Financial Ombudsman Service

complaint

Mr B, represented by Mr W, has made a number of complaints arising from a mortgage he used to have with Mortgages Plc.

- the mortgage was mis-sold;
- Mortgages Plc mis-sold him payment protection insurance (PPI);
- after the property was taken into possession, Mortgages Plc sold it for less than it was worth;
- Mortgages Plc has acted unreasonably by not contacting Mr B about an alleged shortfall debt until four years after the property was sold;
- Mr W is unhappy at the way Mortgages Plc has dealt with the complaint.

To resolve the complaint Mr B wants Mortgages Plc to waive the shortfall debt, provide a full explanation of the *“huge loss”*, apologise and withdraw all threats of legal action.

background

In 2006, acting on the advice of his financial adviser, Mr B took out a mortgage with Mortgages Plc. Mr B was buying a new-build property costing £136,995. He borrowed £130,145 from Mortgages Plc on an interest-only basis over a term of 25 years. The first two years of the mortgage were at a fixed rate of interest of 6.30%, and after that the mortgage moved onto a variable rate of 3.45% above Bank of England Base Rate. The initial monthly repayments were £683.26.

Unfortunately the mortgage fell into arrears and on 2 October 2013 a possession order was made, along with a money judgment for the outstanding balance of the loan, which was then £137,164.82.

The property was sold by Mortgages Plc as mortgagee in possession on 11 February 2014. The sale price was £84,950.

In 2017 Mortgages Plc contacted Mr B about the shortfall debt. It wrote him several letters and spoke to him in October 2017 about the debt. Mr B instructed Mr W to deal with the matter for him.

On Mr B’s behalf, Mr W complained to Mortgages Plc about mis-sale of the mortgage and PPI, about the sale of the property and about the shortfall debt. Mortgages Plc didn’t uphold the complaint so Mr W brought it to us.

An adjudicator looked at the complaint, but didn’t think it should be upheld. He explained to Mr W that the sale of the mortgage and PPI (if there was, in fact, any PPI, which he didn’t think there was) would need to be raised with the broker who advised Mr B in 2006. He also explained that complaint-handling didn’t fall within the scope of regulated activities, which meant it wasn’t something we could consider.

As far as the sale of the property was concerned, the adjudicator was satisfied that Mortgages Plc had properly marketed and sold the property. He didn’t think that part of the complaint should be upheld. He was also satisfied that Mortgages Plc hadn’t done anything wrong in relation to contacting Mr B about the shortfall debt.

Mr W didn't agree with the adjudicator's findings. He asked for an ombudsman's review. I summarise below the main points of his arguments:

mis-sale of the mortgage: Mr W doesn't agree that the broker is wholly responsible for the advice given to Mr B to take out the mortgage. Mortgages Plc provided a 95% interest-only mortgage to a naïve, financially unsophisticated man on limited earnings and has profited by imposing charges and interest to the account. The collapse in the housing market resulted in Mr B suffering a loss and it would only be fair and reasonable for Mortgages Plc to compensate Mr B accordingly *"by whatever means is open to the ombudsman to do so"*.

PPI complaint: A complaint has now been made to the business in question but Mr W is unhappy at the delay in Mortgages Plc providing him with the information he needed to start a claim for mis-sold PPI. This added to the paperwork and time he had to spend on it.

sale of the property: Mr W says that it may well be that the housing market was difficult at the relevant time, but questions whether it was the right move to sell the property rather than rent it out and then perhaps sell it as an income-generating investment, either in 2014 or at a later time when the market had improved.

pursuit of the shortfall debt: Mr W doesn't agree with the adjudicator that Mortgages Plc did nothing wrong. He questions why Mortgages Plc didn't act immediately as soon as the loss crystallised. If it had done so, Mr B had the option to wipe the slate clean by declaring himself bankrupt. But by keeping quiet for four years and then reactivating the matter, Mortgages Plc has delayed Mr B's chances of a *"financial reconstruction"* by at least four years, as well as causing him additional stress.

Mr W has explained that, after Mr B's girlfriend became pregnant, Mr B moved out of the property and rented it. He used the rental income to pay rent on a property he and his girlfriend moved into rather than paying the mortgage. But Mr W considers Mortgages Plc was negligent because it failed to act quickly enough to mitigate its loss or to give advice to Mr B about his predicament.

Mr W says Mr B had no money for legal advice when the property was repossessed in 2013. Mr B spoke to a financial adviser who told him the property wouldn't recover from the negative equity for at least six years. And although Mr B disclosed to Mortgages plc that he was renting out the property, Mr W reiterates that Mr B took this step in an effort to pay the rent on the other property he was living in, as this was a priority for him.

Mr W questions why Mortgages Plc waited four years to reactivate the matter. He says there has been *"major maladministration"* which he considers would justify a payment of *"substantial compensation"* to Mr B, as well as a waiver of the shortfall debt.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I'm not upholding the complaint.

I'll start by saying that the way in which Mortgages Plc deals with complaints isn't something I'm able to consider. It's not a regulated activity. So although I note Mr W's dissatisfaction at how Mortgages Plc has handled the complaint, including its requirement for third party authority and the need for third parties to answer security questions on telephone calls, I won't be commenting on this.

mortgage mis-sale: The mortgage was sold by a third party, which gave advice to Mr B independent of Mortgages Plc. Mr B should contact that business if he thinks the advice given in 2006 was unsuitable.

Mr W has suggested that the lending was irresponsible, so I've looked at the account history. The mortgage completed on 29 December 2006. In July 2007 Mr B contacted Mortgages Plc and asked for a further advance. This was declined due to the loan-to-value ratio. So it seems that within a few months of taking out the mortgage, rather than struggling with it, Mr B wanted to borrow *more* money.

The account history shows that payments were maintained, save for a few intermittent missed payments, for the first five years of the mortgage. Given this, it is difficult to conclude that the lending in 2006 was unaffordable. Mr B made repayments for five years without any difficulty.

It wasn't until 2012 that the mortgage fell into arrears. This was after the fixed rate of 6.30% had expired (in 2008) and the mortgage had gone onto a variable rate of 3.45% above Bank of England Base Rate. In 2012 Bank of England Base Rate was 0.5%, so the interest rate on the mortgage was 3.95% and the monthly repayments had fallen from almost £690 (on the previous fixed rate) to about £430.

Mortgages Plc's notes show that in July 2012 it first became aware that the property was being rented out. Mr W has explained that Mr B decided to use the rental income from the tenants to pay for another property, rather than to service the mortgage. So it's clear that the reason the mortgage fell into arrears wasn't as a result Mortgages Plc lending Mr B the money to buy the property in 2006. Instead the arrears arose as a direct result of Mr B's conscious decision to stop paying the mortgage in 2012. In the circumstances, I'm not upholding this part of the complaint.

PPI mis-sale: As the adjudicator explained, we have a separate area of our business which deals with PPI complaints. The mortgage offer from December 2006 doesn't show any PPI or other insurance being sold alongside the mortgage, but I understand Mr B, through Mr W, has now made a claim about mis-sold PPI to Mortgages Plc. If the claim to Mortgages Plc about mis-sold PPI isn't resolved to Mr B's satisfaction, he is free to complain to us about it.

sale of the property: Mr B bought the property when prices were buoyant. At the time, no-one could have predicted the financial crisis which began about a year later and which resulted in a fall in property prices. I'm glad to note that Mr W acknowledges that the fall in the market wasn't the responsibility of Mortgages Plc.

I'm satisfied Mortgages Plc was entitled to sell the property quickly after it was taken into possession. It did so after having it properly valued, with comparables of similar properties. I note these showed properties in the same area as Mr B's flat which had been sold within a few months of the sale of his flat for substantially less than the £84,950 achieved for his property – between £65,000 and £79,950.

Mortgages Plc appropriately marketed the property and I'm satisfied the price achieved, given market conditions, was not unrealistic – particularly when compared with other properties in the same block which sold at around the same time.

I've noted what Mr W has said Mortgages Plc should, in his opinion, have done after it took possession of the property. He's suggested Mortgages Plc should have rented out the property rather than sell it at a shortfall, waiting until the market had once again recovered before selling the property as a tenanted investment.

Mortgages Plc isn't in the business of property lettings and was under no obligation to rent out the property. There's also no requirement for a mortgage lender to leave a property unsold in the hope that a higher price might be achieved at some point in the future. In the circumstances, I'm satisfied Mortgages Plc did nothing wrong in the way it dealt with the sale of the property. I'm not upholding this part of the complaint.

shortfall debt: Mr W is unhappy that Mortgages Plc took four years to contact Mr B about the shortfall debt (which is about £60,000). But under Council of Mortgage Lenders (now part of UK Finance) guidelines, Mortgages Plc has six years from the date the shortfall arises to contact Mr B about repayment of the debt. I'd have expected Mr W, as a professional adviser, to be aware of the time limits that apply to the recovery of mortgage shortfall debts. It's information that's in the public domain.

In the circumstances, I'm not persuaded Mortgages Plc has done anything wrong in contacting Mr B about repaying the debt before the six-year time limit expired. I'm not upholding this part of the complaint.

I appreciate that hearing from Mortgages Plc about the shortfall debt four years after the property was sold came as a shock to Mr B. I would suggest that he speaks to someone qualified to give him free debt advice about this – such as Shelter, StepChange or Citizens Advice. We can provide Mr B with contact details for those agencies, if he'd like us to do so.

my final decision

My decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 4 April 2019.

Jan O'Leary
ombudsman