

## **The complaint**

This complaint's about a mortgage Mrs R holds with Mortgage Express (ME). It was taken out in 2007 with a lender I'll call K, but was transferred later to ME. The mortgage was initially a capital repayment loan but was switched to interest-only soon after being taken out.

It's a joint mortgage but the other borrower, Mr R, hasn't lived in the property since 2010. He and Mrs R divorced in 2017, and as part of a financial settlement reached in 2019, the court ordered, by consent, that Mrs R should use her best endeavours to release Mr R from the mortgage and become the sole borrower.

## **What happened**

A key part of this complaint is that ME wouldn't allow Mrs R to take the mortgage over in her sole name; the other aspects of the complaint are that ME wasn't willing to convert the mortgage back to capital repayment and extend the term. The mortgage term expired in 2022 and whilst Mrs R has made lump sum reductions, much of the balance remains outstanding and is now overdue for repayment. ME instructed solicitors to commence legal action to recover the debt.

Our investigator wasn't persuaded ME had treated Mrs R unfairly. She has asked for the case to be reviewed by an ombudsman. ME's legal action for recovery of the outstanding debt has been paused whilst the complaint was waiting to be reviewed by an ombudsman.

By way of a jurisdiction decision dated 11 September 2023, I set out the reasons why our remit to consider this complaint was confined to events since 4 July 2016.

In a further submission on the merits of the case dated 12 September 2023, Mrs R has told us, amongst other things, that her former husband is aware of the complaint, and has joined with her in engaging with third parties that are trying to secure new financing for her. Mrs R also pointed out that they divorced in 2017, not 2019 as I referred to in my jurisdiction decision.

## **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. It's for me to decide what the material issues are that will affect the eventual outcome. It's also my judgement on what evidence I need to see and consider, in order to reach a fair decision.

I'm sorry that I recorded 2019 as the year Mrs R and her former husband divorced, when in fact that was the year their financial settlement was finalised. Nothing turns on that for the purposes of this decision, but I apologise for the error nonetheless; it shouldn't have happened.

I appreciate what Mrs R says about her former husband's awareness of the complaint; the fact remains however, that he isn't a party to it. I'll reiterate, for completeness that on balance, I think it is safe for me to determine the case on its merits without him being a party. Having considered the issues Mrs R is asking us to rule on, I don't think any decision from me is likely to impact adversely on Mr R. But by the same token, it does also mean that I can't consider whether and to what extent ME has (or hasn't) engaged with Mr R's former husband about the outstanding debt. I don't have his authority to do that. For the avoidance of doubt, this complaint, and the decision on it, are solely about how ME has treated Mrs R.

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

#### Mrs R wanting to convert the mortgage back to capital repayment and/or extend the mortgage term

As already set out in the jurisdiction decision, I'm only able to consider this point in terms of what has happened since 4 July 2016. As a starting point, changes to a mortgage such as a switch to capital repayment and/or extending the term aren't changes which a borrower is entitled to by right. They are matters for a lender's commercial judgement, and are subject to assessment of risk (to the lender and the borrower in equal measure) by reference to the business' lending criteria applicable from time to time. But a lender also has to treat borrowers fairly and make decisions that it judges to be in their best interests.

ME has looked at Mrs R's requests for the mortgage to be changed to capital repayment; as part of that process, it took into account the difficulties Mrs R has had over time meeting the monthly interest payments on the mortgage as currently configured. With or without a term extension, a capital repayment mortgage costs more each month than an interest-only mortgage. That's unavoidable, because a capital repayment mortgage requires the borrower to pay an amount each month towards reducing the capital, in addition to covering the interest.

It's clear from the history of the mortgage, and the contact between ME and Mrs R over the period I'm looking at, that she has faced enormous financial challenges, many of them imposed on her by external circumstances outside her control. I imply no criticism of Mrs R over this, and none should be inferred. It seems to me she has always done her utmost to try to meet her mortgage obligations, in the face of considerable obstacles. But there's no doubt that doing so has been a huge challenge for Mrs R. However much Mrs R might think otherwise, I can't say, in all fairness, that it would have been in her best interests to increase her monthly payments by switching to capital repayment.

Looking at the term extension issue in isolation, my starting point here is that Mrs R, along with her former husband, borrowed money from ME, and under the terms of their original agreement with ME, was due to repay the money in 2022. No-one is entitled to borrow money; and even when they've borrowed before, they're not automatically entitled to more time to repay the debt after it has fallen due. But a lender must treat customers fairly. In the context of an application for a term extension, that means assessing it fairly in accordance with the bank's lending criteria and its regulatory obligations. Lenders' criteria are commercially sensitive and not generally made public.

One key criterion for a lender is whether the borrower can evidence a suitable repayment strategy for the entire balance. For the reasons I've already talked about, ME wasn't convinced switching the mortgage to capital repayment was in Mrs R's best interests. Realistically, that meant either re-financing to another lender or the sale of the mortgaged property.

I understand why Mrs R has been reluctant to consider a sale of the property, given her wider circumstances. I won't disclose the details here, out of respect for Mrs R's privacy, but she's had reasons, to do with family and how she makes her living, for not wanting to sell the mortgaged property. I'm not unsympathetic towards her situation, but lenders aren't required to wait indefinitely to be repaid the money they've lent. Whilst ME is currently holding recovery action in abeyance whilst we look at the complaint, it doesn't have to and we can't insist that it do so.

Where someone *cannot* repay an interest-only mortgage when it's due, then we'd expect the lender to have a conversation with the borrower about their circumstances, and try to work out a plan for repaying the mortgage. If that means providing more time, then fairness requires a lender to consider doing so. But for all her reasons why she didn't want to, Mrs R wasn't, and isn't, someone who *can't* repay their interest-only mortgage. She had the means to repay the mortgage when it was due, either by selling the mortgaged property or re-financing, a process I understand she is still pursuing. I'll return to that shortly.

#### Removing Mrs R's former husband from the mortgage

At the heart of this element of the complaint is the breakdown in the relationships between Mrs R and her former husband, after the mortgage was taken out. I can tell from everything she has said and provided, that this is a sensitive and complex situation. The difficulty is that where personal relationships within a between joint mortgage borrowers break down, a lender doesn't simply remove one borrower because they want to be removed, and it isn't required to.

First of all, it's a situation for the borrowers to resolve between them; they need to agree collectively on who should remain on the mortgage and who should be released from it. At the same time, it would be normal practice for a similar agreement to be reached on who should stay on, or be released from, the title to the mortgaged property. That's seemingly what happened in 2019, when a consent order was made under which Mrs R agreed to use her best endeavours to release Mr R from the mortgage and become the sole borrower. But a consent order between separating borrowers over the property title doesn't bind a lender to a particular course of action regarding the joint mortgage.

Even where the parties to the mortgage reach agreement, those proposing to stay on the mortgage then need to apply formally to take over the mortgage, and the lender – so ME in this case – will then assess the application by reference to its lending criteria and its regulatory obligations. ME hasn't agreed to release Mrs R's former husband from his obligations under the mortgage, and I can see why. Having two parties to the mortgage rather than one means that, in the event of a default, ME has legal recourse to recover the money from two borrowers, not just one.

For the reasons already explained, I can't consider (or even discuss) in this decision what steps ME might or might not be taking to recover the outstanding mortgage from Mrs R's former husband. But I can understand why it wishes to retain the option of him having joint and several liability for the mortgage debt, along with Mrs R. I appreciate why she might find that unwelcome but it's not unfair, which is the test I have to apply.

I make one last observation; I mentioned that Mrs R is still looking into the option of re-financing the mortgage to another lender in her own name. There's no reason why ME's refusal to release her former husband from the current mortgage should be an impediment to that process. If a lender is willing to lend her enough money to repay the ME mortgage in full, then part of the legal work involved in that transaction can be the transfer of the property title to her sole name so that it can be offered up to the new lender as security for the new mortgage, free of any ongoing interest from other parties.

### **My final decision**

My final decision is that I don't uphold this complaint or make any order or award against Mortgage Express.

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 Mrs R to accept or reject my decision before 17 October 2023.

Jeff Parrington

**Ombudsman**