

The complaint

Miss G complains that Coventry Building Society ('CBS') has been pursuing her for repayment of the mortgage debt despite being aware she was previously made bankrupt. She is also unhappy it has been sending her letters which are addressed jointly to her and her ex-partner.

What happened

Miss G took out a joint mortgage with her ex-partner in around 2007. Unfortunately, their relationship broke down in January 2009 which Miss G has said was due to domestic and economic abuse by the joint party. Around this time, Miss G was also declared bankrupt.

Since around April 2009, the monthly payments haven't always been made in full or on time. This has led to the mortgage account fluctuating in and out of arrears for many years.

CBS has said it found out in June 2021 that Miss G and her ex-partner were separated. So, it traced and contacted Miss G and told her that she is still jointly and severally liable for the mortgage.

In around March 2022, due to the position of the account, CBS decided to take further action and to seek possession of the mortgaged property. Ultimately, CBS took possession of the property in September 2023.

Miss G complained to CBS about the time it had taken for it to take possession of the mortgaged property and about how it had handled the litigation process. CBS said it had acted appropriately and delays in the legal process were outside of its control. It also said that as it holds a first charge over the property, Miss G's bankruptcy would not impact how the account had been processed.

Miss G asked the Financial Ombudsman Service to look into her complaint. The Investigator felt CBS hadn't acted unfairly in pursuing Miss G for the mortgage debt and that CBS wasn't responsible for delays in taking possession or costs incurred as a result. But she said CBS ought to have actioned Miss G's request to address correspondence to her only – by removing her ex-partner's name. She recommended that it should pay Miss G £150 to recognise the distress and inconvenience caused by not doing this.

Because neither party agreed, the Investigator arranged for the case to be referred to an Ombudsman to make a decision. So, the case has been passed to me to decide. I reached a different outcome to the Investigator, so I issued a provisional decision.

My provisional decision

I didn't think CBS had acted fairly. 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 (in this case, CBS'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 through enforcement of the charge and sale of the property instead.

It's not unusual for a mortgage to continue on an informal basis following a bankruptcy. That is, the borrower continues to make payments (even though not obliged to) so they can retain the property, and the lender agrees not to repossess (even though it might be entitled to do so) if the payments continue to be made. This is particularly true where the borrower has retained the property following the bankruptcy. In the case of a joint mortgage where only one borrower has been made bankrupt, however, the mortgage continues to exist essentially as a sole mortgage, with the bankrupt borrower no longer liable for it.

In this case, the mortgage was taken out in joint names and Miss G was made bankrupt in 2009 – meaning she was no longer liable for the mortgage debt or liable to repay it. Her bankruptcy was something that CBS was made aware of at the time. Due to the arrears position worsening in around 2021 and CBS finding out that Miss G was separated from the joint party, it decided to trace and contact her. I don't think it was wrong to do that initially as Miss G may still have had an interest in residing in the property, and so may have wished to informally continue making repayments to be able to continue to do so. But after it had spoken with her it was clear she hadn't lived in the property for over a decade, had no intention to reside there and was unable to pay towards the mortgage.

I'm afraid I do not agree with CBS that it can continue to pursue Miss G for the mortgage debt on the basis she is jointly and severally liable, as that doesn't take into account her bankruptcy. As I've explained above the effect of Miss G's bankruptcy is that she is no longer liable for the mortgage debt. This is still the case where the beneficial interest for the mortgaged property has been returned to the bankrupt by the trustee in bankruptcy – something I think there has been some confusion over here. Following the initial conversations with Miss G, therefore, CBS should not have continued to contact her about the mortgage or tried to recover payments from her. It was clear by that point she had no intention to retain the property or to make voluntary payments to do so.

But CBS did continue to correspond with Miss G about the mortgage, arrears, costs, and legal action. When doing so, it addressed each letter at her current address including the joint party's name and referred to her as Mrs W – the surname of the joint party by which she has never been known. Despite Miss G raising concerns about how the letters were addressed and explaining how this was making her feel, I can see this continued into 2024 and is possibly still ongoing.

I don't consider it was fair or reasonable that CBS continued to refer to Miss G incorrectly as Mrs W in written correspondence. And I am also not persuaded that CBS, knowing as it did about the sensitive circumstances Miss G had explained, couldn't have found a workaround to stop Miss G receiving jointly addressed post. But, in any case, there was no need for CBS to continue contacting her about the mortgage debt at all because she isn't liable for it. That left Miss G not only with concerns about receiving unnecessary correspondence, but also with the thought of the debt lingering over her and the feeling that her ex-partner had some sort of control again – something she thought she had left behind many years ago.

I am persuaded CBS' actions have caused considerable, and avoidable, worry and upset to Miss G. And I provisionally consider that CBS should pay Miss G £500 to recognise this.

There's also the question of Miss G's credit file. It appears that CBS has continued to report the mortgage, including the arrears position, to Miss G's credit file. But it should not have done this as the effect of her bankruptcy was that she was no longer liable to repay the interest or the capital. Instead – in line with the Information Commissioner's guidance – CBS 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 CBS had made those reports they would have fallen off the credit file by now. I provisionally consider CBS should simply remove all reporting of this mortgage for the last six years from Miss G's credit file – and, for completeness, it should not report anything on her credit file about this mortgage going forward.

I know Miss G has also raised concerns that CBS has taken too long to repossess the mortgaged property, which has led to a lower potential sale price and to more costs being incurred. But as she is not liable for the debt CBS should not pursue Miss G for any sale shortfall. So, as CBS' actions around litigation and sale of the property shouldn't impact Miss G going forward, I don't think it is necessary, or appropriate, for me to consider these aspects further.

Putting things right

In summary, I provisionally consider that a fair way to put things right in all the circumstances is for CBS to:

- Remove all record of this mortgage from Miss G's credit file; and
- Pay Miss G £500 compensation.

I'm also minded to direct CBS to ensure it does not contact Miss G further about the mortgage, other than to the extent necessary to implement a resolution to this complaint and to enforce its security. In particular it should not require Miss G to make any payments including towards any shortfall that might result from the property sale."

I invited Miss G and CBS to let me have any further comments or evidence they wanted me to consider before I make my final decision.

Miss G and CBS both agreed with my provisional 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.

As both parties have agreed with my provisional decision, I see no reason to depart from what I've said. But I consider it is appropriate to make this final decision to bring finality to this matter.

Putting things right

To put things right in this individual case, CBS must:

- Remove all record of this mortgage from Miss G's credit file; and
- Pay Miss G £500 compensation.

CBS must also ensure it does not contact Miss G further about the mortgage, other than to the extent necessary to implement a resolution to this complaint and to enforce its security. In particular it should not require Miss G to make any payments including towards any shortfall that might result from the property sale.

My final decision

My final decision is that I uphold this complaint and Coventry Building Society must put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss G to accept or reject my decision before 9 April 2025.

Keith Barnes
Ombudsman