

## **The complaint**

Mr S complains that he should no longer be liable for the balance of the mortgage he had with Landmark Mortgages Limited (Landmark) and that it should have written off the debt following his sequestration and subsequent discharge. He also doesn't believe that the balance is correct.

The mortgage was originally taken out with a different lender and was transferred to Landmark later. For ease, I will refer to Landmark as the lender throughout this decision.

## **What happened**

Mr S took out an interest-only mortgage for around £37,000 in December 1986, with the mortgage term expiring in January 2014. Mr S fell into arrears shortly after the mortgage was taken out. He was sequestered in September 1988 and this sequestration was subsequently discharged in September 1991.

As the balance of the mortgage was not repaid when the term ended, Landmark took legal action for possession of the property. The court made an order requiring Mr S to repay the full outstanding balance and granting possession of the property to Landmark if this wasn't done. Mr S was evicted from the property in April 2025.

Mr S complains that he should no longer be liable for the debt as he says that this should have been written off following the discharge of the sequestration. He also says that the trustee in sequestration was still registered on the title. Mr S also complains that despite continuing to pay the mortgage over the years, the remaining balance was over £80,000 and he does not believe that this is correct.

Landmark says that when Mr S was sequestered, it wrote to the trustee confirming that it did not agree to be included in the sequestration proceedings and that it would rely solely upon its secured charge over the property to repay the outstanding debt. It says that Mr S has suffered some periods of financial difficulty and the arrears were capitalised at various points during the term of the mortgage. This – along with legal costs and arrears fees – means that the outstanding balance has increased over the years.

Our Investigator looked into Mr S's complaint and did not think Landmark had acted unfairly or unreasonably. He explained that being discharged from a bankruptcy or sequestration does not affect the right of a lender to enforce its security on a property, even though this may release the borrower from the underlying indebtedness. This meant that Landmark was entitled to enforce its security to obtain possession of the property to sell and repay the debt. However, if there was a shortfall between the sale value and the mortgage, Landmark may not be able to pursue Mr S for the remaining debt. Given the outstanding debt on the mortgage and the time that had passed since the mortgage term ended, the Investigator was of the view that Landmark's decision to pursue legal action to enforce its security was reasonable.

Mr S disagrees with this, so the case has come to me to make a decision. He says that Landmark has not complied with the Bankruptcy Scotland Act 1985 following the discharge of his sequestration in 1991. Mr S says that when his bankruptcy was discharged in 1991, it was not the law that this did not affect the right of a lender to enforce its security. He complains that his representative abandoned him prior to the case being heard and that an agent appeared and said there was no defence, which meant the sheriff granted decree.

Mr S thinks that it was unreasonable for the decree and eviction to have been granted as there were no arrears on the account.

### **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.

Having looked at the evidence, I agree with the Investigator's view for broadly the same reasons and I've explained my reasons further below.

I understand that Mr S feels strongly about his complaint and appreciate that he has been through a difficult time and that this situation has undoubtedly been distressing for him. However, whilst I can sympathise with Mr S's situation, I must approach his complaint on an impartial basis and base my findings on the evidence available. I also wish to reiterate that we are an informal service and base our findings on what is fair and reasonable.

As set out by the Investigator, it is correct to say that the discharge of the sequestration does not affect the right of a secured lender to enforce its security – even though the borrower is released from the underlying indebtedness. A secured creditor can enforce its security up to the value of the property it is secured against. However, any shortfall may be discharged.

Given the period of time since the term ended and the fact that the outstanding balance was increasing with no plan to pay this off, I think that it was fair and reasonable for Landmark to take legal action in this case.

I also note that a court has already decided that Landmark was able to enforce its security for payment of the balance owed and has therefore made an order granting Landmark possession of the property.

Mr S says that the court did not decide on the merits of his case as his representative abandoned him at the last minute and an agent attended and did not put forward a defence.

I have seen a document in relation to the court proceedings titled '*Defences for the Defender*'. This document submits that the debt has been discharged due to the discharge of the sequestration. It also raised queries in relation to the balance and notes the issues in relation to the trustee in sequestration still remaining on the register.

It therefore appears that the issues regarding whether the discharge extinguished Mr S's liability to repay the debt, the trustee remaining on the title, and the amount of the balance outstanding were raised at some point during the proceedings, albeit it is unclear whether the court made any specific findings on these issues at the hearing granting possession.

In any event, these are all issues which relate to whether Mr S owes Landmark the balance. And a court has already ruled that Landmark is entitled to enforce its security. Whilst I understand that Mr S says that his defence was not put forward at court, this Service has no power to amend an order of the court. Therefore, if Mr S disagrees with the basis upon which the order was made, he will need to go back to court to have this set aside.

I know my decision will come as a disappointment to Mr S, but I can't say that Landmark has acted unreasonably in the circumstances of this case, and I don't uphold this complaint.

### **My final decision**

For the reasons I've explained above, I don't uphold this complaint and don't require Landmark Mortgages Limited to do anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 21 July 2025.

Rachel Ellis  
**Ombudsman**