DRN-5750912

The complaint

Mr B complains that The Co-operative Bank Plc trading as Britannia acted unfairly and in breach of mortgage regulations and court protocols when it took action for possession.

Mr B asks that Britannia stops legal action and refunds any related fees applied to the account, sends all future correspondence by email, and pays compensation.

What happened

Mr B took out a mortgage with Brittania in 2004.

Mr B's mortgage fell into arrears from early 2023. In mid-2023 Mr B said he'd sell the property. Britannia says there was no progress with the sale of the property or agreed plan to address the arrears and in late 2023 it started legal action. It adjourned a court hearing scheduled for late January 2024 when Mr B provided evidence the property was being marketed for sale. In late April 2024 Mr B sent an email to Britannia saying he'd accepted an offer for the property. Britannia says it had no contact from Mr B after May 2024.

Brittania says Mr B is living overseas and letting the property without its consent. It says Mr B hasn't made mortgage payments for some time and by late 2024 he had arrears of about £30,000.

Mr B says he doesn't have access to post sent to the property and didn't receive notices of legal proceedings or the information he needed to respond to the claim. He says Britannia made false claims and unfairly refused to postpone court proceedings despite him actively marketing the property for sale. Mr B says Britannia is taking advantage of his circumstances and health to take the property into possession. Mr B says Britannia is aware of the danger he's in and the impact of its actions on his mental and financial health.

Our investigator said Britannia had shown forbearance and it was fair for it to start legal action given there was no arrangement to address the arrears or progress in selling the property.

Mr B set out in detail why he didn't agree.

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.

Mr B commented in considerable detail. We provide an informal dispute resolution service. I'm not required to respond to each point raised by the parties or explain why it's not relevant. What I have to do is explain my reasons for reaching my decision about what's fair and reasonable in the circumstances of the complaint. I should also explain that where evidence is incomplete or contradictory I make my decision on the balance of probabilities – that is, what I think is most likely based on the available evidence.

I note that Mr B was unhappy about the way Britannia summarised his complaint. I'll focus on what's at the heart of this complaint: whether it was fair for Britannia to take action for possession, and whether it followed a correct and fair process when doing so.

Was it fair for Britannia to start action for possession?

According to Britannia's records, Mr B's direct debit payments were returned unpaid in February 2023 and March 2023. Mr B disputes this and said he'd provide evidence he made the payments. Mr B didn't provide evidence that he'd made these payments. On balance, I think Britannia's records are correct. Mr B made a payment in early April 2023 which reduced (but didn't clear) the arrears.

Mr B told Britannia in April 2023 that his business had cash flow issues which he expected to be short term. An reduced payment arrangement for April and May 2023 was agreed. Mr B didn't resume mortgage payments and his arrears increased. In August 2023 Mr B said he intended to sell the property. The information Mr B provided to Britannia in September 2023 showed he couldn't afford mortgage payments and there was no timeframe for this to change. Britannia says Mr B was letting the property. Mr B says a business associate was living there as his guest.

In October 2023 Britannia told Mr B it would continue recovery action unless it received evidence of contracts exchanged for the sale of the property or the arrears were cleared. It said it could update Mr B's income and expenditure if his circumstances changed so that he could address the arrears. It sent letters to Mr B saying it intended to instruct solicitors and confirming it had done so. Mr B says he didn't know about these letters as he was overseas.

Britannia says by late 2023 it hadn't received evidence of the property being marketed for sale. I think this is right as Mr B told us he appointed estate agents in late December 2023 and the property was listed for sale on 11 January 2024.

In mid-December 2023 Britania's solicitors told it the court had listed a hearing for late January 2024 and the court had written to Mr B to confirm this. Mr B called Britannia several times around mid-December 2023. Britannia told him about the hearing.

Mr B says it was unfair for Britannia to take legal action. He says it knew he was dealing with other matters at that time, such as his divorce, the insolvency of his business and other legal proceedings – all while overseas. He had difficulties appointing an estate agent and needed to clear the property to prepare for a quick sale. Mr B says he progressed matters to market the property for sale as quickly as he could. Mr B said Brittania didn't give him a reasonable amount of time to sell the property before starting legal action. I can't fairly agree with that. Mr B said in mid-2023 he'd sell the property. I think it's reasonable for Brittania to expect to see some evidence of the property being marketed for sale before late 2023.

Britannia's records show no payments into the mortgage account during this period and by November 2023 the arrears were over £12,000. Mr B hadn't put forward any credible proposal to repay the arrears, other than the sale of the property which hadn't progressed. In the circumstances, I think it was fair and reasonable for Britannia to instruct solicitors and start legal action.

In January 2024 Mr B provided evidence of the property being marketed for sale. Britannia postponed a court hearing scheduled for January 2024 to allow Mr B further time to sell the property.

In April 2024 Mr B said he'd accepted an offer for the property and in May 2024 said this was progressing. Britannia asked Mr B (by phone and email) for income and expenditure information, details of a financial settlement he'd referred to and a timescale for exchange of contracts. It said it would hold action until the end of May 2024 to allow Mr B time to provide this. Mr B didn't provide the evidence Britannia requested, despite Britannia extending the deadline to mid-June 2024.

In mid-2024 Britannia re-commenced legal action. The arrears were about £24,000. It wrote to Mr B's address overseas to confirm this. The letter enclosed an updated arrears statement with a list of missed and part payments and the amount due.

Mr B says Britannia hasn't explored other ways for him to clear the arrears, such as a potential financial settlement, sale of furniture or returning to work. Britannia asked Mr B for information about his circumstances so that it could consider what options might be available. If Mr B provides evidence of a credible proposal to clear the arrears I'd expect Britannia to consider this fairly.

Britannia gave Mr B information about a voluntary surrender in October 2023 and December 2023. It sent information about an assisted voluntary sale in December 2023. It was for Mr B to decide whether to proceed with these options.

Mr B hasn't made any payments into the mortgage account for more than two years. He hasn't sold the property. He didn't provide credible evidence he'd be able to raise funds to clear the arrears within a reasonable time period. I don't think Britannia had fairly to hold action indefinitely in the hope Mr B's circumstances might change.

Sending correspondence and legal notices to Mr B

Mr B is overseas. He'd like notices, correspondence and documents sent to him by email.

Mr B says Britannia breached the agreed method of communication (by which I assume he means email). I can't fairly agree that Britannia agreed to communicate by email. Britannia told Mr B it doesn't correspond by email as it's not secure. It said Mr B should telephone for updates on the account. As an exception it agreed to send an email to Mr B to let him know when it sends letters to the property. Mr B says if he receives an email notification of post sent to the security property he can ask his business partner to open it and let him know the contents.

Brittania says it didn't send an email to Mr B when it sent letters in October 2023 about instructing solicitors. It apologised for not telling Mr B that email notifications might not be sent when letters are system generated. It offered £75 compensation. I think that's fair. I don't think this made any difference to the overall outcome. Mr B knew the mortgage was in arrears. He told us he was arranging to market the property for sale as quickly as he was able. This wouldn't have been different if he'd received the email notification. Mr B could have asked his business partner to open post or made arrangements for post to be forwarded to him. Mr B could have asked Britannia to update his correspondence address when he realised he might be overseas for some time.

I can see from Britannia's records that it does correspond with Mr B by email when it can. It calls or sends emails to ask Mr B to call for an update on the account. It updated Mr B's correspondence address when he provided this. I think this is fair and that Britannia took reasonable steps to keep in contact with Mr B about the account. I can't fairly require Britannia to send all correspondence – some of which will contain confidential and sensitive information – to Mr B by email given its concerns about this not being secure.

Did Britannia breach the Mortgage Pre-action Protocol or Mortgage Charter?

Mr B says Britannia and its solicitors failed to issue the correct notices, didn't give the required time to respond and didn't provide the information he needed to defend the claim. Mr B says he hasn't received the account payment history, which he says contains incorrect information.

Britannia says the mortgage pre-action protocol was complied with and Mr B was sent the required information about his arrears and payment history. Britannia says it received assurances from its solicitors that they sent the required notices in accordance with court processes and protocols.

Mr B says because he wasn't sent information on a timely basis he didn't expect Britannia to start action and he was unable to respond to the claim. Mr B says Britannia and its solicitors misled him, including as to whether there was a court hearing and the court reference number, and delayed sending correspondence to him. He says this was deliberate and intended to prevent him from responding to and defending the claim.

I think it's more likely that (as Britannia said) information wasn't always available to the person handling the call – for instance if an email had been recently received and hadn't yet been processed. I appreciate the difficulties for Mr B in having to manage the matter from overseas.

Britannia put a hold on court proceedings in January 2024, in April 2024 and when the complaint came to us later in 2024. Britannia wrote to Mr B at his correspondence address in mid-2024 enclosing the information required by the pre-action protocol such as the payment history. I think Mr B has had time to review and respond to this – for instance to provide evidence that he has made mortgage payments. If this matter does go to a court hearing and Mr B still believes that the correct process wasn't followed, he can raise this with the court.

Lenders that signed up to the Mortgage Charter agreed not to force a borrower to leave their home within a year after the first missed payment. Mr B's first missed payment was in February 2023. More than two years later, Britannia hasn't taken possession.

I can't see that Britannia breached a provision of the Mortgage Charter which applies here, given Mr B's circumstances and that his mortgage was in arrears before the Mortgage Charter took effect in mid-July 2023.

Did Britannia's actions affect the value or marketability of the property?

Mr B says Britannia contacted his estate agent without his consent. He says the estate agent reduced the sales price, tried to force acceptance of a derisory offer, de-listed the property for three weeks and refused to make changes to the sales particulars. Mr B says a derisory offer was received at about the same time as Britannia issued its final response.

It seems Mr B believes that Britannia influenced the estate agent to make it more difficult for him to sell the property for its market value. I haven't seen evidence that was the case.

Britannia's response to Mr B's complaint

Mr B is unhappy with the way Britannia interpreted and responded to his complaint. Complaint handling isn't itself a regulated activity. This means we can't necessarily look into the way that a complaint was dealt with. While we can look into this if it affected the underlying problem being sorted out I don't think that was the case here.

Mr B was unhappy with Britannia's response and brought the complaint to us, as he has the right to do. We can consider – as I've done here – whether the resolution offered by Britannia is fair and reasonable in all the circumstances of the complaint.

Putting things right

Britannia offered £75 for not telling Mr B that he might not receive email notifications when letters are automatically generated. I think that's fair and reasonable in the circumstances.

Mr B told us about the difficult circumstances he's dealing with – circumstances which it seems have been ongoing for several years. Mr B says his situation will be more difficult if the property is sold as his Member of Parliament will no longer be able to assist him. While I'm sorry for the circumstances Mr B describes, I can't fairly say these came about due to Britannia making errors or treating him unfairly. It follows that I don't think it's fair and reasonable to require Britannia to pay further compensation for Mr B's distress and inconvenience.

My decision is the final stage of our process. Britannia put action on hold while the complaint was with us. It's likely Britannia will re-commence legal action.

Mr B hasn't made a mortgage payment for over two years. His arrears are about £40,000. He told us his business is insolvent and he has no income. It seems unlikely Mr B will be able to get the mortgage back on track in the near future. It's about two years since Mr B told Britannia he intended to sell the property to repay the mortgage. I think Mr B has had a reasonable amount of time to sell the property. In the circumstances I can't fairly require Britannia to hold action for possession.

My final decision

My decision is that The Co-operative Bank Plc trading as Britannia should pay £75 to Mr B as it offered to do, unless of course it has already made the payment.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 9 September 2025.

Ruth Stevenson
Ombudsman