

The complaint

Mr L complains that Southern Pacific Mortgage Limited (SPML) took payments from him in respect of a mortgage after he had been discharged from bankruptcy, and that it reported missed payments to his credit file.

What happened

Mr L took out a mortgage with SPML in 2007. The mortgage was secured over a leasehold property. SPML has appointed a separate company to administer the loan on its behalf, but as the lender it remains responsible for the actions of its agent and is the appropriate respondent to this complaint.

Mr L went bankrupt in around 2017. As part of the bankruptcy process, his interest in the property was disclaimed by the trustee and Mr L says he has not lived there since. The trustee wrote to SPML in 2017 notifying it of the disclaimer. Mr L was discharged from the bankruptcy in 2018.

SPML continued to collect monthly payments for the mortgage by direct debit. In some months where the direct debit bounced, Mr L made manual payments instead. However, no payments have been made since August 2023.

In 2024, Mr L contacted SPML saying that he had had no interest in the property since 2017 and had been trying to get SPML to repossess and sell it. SPML referred the mortgage to its solicitors to begin legal action.

Mr L complained. He said that SPML was continuing to report the mortgage – and, in particular, arrears since August 2023 – to his credit file. He said he wasn't liable for the mortgage and had no interest in the property. The mortgage shouldn't be reported to his credit file and any payments he had made since the bankruptcy should be refunded to him.

SPML said that mortgages aren't included in bankruptcy and so Mr L was still liable for the payments. It said it had correctly reported the mortgage to the credit reference agencies and that the reporting of arrears was accurate.

Mr L wasn't happy with that and brought his complaint to us. Our investigator said that following the bankruptcy Mr L was no longer liable for the mortgage debt and so SPML should remove it from his credit file and pay him £350 compensation. It should also refund all the payments he has made since the bankruptcy.

SPML agreed to remove the mortgage from Mr L's credit file and no longer pursue him for payments, as well as to pay the compensation. But it didn't agree to refund the payments he had made. As no agreement could be reached, the case came to me. I issued a provisional decision agreeing, but only in part, with the investigators conclusions.

My provisional decision

I said:

"I've also taken into account the relevant law relating to bankruptcy. Secured debts are included in bankruptcy – but this does not affect the creditor's security. What this means is that the borrower is no longer liable for the debt secured by the mortgage deed, and no longer liable to repay the interest or capital. But the lender's charge over the property continues in force, and the lender is entitled to recover the debt via enforcement of the charge and sale of the property instead.

As a result, it's not unusual for a mortgage to continue on an informal basis following a bankruptcy – the borrower continues to make payments (even though not obliged to) so that they can retain the property, and the lender agrees not to repossess (even though entitled to do so) as long as the payments continue to be made. This is particularly true where the borrower has retained the property following the bankruptcy.

In this case, Mr L's interest in the property was also disclaimed as part of the bankruptcy – which, in effect, means his ownership of the leasehold interest in the property came to an end. This does not affect SPML's security or its ability to enforce it, but it does mean that Mr L no longer owns the property.

There are two parts to this complaint – the credit file reporting, and the payments Mr L has made to the mortgage since the bankruptcy, up to August 2023.

Dealing with the credit file first, I agree that SPML (or its administrator acting on its behalf) should not have reported the arrears to Mr L's credit file. The effect of his bankruptcy was that the credit agreement secured by the mortgage deed came to an end and Mr L was no longer contractually liable for repaying either the interest or the capital. SPML should not have reported the existence of a debt Mr L was not liable for, or that he had missed payments he was not obliged to make.

Instead – in line with the Information Commissioner's guidance – SPML should have reported that the mortgage defaulted on the date of bankruptcy, and that the default was partially satisfied on the date of discharge.

However, those events were more than six years ago and so if SPML had made those reports they would have dropped off the credit file by now. So SPML should simply remove all reporting of this mortgage for the last six years from Mr L's credit file.

To put matters right, therefore, SPML should ensure that the mortgage no longer appears on Mr L's credit file. It should also stop contacting Mr L to try to get him to make payments or chase the arrears – though, to be clear, it can take steps to enforce its security and sell the property to recover the debt, and contact Mr L to the extent necessary for that purpose (but not to try to recover payments from him). I also agree that it should compensate Mr L for the distress and inconvenience caused by contact relating to the arrears and the credit file reporting, and I agree that £350 is fair in all the circumstances.

However, I don't think it would be fair and reasonable to require SPML to refund all the payments Mr L has made between the discharge of his bankruptcy and August 2023. Some of those payments were made manually by Mr L, but most of them were made by direct debit collected by SPML from his bank account.

As I've already explained, Mr L is not liable to make any payments under the mortgage agreement and SPML cannot require him to do so (though it can enforce the security). But the fact remains that Mr L did take out this loan. In effect, by

allowing the direct debit to continue for several years and by making manual payments in months where it failed, Mr L has made voluntary payments to the mortgage debt. He was not obliged to make those payments but – by not cancelling the direct debit and allowing it to remain in place – he did make them. And while SPML could not have insisted that Mr L make payment, it was not required to refuse to accept payments he did make.

Those payments amount to around £17,000 – and if I were to require SPML to refund them, the balance would go up by that amount plus potentially substantial additional interest that would have been charged had payment not been made.

Mr L was not obliged to make those payments. Even if he wasn't aware of that at the time, it's up to Mr L – not SPML – to take advice on the impact of his bankruptcy and his liabilities arising from it. He could have cancelled the direct debit at any time, and did not have to make manual payments when the direct debit failed. By allowing the direct debit to continue, and by making the manual payments, he continued to make payments to service his debt on a voluntary basis after his discharge from bankruptcy. It's true that SPML could have enforced its security sooner, but while payments were being made it saw no need to – and, as I've explained, it's not unusual for a mortgage to continue informally, rather than be enforced, after a bankruptcy.

SPML cannot require Mr L to make payment, but it is entitled to recover the outstanding debt through enforcement of its security. Mr L says that the property has been vacant and abandoned for several years. It's possible, therefore, that it's not in good condition. If I were to direct SPML to refund payments Mr L has made since the bankruptcy, thus increasing the outstanding debt, that increases the risk that the security won't be adequate for SPML to recover the full balance in its current condition.

Mr L defaulted on his obligations to SPML, by virtue of the bankruptcy, but then voluntarily continued to make payments to SPML after the bankruptcy. I don't think it would be fair and reasonable in all the circumstances to require SPML as one of Mr L's creditors to refund payments Mr L voluntarily made, thus increasing the amount of its outstanding debt (and increasing the risk it won't recover the debt in full), merely because Mr L wasn't required to make those payments and now regrets having done so."

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.

Both parties broadly accepted my provisional decision, though Mr L was concerned about timescales for implementation. I see no reason to change my mind – now that I've made a final decision, if Mr L chooses to accept it then it will become binding on both him and SPML and SPML will be required to comply with my directions.

My final decision

For the reasons I've given, my final decision is that I uphold this complaint. Subject to Mr L accepting this decision, within 28 days of him doing so Southern Pacific Mortgage Limited should:

- Remove all record of this mortgage from Mr L's credit files; and

- Pay him £350 compensation.

It should also ensure that it does not contact him further about the mortgage, other than to the extent necessary to implement this decision and to enforce its security – and in particular it should not require Mr L to make further payments.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 19 February 2025.

Simon Pugh
Ombudsman