

## **complaint**

Mrs K complains that Flex Mortgages Limited has harassed her to pay a debt which is statute-barred. She also complains that she has been a victim of mortgage fraud, because the broker who sold her the loan was acting fraudulently.

## **background**

The loan in question was taken out in 2004. Mrs K says a broker arranged the loan so she could buy a property. It was for around £20,000, over a term of 25 years, secured by a second charge on the property. The lender was Flex Investments Limited. Mrs K also took out a first-charge mortgage with another lender.

In 2006, Mrs K thought something wasn't right. She says she realised she'd been conned into taking out the loan, so she asked Flex Investments for the loan agreement and application. She says it couldn't provide them, and so she stopped making payments.

A few years later, Flex Investments Limited went into liquidation. Flex Mortgages Limited acquired Mrs K's loan and others. In August 2018, Mrs K received a letter from Flex Mortgages, saying it intended to start possession proceedings. She wrote back, saying she didn't acknowledge the debt but no payments had been made to it for more than 12 years, so it was statute-barred.

Flex Mortgages said Mrs K had made payments within the last 12 years, so it could still take action to recover the debt. It also said it had no choice but to apply to the court for possession of the property, because Mrs K hadn't replied to its attempts to contact her.

Mrs K got in touch with us. Our investigator said she was too late to complain about what happened when the loan was taken out nearly 15 years ago, so she couldn't look into that. But she found she could consider whether Flex Mortgages was entitled to ask Mrs K for payment. She thought it could, and that it had treated Mrs K fairly.

Mrs K didn't accept that conclusion and asked for it to be reviewed. She still thought the loan wasn't legitimate as the original lender was acting fraudulently and wasn't regulated – so she had no-one to complain to when she realised something was wrong in 2006.

The investigator still felt we couldn't look at the sale of the loan, because the original lender wasn't covered by our rules until 2007.

## **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

This loan was taken out nearly 15 years ago, in 2004. Mrs K is right to say that the original lender, Flex Investments Limited, wasn't regulated at that time. And, as the investigator said, it wasn't covered by our rules until later, in April 2007. Besides that, it has dissolved and so no longer exists.

What this means is that this service has no power to consider Mrs K's complaint against this business – or Flex Mortgages Limited, which took on her loan in 2010 – about events which

happened before 6 April 2007. So we can't look into her complaint about what happened when the loan was taken out.

Flex Mortgages is regulated, and I can consider Mrs K's complaint about what it has done to recover the debt. I agree with the investigator that it hasn't acted unfairly in the circumstances. No payments have been made to the loan for a number of years. Flex Mortgages' records satisfy me that it has tried to contact Mrs K over the years to discuss payment, with little success. It stopped adding interest to the loan in 2016, and it said in its response to her complaint that it was still open to agreeing a payment arrangement with her rather than going ahead with possession proceedings.

Given the arrears on the loan, I consider Flex Mortgages was reasonable in taking further action. I have noted Mrs K's argument that it can't do this under the Limitation Act 1980. The Act does set out a 12-year time limit, but that is from the last time a debtor acknowledges the debt and makes payments towards it.

Flex Mortgages has provided statements for Mrs K's loan. They show the last payment was received by direct debit in March 2007 – which is within the last 12 years. So the debt is not time-barred by the Act.

### **my final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 22 February 2019.

Janet Millington  
**ombudsman**