

The complaint

Mr H complains about how The Mortgage Business Plc (TMB) has handled his buy to let mortgage since he entered into an individual voluntary arrangement (IVA), a form of insolvency procedure.

What happened

Mr H had a buy to let mortgage with TMB. In 2020 he entered into an IVA. TMB was one of the creditors consulted by the IVA practitioner, but it didn't respond to or vote on the IVA at the time. But as enough of Mr H's other creditors did so, the IVA came into force.

Mr H said that he expected that TMB would call in the loan, repossess and sell the property, and any surplus would be used to pay his creditors. But that didn't happen.

From September 2020, no further payments were made towards the mortgage. TMB says that it tried to contact Mr H without success, and was limited in what else it could do at the time because of coronavirus restrictions then in place. For example, it couldn't send a field agent to visit Mr H or the property.

In July 2021, TMB appointed receivers to manage the property. It said the receivers found that there were tenants in place, and the tenants were paying rent. The receivers said that there was unlikely to be much if any surplus if the property were to be sold, and at least one of the tenants was elderly and vulnerable. Taking into account the ongoing coronavirus restrictions, the receiver recommended that the mortgage continue, with the receivers collecting the rent and passing it to TMB to pay the mortgage, rather than trying to evict the tenants and sell the property. TMB agreed.

In July 2022, the receivers obtained a possession order. But the order wasn't enforced while the receivers worked with the local authority to try to ensure the vulnerable tenant was re-housed. That wasn't possible. So the mortgage continued.

For some time the rent exceeded the mortgage payments and the arrears incurred between 2020 and 2021 were reduced. As interest rates increased, however, that was no longer the case and the arrears began to increase again. More recently, as interest rates have come down, the rent exceeds the mortgage again. By the time of this complaint, the mortgage was no longer in arrears.

Mr H complained that TMB hadn't repossessed and sold the property when he entered into the IVA. He said that because of the IVA he was no longer responsible for it but TMB had been reporting the mortgage and arrears to his credit file.

TMB said it had explored taking possession of the property with the receivers. But given the particular circumstances, that wasn't possible. It said that the IVA didn't remove Mr H's liability for the mortgage and it was right to report the conduct of the mortgage to his credit file. But it said that once the property was sold, it wouldn't hold Mr H liable for any shortfall due to the IVA.

Our investigator didn't think TMB had acted unfairly, so Mr H asked for an ombudsman to review his complaint.

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.

I'm sorry to hear of Mr H's situation. I've considered everything very carefully. But I'm afraid I don't think I can fairly uphold his complaint.

Secured creditors – including, in this case, TMB – are not automatically included in an IVA. They are only included if they consent. In this case, TMB did not respond to the IVA proposal or attend the creditors' meeting at which the IVA was agreed. It therefore didn't consent to be included.

That means that this mortgage was not included in the IVA and Mr H remains liable for making payments while it remains outstanding. If the property is sold and there's a shortfall, then the shortfall becomes an unsecured debt. At that point Mr H wouldn't be liable for the unsecured shortfall. And TMB has confirmed that if that happens it wouldn't hold him liable for or seek to pursue him for any shortfall. I think that's fair.

But in the meantime, unless and until the property is sold and the mortgage is repaid, this remains an outstanding secured loan for which Mr H continues to be liable, notwithstanding the IVA.

Mr H says that the IVA proposal says that the property should be handed back to the lender, sold, and either any shortfall written off or any equity used for the benefit of his creditors. The IVA agreement does indeed say that. But that's a proposal about how Mr H deals with his assets. TMB wasn't part of the IVA, isn't bound by the proposal, and is not therefore in breach of the IVA in not having sold the property until now. I wouldn't have expected it to simply repossess the property when the mortgage wasn't in significant arrears on this basis. But if Mr H wanted it to take the property, he could have contacted TMB and asked it to agree a voluntary surrender.

That said, TMB is still required to act fairly and reasonably. So I've also considered whether – even if it wasn't required to do so by the terms of the IVA – it has acted unfairly in not ensuring the property was sold before now.

Mr H stopped making payments in September 2020, around the time the IVA came into force. That meant the mortgage went into arrears. In that situation I wouldn't expect a lender to repossess a property, or appoint receivers, immediately. I'd expect it to try and make contact with the borrower, understand the situation and see whether things could be got back on track before taking further action. In this case, TMB did that – though doing so was complicated and delayed by the pandemic restrictions then in force. During this time there was nothing to stop Mr H getting in touch with TMB himself and asking it to make arrangements for a voluntary surrender of the property.

By July 2021, when there was no prospect of things getting back on track, TMB appointed receivers. It's important to note that while the receivers were appointed by TMB, they don't act as agents for, or act on behalf of, TMB. Receivers act in place of Mr H and as his agent. That means that while we can consider whether TMB acted fairly in appointing the receivers, and whether TMB acted fairly in taking into account what the receivers said and did, we can't consider whether the receivers themselves acted fairly.

In July 2021, when the receivers were appointed, they found that rent was being paid. The rent was enough to cover the mortgage payments, so the mortgage was sustainable. At the same time, there was little or no equity in the property and one of the tenants was very vulnerable. The receivers therefore said that they didn't think it was appropriate to evict the tenants, sell the property, or hand it back to TMB. In any case there were restrictions on evictions at that time because of the pandemic. Instead the receivers allowed the tenants to remain in place and used the rent to pay the mortgage.

In that situation, TMB could either accept the receiver's recommendation. Or, because the mortgage was already in arrears, it could take possession proceedings to recover and sell the property itself. But that would involve considerable costs – possession proceedings against both Mr H and the tenant would be needed – as well as delay. Given the mortgage was sustainable and taking into account the tenant's vulnerability, as well as the pandemic restrictions, TMB decided to allow the mortgage to continue. I think that was reasonable.

A year or so later, when interest rates rose, the rent was no longer enough to cover the mortgage. The receivers obtained a possession order against the tenants. But given the vulnerability it didn't enforce the order.

During this time, the receivers were in contact with TMB. TMB considered the situation, noted that the receivers were making efforts to ensure the tenant could be re-accommodated, and decided not to take action until that was resolved. Again, I think that was a reasonable decision for TMB to make. Although there were arrears, it was in regular contact with the borrower (represented by the receivers) and could see the borrower (represented by the receivers) was taking active steps to try and resolve the situation.

The issue with the tenant couldn't be resolved. But then as interest rates reduced the arrears also reduced and were cleared by 2024. The mortgage was sustainable again. While that's the case, there's no need for TMB to repossess and sell the property.

I'm therefore satisfied that in all the circumstances TMB hasn't acted unfairly in how it has managed the mortgage. It's shown appropriate forbearance, as a result of which the mortgage is now back on track. I don't think there was a point at which it would have been reasonable for TMB to repossess and sell the property itself.

As I said above, the mortgage wasn't included in the IVA. It therefore remains outstanding as a mortgage in Mr H's name and for which he is responsible. In those circumstances, it's fair and reasonable that TMB is reporting the conduct of the mortgage to the credit reference agencies. I appreciate Mr H says he has no interest in the property or the mortgage and no control over it. But he remains liable for the debt until it's repaid, and while the property was being managed by receivers acting on his behalf, it's not unreasonable that TMB reports the conduct of the mortgage to the credit reference agencies.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 14 January 2026.

Simon Pugh
Ombudsman