023 Mrs H arranged for compensation due to her to be paid to the mortgage directly, which covered the next few monthly payments. However, from July 2023 the mortgage began to fall back into arrears – Mrs H says because Mr H was undermining her business to prevent her earning an income. She managed to clear the arrears again. But the mortgage has fallen back into arrears in recent months. As at the beginning of October 2024, the arrears were around £6,000 – the equivalent of just under three months' worth of payments.

Divorce proceedings were issued and there was a court hearing about finances in October 2023, but no agreement between Mrs H and Mr H could be reached. Further hearings were listed but Mrs H was unable to proceed because she couldn't afford legal costs. However, in October 2024 she was granted legal aid to pursue the financial settlement proceedings. Legal aid is only available in divorce and financial matters to applicants who can show that they have been victims of domestic abuse – Mrs H was able to satisfy this requirement because she had previously obtained a non-molestation order against Mr H.

In December 2023, MBS told Mrs H that unless she put the property on the market, it would take legal action. By this point the arrears had reached around £8,000, the equivalent of four monthly payments. Mrs H again managed to clear the arrears in February 2024. MBS said that unless there was a re-mortgage application in place, or the property was on the market, by the end of the term it would take repossession action once the term ended.

In May 2024, MBS said it would agree to a one year term extension and a reduced interest

rate in the meantime – but only if Mr H also agreed. In June, Mr H's solicitors told Mrs H's solicitors that he would agree, but he then told MBS that he wouldn't agree. Mrs H has also explored selling the property, but has been unable to put it on the market without Mr H's consent.

Mrs H complained to us that MBS wasn't treating her fairly. Our investigator agreed. She said that MBS should withdraw or indefinitely adjourn the legal proceedings, and should show forbearance by not taking further recovery action until the divorce and financial proceedings were resolved. She said that MBS should remove any legal fees it has added to the mortgage balance, and compensate Mrs H for the distress of taking unnecessary and premature legal action by paying her £800 compensation.

The mortgage term has now ended. Mrs H is unable to repay the capital from her own resources. Her intention is to sell off part of the land associated with the property, but she's unable to do that as Mr H won't agree to sell the property, either in full or in part. She hopes that, if agreement can't be reached, the court will direct what should happen to the property and the mortgage as part of finalising the divorce. Now that she has been granted legal aid she is able to resume the legal proceedings.

While the complaint was under consideration, MBS says it has begun legal proceedings to repossess the property, though no hearing date has yet been listed. It says it has no option but to do this because the mortgage is in arrears and the capital is due for repayment, and Mrs H and Mr H can't agree between them about what to do next. It has refused to pause legal action pending our review of the complaint.

MBS didn't agree with our investigator's view of the complaint, and asked for an ombudsman to review it. It said that the Financial Ombudsman Service had only heard Mrs H's side of the story, and that Mr H had not agreed to a term extension. It said that it could not provide us with evidence that showed that it had, in its view, acted fairly because doing so would require it to give us information about Mr H without his consent. Our investigator explained that MBS was required to co-operate with our investigations and provide us with all relevant evidence – which we could receive in confidence where appropriate – and that Mr H's consent wasn't required.

But MBS said it would not provide us with further evidence and did not consider that we should investigate this complaint without it. It said that it had acted fairly and had given reasonable time for the property to be sold and had offered all possible forbearance – but was limited in what it could offer without the agreement of both parties. It said that the outcome of the divorce proceedings was likely to be an order that the property be sold, so it was better to do that now rather than delay things further – including by repossession if necessary.

As no agreement could be reached, the complaint comes to me for a final decision to be made.

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.

Before dealing with the substance of the complaint, I'll deal with the points MBS has made about whether it's appropriate for us to deal with it, and about the provision of relevant evidence.

I'm satisfied – subject to what I say below about time limits in respect of the mis-sale part of

the complaint – that the Financial Ombudsman Service has the power to deal with this complaint. It's brought against a regulated firm, about a regulated activity, by an eligible complainant. Nor is this a case that it might be appropriate to dismiss on the basis that not all eligible complainants have joined the complaint – they have. Although the underlying product is a jointly held mortgage account, the fact that this is a joint *account* does not make this a joint *complaint*. Only Mrs H is making this complaint, and the other joint account holder – Mr H – does not share the complaint. There is only one eligible complainant, and she has brought the complaint. The fact that the other joint account holder does not share the complaint might limit the range of awards I can fairly make if I uphold the complaint – for example, it might not be fair to make changes to the terms of the contract prejudicing him or increasing his liability without his consent – but that does not mean that I cannot consider it. I'm satisfied that I have the power to consider this complaint and that it is not one where I should exercise my discretion to dismiss.

That being the case, MBS is required as a regulated firm to co-operate with our investigations,¹ including by providing *all* relevant evidence. It is for the Financial Ombudsman Service to decide what evidence is and is not relevant, not for the parties to a complaint. Under the law establishing the Financial Ombudsman Service, we have the power to compel parties to provide relevant evidence,² meaning MBS is obliged to provide it – and where evidence is not provided, proceed in its absence and take account of the failure to provide it.³

Under data protection legislation, the Financial Ombudsman processes and holds data about individuals – including third parties who are not complainants – under the public task basis. Our rules also make clear that we may receive information about third parties, which may be held in confidence and not, for example, be disclosed to the complainant⁴ (because onward disclosure goes beyond what is necessary for public task). This means that the consent of third parties is not required for us to receive and hold information about them. Nor does MBS require consent to provide that information to us – it can (and should) provide it under the legal obligation basis, just as we receive it under the public task basis.

Using the powers delegated to her as a member of ombudsman staff, our investigator told MBS that if it had evidence relevant to this complaint, it should provide it – and that if it did not do so, we would proceed to determine the complaint based on the evidence we do have. MBS declined to provide any further evidence. I'm therefore satisfied that it has had every opportunity to provide all relevant evidence that it wishes me to take into account, that I have enough evidence available to me to be able to decide the complaint, and that there is no reason for me not to proceed to do so.

The sale of the mortgage

I agree with the investigator that we can't consider Mrs H's complaint about the sale of the mortgage or the further advance. Our rules say that a complaint must be made within six years of the date of the event complained of, or (if this gives more time) within three years of when the complainant became, or ought reasonably to have become, aware of cause for complaint. If a complaint is made outside those limits, we cannot consider it unless the firm consents to us looking at it out of time (which MBS doesn't), or unless there are exceptional circumstances which explain why the complaint wasn't made in time.

Both the sale of the mortgage and the further advance took place more than six years before

¹ See for example DISP 1.4.4 R, in the Financial Conduct Authority Handbook.

² Section 231, Financial Services and Markets Act 2000, and DISP 3.5.10 G

³ DISP 3.5.9 (3) R

⁴ DISP 3.5.9 (2) R

Mrs H made this complaint. She's said that while she was aware of the mortgage, she was coerced into it and was unaware it was on interest only terms – and that MBS should have done more to make sure that she specifically consented to it on that basis. She says she was unaware of the situation until the separation from her husband because he dealt with all the finances and concealed documents, including letters and statements, from her.

I've seen that Mrs H signed to accept both the mortgage and further advance offers, as well as an offer of a new interest rate in 2009. Although the latter doesn't specify that the mortgage is on interest only terms, both lending offers do say that. So it would be difficult for me to conclude that Mrs H was unaware that the mortgage was on interest only terms at that time. The statements make that clear too – although Mrs H says that she didn't see any of those until recently, even so she would have been aware of the nature of the mortgage from the original offer. I'm satisfied that Mrs H ought reasonably to have known she had an interest only mortgage from the time it was taken out – so I don't think the three year rule gives her more time to complain than the six year rule. And while I appreciate how difficult her situation has been in recent years, I'm not persuaded there were exceptional circumstances that prevented her complaining within that time.

In any case, it's also important to note that while MBS was the lender it didn't sell the mortgage – a mortgage broker did that. So any complaint about what Mrs H was or wasn't told at the point of sale, and whether she was given enough information to know what she was agreeing to, would need to be directed to the mortgage broker, not MBS.

I'll therefore focus, in the rest of this decision, on whether MBS has treated Mrs H fairly more recently, since the breakdown of her relationship and now that the term of the mortgage has ended.

Has MBS shown reasonable forbearance?

In considering this question, I've taken into account the relevant regulatory rules and guidance – not just the rules of mortgage regulation, but also the FCA's guidance on the treatment of vulnerable customers (which I'm satisfied includes Mrs H), as well as the guidance on the fair treatment of interest only borrowers unable to repay their mortgages.

Having taken those matters into account, having thought about Mrs H's circumstances and the action that MBS has and has not taken, and having thought about all the circumstances, I'm not persuaded that MBS has acted fairly and reasonably in the particular circumstances of this complaint.

In particular, I don't think it took sufficient account of Mrs H's circumstances. During the term of the mortgage, until June 2024, although it didn't take litigation action it repeatedly threatened to do so. It also made clear that once the term of the mortgage ended it would expect immediate repayment or evidence the property was on the market and wouldn't consider other forms of forbearance. It did offer a one year term extension, but Mr H didn't agree to that, and once he refused to do so MBS wouldn't consider any further options.

By the end of the term, Mrs H had cleared the arrears and the mortgage was up to date – though it's since fallen back into arrears again, it's currently only three months in arrears and the term has only expired a few months ago. But MBS says that it is beginning repossession action immediately, regardless of Mrs H's circumstances and despite the fact that an active complaint about the fairness of doing so is still under consideration – notwithstanding its obligation to co-operate with an ombudsman's investigation.

The regulator's guidance makes clear that the rules on arrears handling continue to apply after the end of a mortgage term. And the guidance makes clear that the rules on

repossession apply even where there are no arrears.

It's fair and reasonable for MBS to expect the capital to be repaid at the end of the term, in line with the mortgage agreement. However, where that's not possible – or not possible yet – it should offer reasonable forbearance, allowing the borrower time to find a way to repay, and not take repossession action except as a last resort.

I agree with MBS that a formal term extension – which varies the mortgage contract – cannot be put in place without the consent of both Mrs H and Mr H, and Mr H did not agree. But that does not mean that the only alternative to a term extension is immediate repossession.

In this case, Mrs H cannot sell the property, either in full or in part, except with the consent of Mr H – who has not consented to her doing so. He has also not consented to the term of the mortgage being extended. But Mrs H is not currently in a position to repay the mortgage without selling the property.

There is a dispute between the borrowers here, and that dispute is what is preventing the mortgage being repaid. It's not for MBS – or for me – to resolve that dispute. But it doesn't follow that repossession is the only alternative. It's clear that Mrs H is taking steps to resolve the dispute herself in the appropriate forum, through the courts as part of the divorce proceedings. There have been hearings already, and although the proceedings stalled when Mrs H was no longer able to fund legal fees, she now has legal aid in place so proceedings can resume.

As part of the financial proceedings on divorce, if agreement between Mrs H and Mr H cannot be reached, the court will decide what is to happen with the property. It may direct that the property is to be sold – but I don't think it's reasonable for MBS to say that this will definitely happen and that it should therefore repossess and sell the property now instead.

The court might order the property to be signed over to Mrs H or to Mr H, or it might require Mr H to consent to the partial sale that Mrs H wants. And even if the court directs the property to be sold, it would then set out what is to be done with the equity, including liability for the third charge secured against Mr H's interest only – without direction from the court, there is likely to be further dispute between Mrs H and Mr H about that. Repossession followed by sale would also leave Mrs H homeless in the meantime, while a voluntary sale with her in possession would not. And repossession is likely to drive up the costs of sale – as well as potentially impacting the sale price.

So I'm not persuaded that sale of the property is inevitable, or even if it is that it's clearly better for that to be done via a forced repossession now rather than voluntarily in line with the court's decision later.

Although the term has expired, Mrs H is taking active steps to resolve the situation to get to a point where the mortgage can be repaid. She is progressing the divorce and financial settlement proceedings, having recently obtained legal aid.

Where a borrower reaches the end of an interest only term and can't repay the capital immediately, but has a credible plan to do so within a reasonable time and is actively taking steps to implement that plan, then acting fairly and reasonably I would expect a lender to show forbearance by allowing the borrower to do so rather than taking repossession. That is the case here.

Mrs H cannot currently repay – but she is taking active steps to resolve the barrier to doing so, and will be able to do so within a reasonable time (which is out of her control – depending on when the court lists a hearing). Following the court's decision finalising the

financial arrangements on divorce, there will be clarity about what should happen with the property and the mortgage, and Mrs H will then be able to implement the court's decision. Repossession is not, in those circumstances, a last resort and it is not therefore, in my view, fair and reasonable for MBS to disregard that and insist on repossessing now.

I'm not persuaded that the fact that Mr H has not consented to a formal term extension, or sought any other form of forbearance, is a barrier to MBS offering forbearance to Mrs H. Forbearance is not limited to a formal term extension. Merely agreeing not to take recovery action pending the resolution of the divorce proceedings – without formally extending the term – is also forbearance. MBS does not require Mr H's consent to refrain from taking repossession action.

And although this is a joint mortgage, and the joint borrowers are in dispute, that does not override MBS's obligations to show forbearance and not repossess unless as a last resort. MBS cannot arbitrate between borrowers in dispute – but the court can. And in insisting on repossession now rather than allowing the court to do so, MBS is not acting neutrally in the dispute between the borrowers, but is frustrating Mrs H's ability to resolve the question of the ownership and future of the property through the court. In my view MBS has a particular obligation to show forbearance to Mrs H as the borrower living in the property and attempting to pay the mortgage. It also has particular obligations to her as a vulnerable customer – including obligations under the consumer duty to take her vulnerability into account, support her to achieve her financial objectives, and avoid foreseeable harm.

It's true that the monthly mortgage payments are not currently being paid, and the mortgage is now in three months' worth of arrears. But in my view taking repossession action when only three months have been missed is premature, so I'm not persuaded that this changes my view of what forbearance MBS should offer. Both parties are jointly and severally liable for the mortgage payments – MBS hasn't shared information about its discussions with Mr H, so it's not clear why he isn't making any payments. But Mrs H will need to pay what she can while the mortgage balance remains outstanding. Any payments not made will increase the arrears – and interest charged on arrears will increase the balance, and therefore reduce the equity in the property once the mortgage is repaid.

Putting things right

To put things right, MBS should withdraw legal proceedings if they have now been issued, should remove any legal fees added to the balance in connection with legal proceedings, and not add any fees not yet applied to the balance. I'm not aware that Mrs H has instructed solicitors to defend the repossession action, but if she has, any legal fees she has incurred in doing so should be refunded to her. Threatening repossession action prematurely, and not considering appropriate forbearance, has caused Mrs H very considerable upset in already very difficult circumstances. MBS should pay her £800 compensation to reflect the distress caused.

MBS should then suspend recovery action for a period of one year, or until the conclusion of the financial proceedings, whichever comes first. If at the end of one year the proceedings have not concluded, but are being actively progressed and Mrs H's solicitors confirm that a final hearing is awaited, it should allow further time for the proceedings to be resolved. Once the court makes a final order, MBS should then allow reasonable time for the order to be implemented – including, if necessary, allowing a reasonable time for the property (or part of it) to be marketed and sold. Mrs H will need to take immediate steps to begin the process of raising funds to repay as soon as the divorce and financial proceedings are ended, and will need to ensure the mortgage payments are made, as far as she can, in the meantime..

My final decision

My final decision is that I uphold this complaint and direct Monmouthshire Building Society to put matters right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 10 December 2024.

Simon Pugh
Ombudsman