

complaint

Ms G has a number of concerns about her mortgage and the way in which it has been administered by Amber Homeloans Limited. The main points of concern are as follows:

- Further borrowing taken out in 2007 was incorrectly set up as a further advance rather than a separate secured loan.
- Amber incorrectly amalgamated the interest rates for her main mortgage and the additional borrowing.
- After she fell into financial difficulties, Ms G wanted Amber to transfer the main mortgage to interest only and keep the further borrowing on full repayment. But Amber transferred both to interest-only.
- Ms G believes Amber should have registered a second charge for the additional borrowing. Because it didn't do so, Ms G says that the further borrowing is unsecured and could have been written off after she was made bankrupt.

background

Ms G took out a mortgage with Amber in 2005 for approx. £256,000. This was on a capital and interest basis over 25 years on an initial fixed rate of 4.99% until 30 September 2008. After that date the interest rate reverted to Amber's Standard Variable Rate (SVR).

In January 2007 Ms G took out a further advance for approx. £43,000. This was also capital and interest and was set to run over the remaining term of the main mortgage at SVR. The offer for the further advance states that the monthly payment is a combined payment covering both the main mortgage and the further advance.

Ms G's first complaint is that she originally asked for a secured loan, and not a further advance. She says that she was told that she could only have a secured loan on a capital repayment basis.

Ms G is now unhappy as the further advance balance is calculated within the main mortgage and she says that she has not been able to keep track of her payments on each account because of this. She believes that Amber has amalgamated the main loan and further advance and also amalgamated the interest rates without her permission.

Ms G fell into arrears shortly after the further advance and has struggled to maintain payments. In August 2007 she asked for the main mortgage to be transferred to interest only. Ms G wanted to keep the further borrowing on capital repayment, but both the main account and further advance were transferred to interest only.

Unfortunately Ms G was made bankrupt at the end of 2010. Ms G believes that a further charge for the additional borrowing should have been registered with the land registry. She has said that as Amber did not register a second charge, the debt is unsecured and could have been written off as part of her bankruptcy order.

Amber took the case to a possession hearing, but it was cancelled part way through as Amber did not have the correct documentation available. Ms G raised the points of this complaint as part of her defence in court, but no court order was made.

Our adjudicator didn't recommend the complaint should be upheld. She was satisfied Amber had acted correctly in its handling of the account. She also wasn't persuaded that Amber

had agreed to transfer only the main mortgage to interest-only. The adjudicator considered that, even if Amber had kept the further borrowing on capital repayment, given Ms G's financial position she could not have maintained payments to the further advance on a capital and interest repayment basis.

Ms G asked for an ombudsman to review the complaint so it now falls to me to issue a final decision on this complaint.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint, including Ms G's letter to Amber sent in November 2013.

further borrowing – Ms G says that the further borrowing taken out in 2007 should have been as a separate secured loan. But the documentation makes it clear that this is a further advance against the mortgage and that there will be a single payment for both the main and further borrowing. So I'm satisfied that Amber didn't set up the further borrowing incorrectly.

interest rate – Ms G says that Amber has incorrectly amalgamated the interest rates on both loans. But once the main mortgage reached the end of its fixed rate period in September 2009 it reverted to SVR – the same rate as the further advance. This means that both parts of the mortgage – the main and further advance – are on the same interest rate.

transfer to interest-only – I understand that, when she experienced financial difficulties, Ms G wanted to transfer only the main part of the mortgage to interest-only and keep the further advance on capital and interest repayment. Instead Amber transferred all the borrowing onto interest-only. I'm not persuaded Amber acted incorrectly here. Ms G asked for assistance and Amber was entitled to transfer the whole borrowing onto interest-only to assist her. The available evidence shows that Ms G was unable to maintain payments of the whole borrowing at interest-only.

Given this, I think it unlikely she'd have been able to make the higher payments of capital and interest if the further advance had been kept on that basis.

registration of second charge – Ms G's argument is that, in her view, Amber should have registered a second charge for the further advance. Because it didn't do so, this part of the borrowing is unsecured and so should have been written off when she became bankrupt in 2010.

But this was a further advance on the original borrowing. So the original legal charge registered with the Land Registry covers the further advance. No additional charge needed to be registered.

other matters – I see that Amber began possession proceedings, which were withdrawn once it became clear its paperwork wasn't in order. This doesn't mean Amber isn't entitled to seek possession of the property; the arrears are very substantial. But if Amber does pursue this course of action, it can only do so if it produces the correct documentation to the court. I will comment no further on this, because it is a matter for the court to decide whether Amber is entitled to a possession order.

I also see that Ms G has expressed her concerns about fees and charges, but has indicated she will be complaining separately to Amber about this. In the circumstances I have made no further comment on this.

my final decision

I do have sympathy for Ms G, who has experienced both personal and financial difficulties in recent years. But overall I'm satisfied Amber has acted correctly in its handling of her account.

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

Jan O'Leary
ombudsman