

complaint

Mr C complains that Landmark Mortgages Limited is pursuing him rather than his ex-partner for a shortfall debt from their joint mortgage.

background

Mr C held a mortgage with his now ex-partner. The property was sold. But the proceeds of the sale weren't enough to repay the mortgage balance. That left a shortfall to repay.

Mr C considers that Landmark should only pursue him for half the debt. He also considers that Landmark is treating him unfairly. Mr C thinks that Landmark is not pursuing his ex-partner, as it is easier for it to rely on his regular payments.

Our investigator didn't think that Landmark had treated Mr C unfairly. She said that she couldn't look at what Landmark had done in relation to Mr C's ex-partner. Mr C didn't accept what the investigator said.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I understand Mr C's disappointment that he has been left with a debt to repay after the sale of his home. But after looking carefully at what happened, I don't think Landmark has treated him unfairly.

I'd note that I'm only looking at a complaint from Mr C. I don't have his ex-partner's authority for us to look at confidential information about her. So I can't comment on whether Landmark is pursuing her for the debt or not.

In any event, when Mr C took out the mortgage he agreed to the mortgage conditions. They said:

If there is more than one of you, these conditions apply to all of you together and to each of you on your own. For example, we can claim any money you owe us from all of you together and from each of you on your own.

Mr C later signed a shortfall acknowledgement from that he would remain "*jointly and severally liable*" for the debt.

I'm satisfied that it was set out clearly and prominently that the lender could choose to pursue either of the borrowers for the full amount of the debt. I don't think it would be reasonable to interpret either of those statements to mean that Mr C is only responsible for half the debt. And I can't see any other reason why Landmark should only collect half of the remaining debt from Mr C.

If Mr C has a dispute with his ex-partner about how much she is paying towards the shortfall debt, then that is a matter for them. He should seek legal advice about what his options are.

Mr C had the benefit of the money that Landmark lent him. Unfortunately, the sale of the property that secured the debt wasn't enough to repay it in full. I don't think it would be fair

for me to say that Landmark isn't entitled to recover the shortfall from Mr C. It has acted promptly and fairly. I note that at the time of the sale, Mr C acknowledged the shortfall debt and agreed to make payments towards it.

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 C to accept or reject my decision before 11 May 2017.

Ken Rose
ombudsman