

complaint

Mr I complains that The Mortgage Works (UK) Plc ("TMW") is unfairly seeking payment from him for a shortfall owed after it possessed and sold six properties. He wants matters put right.

background

Mr I had a buy-to-let mortgage with TMW. It possessed and sold the properties, but enough wasn't raised from the final sale to pay the mortgage debt in full. Mr I said that there was a court order saying that the debt was joint with his ex wife, so he didn't understand why TMW was asking him for the full amount.

Mr I complained to TMW, which said that the debt was joint and several with his ex wife for some of the properties, and in his sole name for others. This meant it could ask either of them to pay the joint debt. It pointed out that the agreement reached between Mr I and his ex wife in the divorce proceedings didn't change this. TMW also explained that when one of the properties were sold for an amount in excess of the debt attached to that property, Mr I agreed that the money was paid to his ex wife's solicitors and that he was still liable for the overall mortgage debt. TMW said that he did this to avoid bankruptcy proceedings being issued by his ex wife. It also said that it carried out works to try to improve the property which sold at a loss.

Mr I complained to us. The investigator's view was that TMW wasn't at fault. He said the court order didn't require TMW to do anything and Mr I was liable for the shortfall.

Mr I disagreed. He said that the court order required both him and his ex wife to deal with their own liabilities. Mr I denied asking TMW to give any surplus to his wife.

my findings

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

The court order made in relation to the divorce doesn't change the legal position in relation to the mortgage debt. Both Mr and Mrs I are jointly and severally liable for any joint debt, and TMW can pursue both or either of them for the full amount, provided that by the end of the process it only receives and keeps the money it's owed. The divorce court order doesn't change this position. And it's clear that Mr I agreed to the sale proceeds being paid to his ex wife in the court order he sent to this service. I also think it's more likely than not that Mr I asked TMW to send surplus money to his ex wife in his calls with TMW in November 2016 based on the notes written by TMW at the time, and the contents of the court order.

TMW isn't acting unfairly in seeking payment of the shortfall from Mr I. He agreed to be liable for the debt when he took out the mortgages. He agreed to payments being made to his ex wife when a surplus from earlier sales arose. The final sale didn't raise enough money to clear the mortgage debt, but TMW is able to ask Mr I to pay the shortfall as a matter of law. I can't say that it's acting unfairly in all the circumstances of this complaint.

my final decision

My final decision is that I don't uphold the complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr I to accept or reject my decision before 13 October 2017.

Claire Sharp
ombudsman