

complaint

Mr and Mrs W complain that Bradford & Bingley Plc continues to pursue them for the shortfall on their mortgage following repossession of their property.

background

Mr and Mrs W had a mortgage with Bradford & Bingley. In 1991, their property was repossessed and sold, leaving a substantial shortfall of about £39,000 on the mortgage.

Bradford & Bingley attempted to contact Mr and Mrs W in the years after the repossession, and did do so in 1996. Mr and Mrs W started making payments towards the shortfall in 2001 and these continued, off and on, to 2009, by which time the shortfall had reduced to around £23,000. Then they stopped making payments.

In 2011, Bradford & Bingley wrote to Mr and Mrs W trying to get them to re-start making payments. Mr and Mrs W wrote back saying that the debt was statute barred under the Limitation Act 1980, and was outside the terms of guidance issued by the Council of Mortgage Lenders ("CML"). They therefore invited it to write off the outstanding debt. Bradford & Bingley was not willing to do so, and so Mr and Mrs W complained to this service.

Their complaint was in two parts; firstly that they were told, in 1991, that they would not be pursued for the shortfall, and so didn't contest what they thought was a sale at undervalue at the time. Secondly, they said that the debt was now statute barred and that Bradford & Bingley could no longer pursue them for it.

Our adjudicator considered that she could not deal with what Mr and Mrs W were told in 1991, as that complaint was brought too late for us to investigate. And she didn't consider that the debt was statute barred, and therefore didn't recommend upholding that part of the complaint. Mr and Mrs W didn't agree and want an ombudsman to review their complaint, so it comes to me to consider.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

I will take the two parts of Mr and Mrs W's complaint separately, dealing first with what they were told in 1991.

did Bradford & Bingley agree not to pursue the debt in 1991?

I agree with the adjudicator that this is not a matter I can come to a view on one way or the other. Our rules require that complaints are generally brought to us within six years of the event complained of; or within three years of the consumer becoming aware of the event, whichever is the later. If a business objects to us considering a complaint outside those time limits – as Bradford & Bingley has here – we can't do so unless there are exceptional circumstances which prevented the complaint being brought.

This aspect of the complaint refers to what Mr and Mrs W were told in 1991. That is the date of the event complained of. Therefore, the six year time limit ran out in 1997. At the very

latest, the date Mr and Mrs W became aware that Bradford & Bingley had decided to pursue them for the shortfall was when they began corresponding with it in 1996. Therefore the alternative three year time limit ran out in 1999.

As a result, the time for bringing this aspect of the complaint ran out in 1999. And I have not been shown any exceptional circumstances that prevented it being brought between 1999 and now (I am aware that Mrs W has been ill in recent years, but that doesn't cover the whole period, and doesn't apply to Mr W). It was therefore brought out of time, and is not a complaint I can consider further. That means that I make no assessment either way of the merits of the case; I am not allowed by our rules to do so.

is the debt now statute barred?

Mr and Mrs W say that Bradford & Bingley are barred by the operation of the Limitation Act from seeking to recover the debt from them. They say that there is a 12 year limit within which action must be taken, and as the debt arose in 1991, that has now passed.

I don't agree with this interpretation of the Limitation Act. The Act does indeed set out a 12 year time limit, and time started to run in 1991. But the Act also says that where a debtor acknowledges the debt and makes payments towards it, time stops – and resets. Mr and Mrs W made payments to their loan between 2001 and 2009. Therefore the 12 year limitation period now runs not from 1991, but from when they stopped making payments in 2009 – and so the debt is not time barred by the Act.

is Bradford & Bingley prevented from chasing the debt by CML guidelines?

The CML guidance says that borrowers who have not been contacted by their lender for more than six years after their property was taken into possession should not be pursued for the debt – even though the law allows 12 years.

But the guidance goes on to say that it doesn't apply to shortfall debts where the repossession happened before the guidance was issued in 2000, and where the lender contacted the borrower before 2000.

In this case, the repossession happened before 2000, as did Bradford & Bingley's first contact with Mr and Mrs W. And so the guidance doesn't apply in their case. Nor do I consider that it would be fair and reasonable to expect Bradford & Bingley not to pursue the debt as if the guidance did apply; there has not been, for example, any period of six years or more when it made no contact with Mr and Mrs W.

conclusion

I do have sympathy with Mr and Mrs W's situation, as they are still being pursued for a debt that arose more than 20 years ago. But I have to consider, in making my decision, whether Bradford & Bingley has done anything wrong in this case. I can't consider what Mr and Mrs W were told in 1991. And as to what has happened since then, Bradford & Bingley has acted as the law, and the CML guidance, entitles it to do – and in all the circumstances, I can't say that it has acted unfairly or unreasonably.

my final decision

For the reasons I have given, my final decision is that:

- the complaint about what was said in 1991 cannot be considered as it was brought out of time and there are no exceptional circumstances;
- I do not uphold the complaint about the current recovery action.

Simon Pugh
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