

complaint

Miss A complains that UBS AG did a deal with her ex-husband to settle its claim against him for a mortgage shortfall, but didn't consider her position. She also complains UBS didn't put in writing its offer to limit its claim against her. Miss A wants the debt written off.

background

Miss A had a joint mortgage with UBS with her ex-husband. The sale of the property didn't raise enough to pay the mortgage in full, so there was a shortfall. UBS agreed to accept £10 a month from Miss A and not continue to charge interest. It also agreed to accept a lump sum from Miss A's ex-husband to settle its claim against him. UBS wrote to Miss A and offered to accept the same sum from her to settle its claim against her. It said it was willing to let her continue to pay £10 per month.

Miss A complained that she was afraid UBS would come after her for more money in the future and had agreed a deal with her ex-husband as he had instructed a solicitor. UBS said it was able to use its commercial judgement when deciding whether to agree to settle its claims against someone. It said it hadn't acted unfairly or unreasonably to Miss A as it offered the same deal to her, and it didn't matter her ex-husband had instructed a solicitor.

Miss A complained to us. The adjudicator's view was that UBS hadn't acted unfairly or unreasonably as it had offered to accept the same amount from Miss A as it accepted from her ex-husband. UBS had offered to continue accepting £10 per month and not to charge interest and had put all this in writing. UBS couldn't later ask for more money.

Miss A disagreed. She said she had offered to pay less to UBS and it wasn't fair her ex-husband's financial position had been considered by UBS, and not hers.

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 Financial Ombudsman Service has already found UBS is able to claim the shortfall from Miss A. It is a joint and several debt, which means UBS can choose to claim against either Miss A alone or her ex-husband alone or from both at the same time. That is why the debt is shown against Miss A's name in the credit records. UBS is able to use its commercial judgement about what deal it was prepared to make, provided both Miss A and her ex-husband were treated fairly and reasonably.

UBS used its judgement to accept Miss A's ex-husband's offer. I have also considered the relevant law, and agree it was fair and reasonable for UBS to offer to accept the same sum from Miss A. It took into account her position by offering to accept instalment payments and not charge interest. UBS has also offered to take into account the payments made by Miss A already. I appreciate Miss A feels it isn't fair as it will take her longer to pay, but the offer made by UBS is much better for her than paying the whole debt in full minus whatever her ex-husband has paid. I note Miss A says she's willing to pay less to UBS than it has offered to accept, but UBS doesn't have to accept her offer. It simply needs to consider her offer fairly.

UBS has put into writing clearly that it will accept the sum stated in its offer letter in full and final settlement of its claim against Miss A. If Miss A accepts it, UBS cannot demand more money from her in the future to pay this debt. Once Miss A pays the amount UBS has offered to accept, the debt will be written off. I agree this is fair and reasonable as until Miss A pays UBS in full the sum it has offered to accept, the debt hasn't been paid. That's why the credit records show the debt as unpaid at the moment by Miss A, as does her ex-husband's according to UBS.

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 Miss A to accept or reject my decision before 26 October 2015.

Claire Sharp
ombudsman