

complaint

Mr and Mrs K complain that Elderbridge Limited hasn't treated them fairly when they've been in financial difficulties repaying a second charge over their property. They want matters put right and for Mrs K not to be liable for the debt if anything happens to Mr K.

background

Mr and Mrs K had a second charge over their property with Elderbridge taken out in 2008. Mr K was made redundant in 2015. The property was sold and Elderbridge wasn't paid in full; it was still owed £69,000 ("the shortfall debt"). Mr and Mrs K weren't happy that Elderbridge had accepted a repayment plan of £1 a month to clear the shortfall debt as there was no long term plan to repay. They wanted to avoid going bankrupt.

Mr K was also unhappy that Mrs K had been added as a borrower to the loan – he said that he'd been forced to do this and he didn't want her to be liable for the debt if something happened to him. Mr K said sending letters to him and Mrs K separately was unfair, was concerned about the contacts made by Elderbridge and the information on his credit file.

Mr and Mrs K complained to Elderbridge. It said that the complaint about the inclusion of Mrs K under the second charge had been made too late as more than six years had passed, but said that it had nothing to do with that event. Elderbridge confirmed that Mrs K was jointly and severally liable for the loan as she signed the credit agreement. It said that repayment plans had to be affordable and would be reviewed to ensure this remained the case.

Mr and Mrs K complained to us. The investigator's view was that the complaint about the inclusion of Mrs K under the second charge couldn't be considered by this service as there were no exceptional circumstances that prevented the complaint being brought in time. I later issued a final decision confirming this position and this issue is no longer part of this complaint.

The investigator explained that when Mrs K was included in the agreement, she became liable for the whole debt and this was set out within the document she signed. He didn't think that it was unfair for Elderbridge to hold Mrs K to the terms of the agreement, but noted it should work with her about a repayment plan. This meant that if Mr K died, Mrs K still would be responsible for the debt, but her circumstances at the time would be considered by Elderbridge.

The investigator also said that the shortfall debt was owed by Mr and Mrs K and no interest was being charged. £1 a month was affordable for Mr and Mrs K in his view and the plan would be reviewed every year. He didn't think Elderbridge had to do more or comment on the advice Mr and Mrs K had received from third parties. While Elderbridge wasn't willing to write off the debt, the investigator noted that it wasn't required to do so and wasn't requiring Mr and Mrs K to declare themselves bankrupt.

The investigator commented that sending letters to joint borrowers separately wasn't unfair as both were liable for the debt and there would be minimum contact in the future as a repayment plan was agreed (if payments continued to be made). He pointed out that credit records dealt with individuals, not specific addresses, and said it wasn't unreasonable for the failure to pay a secured loan to be recorded, even though after the sale of the property, the debt was now unsecured as the debt was secured when Mr and Mrs K got into arrears.

Mr and Mrs K disagreed. They said that they were disgusted and we'd taken too long. Mr K also said that he'd recently received texts from Elderbridge about the debt. The investigator didn't change his view and said that there was no evidence Elderbridge had been involved with the taking out of the second charge in relation to Mrs K's inclusion or its timing. He confirmed that he had asked Elderbridge to stop the texts but it said that it hadn't sent one since November 2019 (and had checked that its systems wouldn't send any). The investigator asked for evidence of the texts Mr K had said he'd recently received. Mr K asked for an ombudsman's view and said that it wasn't for him to prove his complaint and he was withholding evidence.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I am aware that Mr and Mrs K have a number of complaints with this service, but I'm only dealing with the complaints arising after the property was sold – Mrs K's liability for the whole debt, the repayment plan for the shortfall debt, Elderbridge's refusal to write off the debt to allow Mr and Mrs K to avoid bankruptcy, the information within the credit records and the letters sent by Elderbridge.

Mrs K did sign the second charge, and it's fair and reasonable to expect consumers to read important documents that they sign. The document did make it clear that by signing Mrs K would be jointly and severally liable for the debt with Mr K. This means that Elderbridge is able to ask either to pay the debt in full, regardless of whether one or both die. I can't say that this is unfair or unreasonable, particularly as there's no evidence before me that Elderbridge forced Mrs K to sign or controlled the timing – there was a broker involved, but Elderbridge isn't responsible for the actions of the broker.

Lenders are required to treat those in financial difficulties fairly, and those facing a shortfall debt are likely to be in financial difficulties. I can see though from the evidence available that Elderbridge has frozen interest and considered Mr and Mrs K's financial circumstances. £1 a month is affordable and serves a valuable purpose in ensuring that the debt remains enforceable if Mr and Mrs K's financial position improves in the future. This service would expect Elderbridge to review the position in the future and understand Mr and Mrs K's financial circumstances, but we wouldn't expect a lender to write off a debt to which it's legally entitled so a consumer wouldn't decide to declare themselves bankrupt.

I don't think that it's unfair or unreasonable for a lender to send letters separately or jointly to borrowers in Mr and Mrs K's position. Lenders do need to stay in contact to stay up to date about the current financial position and to keep borrowers informed about their debts. Mr K has complained about texts he has received but the evidence available to me doesn't support his position. It is for complainants to supply evidence to support their complaint and I haven't seen any inappropriate texts from Elderbridge, and none since November 2019 (which was a payment link). I note that Elderbridge has checked that its systems aren't sending inappropriate texts and this is fair and reasonable.

I also don't see anything wrong in noting addresses in credit records and there should be no effect on the future occupants of those address if unconnected to Mr and Mrs K. Lenders are required to accurately report credit issues to the credit reference agencies and Elderbridge was correct to state that Mr and Mrs K failed to pay a secured loan in full – the loan was secured when Mr and Mrs K got into arrears.

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 and Mrs K to accept or reject my decision before 8 May 2020.

Claire Sharp
ombudsman