

The complaint

This complaint is about a mortgage Mr K holds with The Mortgage Business Plc (TMB). The complaint arises from an earlier complaint Mr K brought to us, which was determined by an ombudsman colleague. There are two aspects to this new complaint; these are:

- that since March 2022, TMB has continued to contact Mr K excessively about his mortgage arrears; and
- in a phone conversation in May 2021, TMB's call handler told Mr K the arrears would be removed.

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What happened

The broad circumstances of this complaint are known to Mr K and TMB. I'm also aware that the investigator issued a response to the complaint, a copy of which has been sent to all parties, and so I don't need to repeat all the details here. Our decisions are published, and it's important that I don't include any information that might result in Mr K being identified.

Instead I'll focus on giving the reasons for my decision. If I don't mention something, it won't be because I've ignored it. It'll be because I didn't think it was material to the outcome of the complaint.

I'm conscious that Mr K has specific health problems; I don't reveal the details here out of respect for his privacy, but I've kept his circumstances in mind at all times when deciding what the outcome of his complaint should be.

What I've decided – and why

I'll start with some general observations. We're not the regulator of financial businesses, and we don't "police" their internal processes or how they operate generally. That's the job of the Financial Conduct Authority (FCA). We deal with individual disputes between businesses and their customers. In doing that, we don't replicate the work of the courts.

We're impartial, and we don't take either side's instructions on how we investigate a complaint. We conduct our investigations and reach our conclusions without interference from anyone else. But in doing so, we have to work within the rules of the ombudsman service, and the remit those rules give us.

One aspect of those rules is that we don't generally look at the same issue(s) more than once. So to ensure there's no ambiguity, I'm not revisiting anything that my fellow ombudsman has already dealt with in his final decision on the earlier complaint. If I mention any such issues, it will be for context only.

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

As summarised above, there are two components to Mr K's complaint.

The level of contact a business has with a consumer who is in arrears will always be a sensitive area, especially where, as is the case here, the consumer has vulnerabilities. The lender has to tread a fine line between making sure it meets its regulatory obligations and not treating customers unfairly. Occasionally, those obligations collide; and I think that's what is happening here.

On the one hand, a lender must inform borrowers in arrears about the state of their account, and check on a regular basis to see if the borrower's circumstances have changed, whether that be for the better or worse. On the other hand, lenders need to treat consumers fairly, and at all times be mindful of their vulnerabilities. It's a balancing act, and everyone will have their own subjective opinion on where the dividing line is between fair and unfair treatment.

I've no doubt Mr K finds his situation distressing, and I can understand why his vulnerabilities mean he might well interpret the correspondence from TMB as being threatening. But at the same time, I'm satisfied the correspondence he's receiving is well-intentioned and phrased in a manner that the regulator would regard as reasonable. Mr K has my sympathies, but overall, I think that TMB is acting in a way that achieves the balancing act I referred to above.

I'm limited to what I can say regarding the second part of Mr K's complaint. My ombudsman colleague has already made a finding in his decision on the earlier complaint that the arrears on Mr K's mortgage account were, and continue to be, genuine. So it would be wrong of me to make a finding that contradicted that by saying TMB should have removed Mr K's arrears in May 2021. All I can comment on is whether someone told him a phone call that this would happen.

TMB has no record (or recording) of a phone conversation with Mr K on 12 May 2021, the date he says the phone call happened. That's not to say I don't think Mr K genuinely believes the conversation took place. I'm entirely satisfied he's raised the complaint in good faith, based on his best recollection of events. The difficulty I have is that there's nothing to corroborate that recollection. I accept it's *possible* someone told Mr K what he says he was told, but I'm not persuaded it more likely than not happened the way Mr K recalls. Aside from anything else, it would contradict TMB's contemporaneous records and the letters it sent him at the time.

My final decision

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

My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further consideration or discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 22 November 2023.

Jeff Parrington
Ombudsman