

## **The complaint**

Ms G complains about how Yorkshire Building Society trading as Chelsea Building Society ('CBS') handled the sale of her buy to let property in 2010 which led to a shortfall. She also complains that CBS recently added the resulting shortfall debt to the redemption figure she was required to pay, when she redeemed a separate mortgage on her home.

## **What happened**

Ms G took out a buy to let mortgage with CBS in 2005. She later took out a separate mortgage on her home in 2006, also with CBS.

Due to Ms G's buy to let mortgage being in arrears, CBS appointed a Law of Property Act Receiver to act on Ms G's behalf in managing the property. The property was sold in around September 2010, but the funds generated weren't enough to repay the buy to let mortgage in full and it left a shortfall of almost £44,000.

CBS has contacted Ms G many times over the years seeking repayment of the shortfall debt – both directly and through appointed third parties. But Ms G disputed that she should be liable for the debt and didn't make any payments towards it.

Ms G complained to CBS in 2011 about the actions of the appointed Receiver and concerns about the sale price achieved for the property. CBS said it had appointed a Receiver in line with the mortgage terms and conditions, that the Receiver was acting on Ms G's behalf and that it was the Receiver's responsibility to decide what steps to take to achieve the best possible sale price for the property.

Ms G referred that complaint to the Financial Ombudsman Service. We concluded that CBS hadn't acted unfairly or unreasonably in appointing the Receiver and that we are unable to investigate the actions of a Receiver regarding the sale of the property.

Ms G raised concerns about the sale price achieved for the buy to let property again in 2014 and 2020. CBS's position remained unchanged, and it referred Ms G back to the answer it gave to Ms G's complaint in 2011, and the findings made by this Service in 2012.

Ms G contacted CBS around the end of 2024 as she wanted to sell her home and redeem her residential mortgage. CBS told Ms G it would need to investigate matters before it could provide a redemption statement setting out the amount she would need to pay. It said that there had been a shortfall on her previous buy to let mortgage and that it might decide to add that amount to the redemption amount required. It later confirmed that it would do that.

Ms G was unhappy about that so she complained to CBS. In its response, CBS said the shortfall debt was still due so it intended to recover that balance. It said no payments had been made towards the shortfall debt and it can recover this, in line with the mortgage terms and conditions, under the current mortgage on Ms G's home. It said it wouldn't remove its charge over the property until the shortfall debt and current mortgage balance had been repaid in full. And it said it wouldn't agree to having a second charge against another property.

Ms G referred her complaint to the Financial Ombudsman Service. Shortly after that, in February 2025, she redeemed her residential mortgage and repaid the shortfall debt.

Our Investigator didn't think the complaint should be upheld. She said that we couldn't consider Ms G's complaint about the sale of the buy to let property as it hadn't been raised within the time limits that apply to making complaints. And that, even if that wasn't the case, it wouldn't be appropriate for us to consider the same complaint again. She considered Ms G's complaint about CBS adding the shortfall to the redemption balance of her current mortgage. And she found that it was entitled to do that under the 'all moneys charge' within the terms and conditions of Ms G's residential mortgage. The Investigator concluded that it wasn't unfair or unreasonable for CBS to add the shortfall to the redemption balance.

Ms G didn't agree and asked for an Ombudsman to review her complaint. So it's been passed to me to decide.

I issued a provisional decision setting out what I thought we can consider, which is Ms G's complaint about CBS adding the buy to let mortgage shortfall to the redemption figure when she redeemed her residential mortgage. Neither party has disputed what I can consider. Ms G did, however, raise some further points about the merits of her complaint about adding the shortfall to her redemption figure. So, I have set out my response to that below.

### **My provisional decision**

Below is the relevant section of my provisional decision in which I set out my findings about the shortfall being added on redemption of Ms G's residential mortgage. I said:

"I can see CBS has been in contact with Ms G over the years, both directly and through appointed third parties – including a debt collection agency and a solicitor. From the evidence I've seen of that correspondence, CBS and its agents were looking to reach an agreement with Ms G for her to repay the shortfall debt. And I've not seen any evidence to suggest that CBS, or its agents, have at any point led Ms G to believe she doesn't owe the debt.

Although an initial agreement was reached soon after the shortfall arose for Ms G to make regular payments of £50 towards the debt, I note that this didn't come to fruition and Ms G had not – until redemption of her residential mortgage – paid anything towards the shortfall. It's clear, in my view, that Ms G was aware of the shortfall debt over the years, but she both disputed that she should be liable for it and couldn't afford to pay towards it.

I've considered that legally CBS had two routes available to it to recover the shortfall debt if no agreement could be reached with Ms G for her to repay it, as is the case here. CBS could have taken steps to recover the debt through legal proceedings. But to do that it needed to do so within the limitation period which is 12 years of the shortfall debt commencing, in line with the Limitation Act 1980. So, by around 2022 at the latest. But CBS didn't take that route to recover the debt.

The other route available to CBS to recover the shortfall debt was for it to rely on the all moneys charge which is set out in the terms and conditions and mortgage deed for Ms G's residential mortgage. An all moneys charge is a clause in the mortgage agreement that gives the lender an additional course of action it can take to recover the money owed to it. This is the route CBS later took. While I acknowledge it was entitled to do this, I've also thought about what's fair and reasonable in all the circumstances. And when considering the purpose of the 12-year limitation period, something CBS would have been aware of, I consider CBS ought to have acted

sooner to recover the shortfall debt. That doesn't mean CBS ought to do something differently now, though. I'll explain why.

Ms G has said she has asked CBS and its agents to take the matter to court several times since 2010 so she could defend her position and dispute liability for the debt. But having considered the available evidence I'm not persuaded, even if CBS had taken the matter to court, that Ms G would have had the funds to enable her to defend her position. And, in any case, it seems unlikely in my view that the matter going to court would have led to a successful outcome for Ms G. She did not want to, and the evidence suggests couldn't afford to, pay anything towards the shortfall debt. So, I think CBS taking legal action would most likely have led to it obtaining a County Court Judgement (CCJ) and a charging order over Ms G's home.

The cost of taking those steps would have been added to the debt, meaning more for Ms G to repay. So, if CBS had taken legal action sooner to recover the debt, I'm not persuaded it would have left Ms G in a better position than relying on the all moneys charge. A charge over her home by way of a charging order would still have required her to repay the shortfall debt out of the equity in her residential property before CBS would remove its charge(s). The only difference would likely have been that the debt would have increased, because of the costs incurred for taking legal action. Ms G would also have had a CCJ registered against her, which would have negatively impacted her credit file. That could have limited her options further.

To conclude, while I think CBS ought to have acted sooner to recover the shortfall, I don't think it would have changed the overall course of events, or the position Ms G is now in, in a positive way. I appreciate Ms G sold her home with the intention of downsizing and reducing her outgoings. And I'm sorry to hear she hasn't been able to do that as she had planned. But, while I appreciate this will come as a disappointment to Ms G, I don't consider I can fairly require CBS to do anything differently here."

### **Responses to my provisional decision**

CBS didn't reply but Ms G did. She didn't accept my decision and said, in summary:

- She has never accepted liability for the shortfall debt.
- The residential mortgage and buy to let mortgage had separate account numbers and she had no reason to believe the accounts would be tied together. She thinks there was a lack of transparency on the part of CBS and that it was intentional.
- Ms G has said CBS didn't follow the correct procedure of taking the matter to court and that I have allowed it to exploit a loophole. She was not told that her residential property could be at risk if she didn't repay the buy to let shortfall.
- She has had to pay £550 up front for conveyancing for the now aborted purchase of a property. She would never have instructed a solicitor in the first place had she known she couldn't afford the purchase.
- Ms G disagrees that she wouldn't have won the case if the matter had been taken to court by CBS. She feels it is clear she would have won. She wants me to hold CBS accountable for its actions.

## **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've also carefully considered the relevant law, good industry practice and, ultimately, what's fair and reasonable in all the circumstances.

I appreciate what Ms G has said about incurring conveyancing costs, but I took that into account when reaching my provisional decision. It's unclear from the available evidence if Ms G instructed her solicitor and incurred the upfront costs before she was made aware the shortfall would be added to her redemption figure. Even if she did, I consider the legal and court costs that would have been incurred had CBS acted sooner to recover the debt, plus compound interest added to them, would most likely outweigh the conveyancing costs Ms G has more recently incurred. She would also have had a CCJ recorded against her, likely limiting her options further. Ultimately, while I appreciate the situation is not ideal for Ms G, I'm not persuaded that she's in a worse position overall than she would have been in, had CBS taken legal action instead of relying on the all moneys charge.

I'm afraid I don't share Ms G's view that she clearly would have won a court case had CBS taken legal action, instead of relying on the all monies charge. I set out in my provisional decision why I consider it most unlikely that the matter going to court would have led to a better outcome for Ms G. I have nothing further to add to that.

I know Ms G feels very strongly about what's happened and I have thought again very carefully about my provisional findings. But, while I appreciate Ms G will be disappointed, I see no reason to depart from them. My view remains that while I think CBS ought to have acted sooner to recover the shortfall, I don't think it would have changed the overall course of events, or the position Ms G is now in, in a positive way.

## **My final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms G to accept or reject my decision before 15 January 2026.

Keith Barnes  
**Ombudsman**