

## **complaint**

Mr H is unhappy that West Bromwich Building Society is reporting a mortgage shortfall debt on his credit file. Mr M says that the mortgage account was included in his Individual Voluntary Arrangement (IVA). Mr H has had to incur substantial legal fees in order for West Brom to accept that it was wrong to hold him liable for the shortfall.

Mr H is also unhappy about the appointment of Law of Property Act Receivers (LPARs) and that one of his properties which is unsold remains in his name, which he considers has implications for Stamp Duty Land Tax (SDLT).

He is asking for reimbursement of his legal fees and compensation for distress and inconvenience.

## **background**

Mr H had two buy-to-let (BTL) mortgages with West Brom taken out in about 2007. They were for £155,000 and £130,000, on an interest-only basis. Mr H also bought three other BTL properties and a property in Spain with funds from other lenders.

Unfortunately, when the credit crunch hit from 2009 onwards Mr H fell into financial difficulties. By July 2011 he realised all of his properties were in negative equity. Mr H surrendered all his properties back to the lenders and sought advice about his financial situation, as he realised he was over-committed.

Mr H was advised to enter into an IVA. The proposal for the IVA set out his existing and contingent future liabilities, including his estimate of the mortgage shortfall debts as a future contingent liability (FCL).

I will not set out the history of what happened after that, as both parties are aware of the protracted correspondence concerning West Brom's stance that it didn't consider itself to be bound by the IVA. It wasn't until 2018 that West Brom acknowledged that it had been wrong to think it wasn't subject to the IVA.

Mr H complained. He said that West Brom had no right to hold him responsible for the shortfall debt, as this had been included in his IVA. Because West Brom refused to acknowledge that the shortfall debt was included in the IVA, Mr H had to involve his solicitors, and obtained Counsel's Opinion. After protracted correspondence, West Brom finally acknowledged that it had given Mr H incorrect information.

West Brom agreed to reimburse some of the fees, but Mr H wasn't happy with the amount. He brought his complaint to us. After considering everything Mr H and West Brom said, the adjudicator thought West Brom should reimburse 90% of Mr H's legal fees.

The adjudicator explained that it was due to the LPARs' actions that the property remained in Mr H's name, and so he would need to take this up with the LPARs.

Finally, the adjudicator recommended West Brom pay Mr H £750 for distress and inconvenience.

Neither Mr H nor West Brom accepted the adjudicator's findings. Mr H thinks that £750 is insufficient to compensate him for the impact on his life of the incorrect credit reporting by

West Brom of the mortgage debt. West Brom thought that the legal fees it was being asked to pay were excessive and didn't relate wholly to work done as a result of its errors.

Because the parties didn't accept the adjudicator's findings, it now falls on me to issue a final decision.

### **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 main issue in this complaint is the amount of legal fees West Brom should be required to reimburse to Mr H.

The Insolvency Rules require the proposal to state how the debtor intends to deal with secured creditors. West Brom was sent notification as a creditor. I'm satisfied the insolvency practitioner anticipated the likelihood of a shortfall and took steps to include it as a FCL in the IVA.

I'm glad to see that West Brom has now acknowledged that it was wrong to suggest Mr H was responsible for the mortgage shortfall debt. West Brom has agreed to reimburse some of the legal fees, but not all of them. Mr H's total legal costs were £5,000 plus VAT (making a total of £6,000).

I've reviewed the solicitors' breakdown provided. From this, I'm satisfied that the majority of costs incurred relate to the issues with West Brom and its (incorrect) refusal to acknowledge it was bound by the IVA. I am a solicitor and I've looked at the amount of work itemised and charged for. It appears to me that the work itemised is proportionate to the fees charged. Likewise, the fees charged are not excessive for this type of work.

In the circumstances, I'm satisfied that West Brom should refund 90% of Mr H's legal fees, as follows:

£5,000 x 90%	£4,500
VAT on £4,500 @ 20%	£ 900
Total:	£5,400

I don't know if Mr H has already paid this amount. If he has, and is able to provide evidence of this, then West Brom must also pay interest at 8% per annum simple, calculated from the date of payment to the date of acceptance of this final decision.

Because the shortfall debt was included in the IVA, I'm satisfied that Mr H's credit file should reflect the default of the mortgage accounts from the date when his IVA was concluded, which was 27 January 2015.

As the investigator explained, the actions of the LPARs are outside the scope of our rules, so I'm unable to comment on their actions. If Mr H is unhappy that property he surrendered in 2011 is still in his name, he'll need to take that up with the LPARs directly.

As far as trouble and upset is concerned, I'm satisfied West Brom's actions have caused distress to Mr H for a number of years. But we don't award punitive damages. In the

circumstances, I think an award of £750 – as recommended by the adjudicator – is fair and reasonable.

### **my final decision**

My decision is that I uphold this complaint. In full and final settlement, West Bromwich Building Society must do the following:

- reimburse Mr H's legal fees of £5,400 as set out above;
- if Mr H provides evidence that he has already paid the legal fees, pay simple interest of 8% per annum on £5,400 from the date of payment to the date of acceptance of this final decision.\*
- pay compensation of £750 for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 13 October 2019.

Jan O'Leary  
**ombudsman**

\* If West Brom believes it should deduct basic rate income tax from the interest part of the award, it may do provided it also presents Mr H with the relevant tax certificate so that he can, if eligible, reclaim the tax.