

The complaint

Mr B complains about a Together mortgage he took out jointly with his now ex-wife. He says that TSB Bank plc, trading as Whistletree, wrongly told him that his name couldn't be removed from the mortgage and he has now lost the opportunity to be free of the debt.

What happened

Mr B and his now ex-wife took out a 'Together' mortgage in 2006. They borrowed a secured loan of just over £100,000 and a linked unsecured loan of just over £16,000. The mortgage was originally with Northern Rock and is now with Whistletree, which is the respondent to this complaint.

Mr B and his ex-wife divorced in 2014. Mr B says the divorce was acrimonious, and their finances were settled in Court. A Financial Remedy Order was issued in the Family Court in October 2014. Under the Order, Mr B was to repay the mortgage arrears as they stood at the time, and transfer his interest in the mortgaged property to his ex-wife. His ex-wife was then to apply to release Mr B from the Together mortgage and indemnify him against any liability for it.

The mortgage nevertheless remained in the names of both borrowers. In around early 2020, the mortgaged property was sold and the secured part of the Together mortgage was repaid. The unsecured part remained outstanding, with a balance at that time of just over £11,000.

In 2022, Whistletree got in touch with Mr B to pay him some compensation for charges that had been applied to the mortgage. Mr B says he then found out that while the secured loan had been repaid, the unsecured loan had not. It was still outstanding and payments had been missed.

Mr B complained. Whistletree said it hadn't received any requests to remove his name from the mortgage and, now that only the unsecured loan remained outstanding, it couldn't remove his name from the account. It didn't think it had done anything wrong.

Mr B referred his complaint to us. He said the lender had told him in 2014/2015 that he couldn't come off the mortgage and nothing could be done. He has since found out that his name could have been removed if he and his ex-wife had both requested it, but Whistletree has said that is no longer possible now that only the unsecured loan is still outstanding. He said he would have done things differently had he known what was happening and he would have taken his ex-wife back to Court – but now there would be no point and he remains tied to the loan, with a ruined credit score.

Our Investigator found nothing in Whistletree's records to indicate that it told Mr B he couldn't be removed from the account under any circumstances, and said the lender wasn't in any event party to the Court Order. He didn't think Whistletree had done anything wrong.

Mr B didn't accept that and still thought he had been treated very unfairly. He asked for a review.

What I've decided – and why

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

Having done so, I've come to the same conclusion as the Investigator did, for much the same reasons.

I recognise that Mr B has had to deal with challenging circumstances and he has been through a difficult divorce. I can't, however, fairly require Whistletree to remove his name from the joint loan or alter his credit file.

Mr B and his ex-wife took out the Together mortgage on the basis that they were jointly and severally responsible for it. The Court Order in respect of their divorce settlement didn't change that. Whistletree wasn't party to the Court proceedings and wasn't bound by the Order. So it wasn't required to make any changes to the mortgage or remove Mr B's name.

I've looked carefully at Whistletree's records of its contact with Mr B from 2014 onwards and, like our Investigator, I've found nothing to suggest that it misled Mr B about the process for changing the borrowers on the account. I've also considered what Mr B remembers about his conversations with the lender, and I accept that if he had asked to come off the mortgage the lender may well have said it couldn't simply remove his name and therefore remove his liability for the debt at his request. That would have been right. Removing Mr B from the account was also never simply a matter of him and his ex-wife signing a document requesting his removal, as Mr B seems to believe. Whistletree would have been expected to assess an application from the party to remain on the account, including considering whether she could afford to take responsibility for the debt on her own, for example.

Mr B has a Court Order saying that:

"The Respondent [his ex-wife] shall use her best endeavours to procure the release of the Applicant [Mr B] from any liability under the mortgage by 1st November 2018 and shall in any event indemnify the Applicant against all such liability.

The Respondent additionally undertakes to apply annually to the mortgage lender for the Applicant's release and shall notify the Applicant within 3 weeks of the outcome.

In the event that the Respondent is not able to secure the Applicant's release from all liability under the mortgages (as described above) [both the secured and unsecured Together loans] with effect from 1st November 2018 the property shall be sold to effect the Applicant's release from the mortgages."

The Order didn't – and couldn't – require Whistletree to take Mr B off the account. Whether or not Mr B's ex-wife took the steps required under the Order is a matter between her and Mr B. The Order set out what Mr B could expect if his ex-wife was unable to arrange his release from the account, both annually and after 1 November 2018. Mr B's ex-wife isn't party to this complaint, so I can't look into any requests she may have made to Whistletree to take sole responsibility for the debts.

Mr B has said it's not right that the loan terms have been changed without his agreement, now that the secured loan has been repaid. The terms haven't changed however – they provided for the secured and unsecured loans to be delinked. The fact that the secured loan has been repaid but the unsecured loan hasn't doesn't prevent Mr B from applying to the Court to enforce the Court Order, but that is a decision for him to make.

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 Mr B to accept or reject my decision before 9 February 2024.

Janet Millington
Ombudsman