

complaint

Mr H complains that his mortgage was missold and Mortgage Express has breached a number of laws and regulations when administering his mortgage. Mr H says he has suffered financial loss as a result. Mr H asks that a payment arrangement is put in place, the possession claim is cancelled and Mortgage Express proves it is his mortgage lender.

background

Mr H's mortgage account was in arrears and Mortgage Express started action for possession. Court action was suspended and Mr H agreed to pay his monthly payments plus a sum to clear the arrears. Mr H says:

- the mortgage was missold to him as he had a good credit rating at the time and should not have been sold a mortgage with a sub-prime lender;
- Mortgage Express wrongly applied fees and charges;
- the transfer of the mortgage from GMAC, the original lender, to Mortgage Express was wrong and Mortgage Express does not have privity of contract with him;
- Mortgage Express has not complied with the Data Protection Act;
- he received poor service generally.

The adjudicator did not recommend that the complaint should be upheld. He said:

- *Data Protection Act*: Mr H's complaint about the Data Protection Act would be more appropriately dealt with by the Information Commissioners Office;
- *Misselling of the Mortgage*: Mr H's mortgage was sold through an independent financial adviser. The adjudicator said he was satisfied from the evidence that the mortgage was suitable for Mr H's needs at the time. As information was provided to Mr H, and the terms of the mortgage were clearly set out in the mortgage offer, the adjudicator said Mortgage Express had not made an error;
- *Privity of contract*: we do not usually investigate legal disputes. However, he had no reason to believe that the transfer of the mortgage to Mortgage Express was unlawful and suggested Mr H contact a solicitor to discuss this;
- *Charges*: Mortgage Express had applied arrears charges and charges in respect of solicitors' fees in accordance with the terms and conditions.

Mr H did not agree, saying he did not agree to his mortgage being securitised, Mortgage Express did not have privity of contract with him and the transfer was in breach of laws on land registration and the Mortgage Conduct of Business rules (MCOB).

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Where there is a dispute about what happened, I have based my decision on the balance of probabilities – in other words, on what I consider is most likely to have happened in the light of the evidence.

Sale of the mortgage

The mortgage was sold to Mr H through an independent financial adviser (IFA). As the IFA is a different entity, I cannot consider whether the IFA missold the mortgage as part of this complaint.

I am satisfied that GMAC, the original mortgage lender, provided information to Mr H about the mortgage, including the key facts illustration, the mortgage offer and terms and conditions and the tariff of charges. I am not persuaded from the evidence that GMAC had any reason to believe the mortgage was not appropriate for Mr H. So I am not persuaded that GMAC breached MCOB when it sold the mortgage to Mr H.

Mortgage transfer: privity of contract and enforceability of the mortgage contract

Under the mortgage terms and conditions the mortgage lender is entitled to assign or transfer the mortgage and outsource the administration of the mortgage. This was also set out in the document headed "Important Applicant Information" sent to Mr H with the mortgage offer. So I am satisfied that Mr H was made aware that GMAC was entitled to transfer the mortgage. I am also satisfied from the evidence that GMAC wrote to Mr H when his mortgage account was transferred to Mortgage Express, as required by MCOB. So I am not persuaded from the evidence that there has been a breach of MCOB or the terms and conditions of Mr H's mortgage.

Mr H says that the mortgage is not enforceable by Mortgage Express. However, only a court can decide whether a mortgage contract is enforceable. Mr H does not dispute he borrowed or had the benefit of the money and so I consider Mortgage Express is entitled to enforce the mortgage contract.

Application of Fees and Charges

I am satisfied from the evidence that Mortgage Express applied arrears charges in accordance with the terms and conditions. I am also satisfied from the evidence that Mortgage Express was entitled to apply the charges for solicitors' fees. I am not persuaded from the evidence that Mortgage Express applied fees and charges incorrectly or unfairly.

Breach of law and regulation and poor service

While Mr H says that Mortgage Express is in breach of various laws and regulations and has provided poor service, the evidence does not support this.

Data Protection Act:

While I've noted what Mr H has said, his complaint about breaches of the Data Protection Act is really more appropriate for the Office of the Information Commissioner, which is responsible for enforcement of the Data Protection Act in the UK. For this reason, it isn't appropriate for us to consider this point.

my final decision

My decision is that I do not uphold this complaint.

Ruth Stevenson
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