

complaint

Miss C complains about a mortgage she took out in 2007 with her now ex-partner (who I'll call Mr C). The mortgage was taken out with a different lender and, due to arrears, the property was repossessed in 2009. The property was sold for less than the outstanding mortgage balance and so a shortfall debt remains.

TBI Financial Services Ltd took over the outstanding debt on 15 June 2016 and since then has been in contact with Miss C about it.

Miss C feels she shouldn't be liable for the debt as she didn't know about the repossession, having moved out of the property in 2008 following the breakdown of her relationship.

background

In a decision in January 2018 I said we can't look at anything against TBI that happened before 15 June 2016 as that was the date it took over the debt. This decision now sets out my findings on the matters we can consider.

Our adjudicator recommended TBI pay £100 to Miss C in recognition of the delays in replying to her letters and for not letting her know it was passing the debt recovery to its solicitors. She didn't uphold any other part of Miss C's complaint.

TBI accepted this. Miss C didn't and so the matter's been passed to me to decide.

my findings

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

It may help if I begin by explaining what is meant by joint and several liability. Where a mortgage was held jointly by two borrowers, as was the case here, both parties are wholly responsible for the debt in its entirety, and both parties are wholly responsible for maintaining the payments in full. I understand Miss C moved out of the property and didn't hear any more about the mortgage but that doesn't remove her legal liability. Miss C should have given the lender her new address when she moved out so she could be kept informed about the status of the account until such time, if ever, she could be removed from the mortgage.

I appreciate how strongly Miss C feels about now being chased for a shortfall debt, but the reality is that her lack of awareness of the situation isn't relevant, given the nature of her joint and several liability alongside Mr C.

Any arrears that accrued on the mortgage were as much the responsibility of the person who wasn't making payments as they were the responsibility of the person who was. Similarly, any arrears that accrued were as much the responsibility of the person who wasn't living in the property as they were the responsibility of the person who did live there. Lastly, any payments that are made are deemed to have contributed to discharging the liability of both borrowers equally, regardless of who actually made them. The fact Miss C wasn't in court, and so was unaware of repossession and the money judgement, doesn't alter this. A debt for which Miss C is jointly liable has a court order on it, therefore that court order binds Miss C just as much as it binds Mr C.

This also means that both Miss C and Mr C are equally liable for the entire shortfall debt. Miss C says she thinks she's being targeted over Mr C, saying he probably isn't responding. I can't say what contact TBI may or may not have had with Mr C as he's not party to this complaint, and that would be classed as his personal information so protected under the Data Protection Act. Suffice to say as Miss C is liable for the entire shortfall debt, regardless of Mr C, then TBI isn't doing anything wrong in asking Miss C to repay the full amount. It may be TBI is having the same conversations with Mr C, asking him to repay the whole amount; but that's something of which I have no knowledge whatsoever.

Our adjudicator recommended a payment of £100 in recognition of the delay in TBI responding to Miss C's letters, and for the fact it didn't warn Miss C it was passing the matter to its solicitors. I think that's a fair amount.

TBI made a mistake when it accepted our adjudicator's recommendation as it misunderstood our process, and thought that was the end of the matter. This led to it sending Miss C a £100 cheque and chasing her for her repayment proposals. Miss C says she felt TBI was trying to intimidate and bully her. TBI said that wasn't its intention, it was just a misunderstanding about our process. Having considered everything I'm satisfied TBI wasn't trying to bully and intimidate Miss C and it was a simple case of human error. Mistakes do happen and generally don't have any hidden meaning or agenda. Once we explained we were still dealing with Miss C's complaint TBI confirmed it had placed things back on hold.

Miss C has said she wants:

- Any action that TBI is threatening to be put on hold whilst she complains to the original lender.
- The decision made by the ombudsman to be that TBI shouldn't enforce the money judgement by means of an attachment of earnings order.
- TBI to write off the debt as she doesn't believe she should be liable for it regardless of whether TBI has a money judgement with her name on it.

I can't do any of those. As I explained above, Miss C *is* liable for the debt as per the money judgement regardless of whether or not she believes otherwise; so I won't be ordering TBI to write it off. It also wouldn't be fair on TBI to tell it to put matters on hold indefinitely whilst Miss C complains to a third party (the original lender). If Miss C wants to complain to the original lender that's her choice, but that's nothing to do with TBI or the debt it legally owns and Miss C legally owes. If anything comes of Miss C's complaint to the original lender then that's something that can be considered if and when it happens, but I won't order TBI to put matters on hold for it.

Finally it's not my place to tell TBI here what action it should or shouldn't take in recovering the debt. If TBI feels an attachment of earnings order is the best option it has available then that's a matter for it to put to the court. Miss C will have her chance to put her side to the court as to why there shouldn't be an attachment of earnings order.

my final decision

I partly uphold this complaint and order TBI Financial Services Ltd to pay £100 to Miss C if she hasn't already cashed the cheque sent in December 2017. If that cheque hasn't been cashed then Miss C should confirm, if she accepts this decision, whether she's kept the cheque she'd been sent (so can cash that) or if she needs a new one to be issued.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 20 March 2018.

Julia Chapman
ombudsman