

The complaint

This complaint is about a mortgage which, until recently, Ms F held, jointly with another party, with Melton Mowbray Building Society (MMBS). The main thrust of the complaint is about the timing of MMBS taking the property into possession, the price at which it sold the property in possession, and how it treated her generally compared with the other borrower. For reasons I'll set out in due course, the joint borrower is not a party to the complaint.

What happened

The details of this complaint are well known to both parties so I won't repeat them again in detail here. Instead I'll give a brief summary (in my own words and rounding the figures involved) and then focus on giving the reasons for my decision.

Ms F and her joint borrower took the mortgage out in 2018; they paid £640,000 for the property, borrowing £508,000 from MMBS. Sadly, their relationship ended in difficult circumstances, and Ms F moved out in late 2020. Monthly payment to the mortgage became erratic during 2021, and arrears began to build up. By early 2021, the joint borrower had also moved out but had arranged an unauthorised let to a friend who would then occupy the mortgaged property until December 2022.

The worsening arrears situation resulted in MMBS taking legal action and a court order was handed down in August 2022 requiring Ms F and the joint borrower to surrender the property to MMBS by 23 September 2023. That didn't happen, and the presence of a tenant held up MMBS' enforcement of the possession order. A warrant for possession and an eviction order were handed down, suspended until 16 January 2023. The tenant vacated the property just before Christmas 2022; MMBS was informed of this on 28 December 2022 but didn't immediately proceed with enforcement. It felt obliged to wait until 16 January 2023.

The court scheduled a new date for the warrant to be executed on 11.00am 23 March 2023. During February 2023, both Ms F and the joint borrower put forward the possibility of surrendering possession voluntarily. MMBS provided the relevant paperwork to both borrowers to sign, but the joint borrower didn't respond. On 8 March 2023, MMBS advised both parties of its intention to enforce the warrant, and took possession on 23 March 2023.

MMBS arranged for the property, which was in poor condition, to be valued by two separate independent valuers, and arranged for it to be emptied and cleaned. In June 2023, MMBS put the mortgaged property up for sale with an initial asking price of £595,000. In September 2023, MMBS wrote to inform Ms F the property had sold for £550,000, leaving a shortfall of nearly £24,000.

Ms F believes MMBS treated the joint borrower more favourably than it did her throughout 2022. She thinks MMBS should have taken steps to end the unauthorised tenancy (rather than suggest she do so herself) and unduly delayed taking possession, which left the empty and unattended property to deteriorate for several months. Ms F also believes the property was marketed, and sold, for less than its true worth.

MMBS rejected the complaint, and when it was referred here, our investigator wasn't persuaded MMBS had treated Ms F unfairly or acted (or failed to act) in such a way that resulted in the property being sold at too low a price. Ms F has asked for the complaint to be reviewed by an ombudsman.

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. We deal with individual disputes between businesses and their customers.

In doing that, we don't replicate the work, or second guess the judgements, of the courts. We're impartial, and we don't take either side's instructions on how we investigate a complaint, or when we have enough information on file to decide it.

If the available evidence is incomplete and/or contradictory, we reach our findings on what we consider is most likely to have happened, on the balance of probabilities. That's broadly the same test that the courts use in civil cases.

Unless there are exceptional circumstances that would put one of the parties at risk, it's our normal requirement that all eligible complainants join a complaint. That's to ensure that all of the relevant parties (so, in the case of a joint mortgage, as here, that's both borrowers) that might be affected by the complaint outcome are acting in unison towards a common purpose.

Here, I'm satisfied there is good reason why we haven't insisted the joint borrower join the complaint alongside Ms F. Ms F has been very open and honest about the situation between her and the joint borrower. I won't reveal any of the detail here, to preserve Ms F's privacy. I think it is enough simply for me to say that proceeding with Ms F as sole complainant is the right thing to do.

But this does put this service in a slightly difficult position; we can't take sides between joint account holders who don't share a common purpose. But it's not just this service that has been put in a difficult position; MMBS has been as well. Just as we can't take sides between joint account holders who don't share a common purpose, MMBS couldn't either.

Of course, much of Ms F's argument is that MMBS *has* taken sides, and treated the joint borrower more favourably than it has her. The further difficulty there is that without the joint borrower being a party to the complaint, we have no power to assess MMBS's treatment of the other borrower, or indeed to reveal anything about how it has treated the other borrower.

That means I can only assess the fairness or otherwise of MMBS's treatment of Ms F on its own terms, and not by comparison with how it has treated the other borrower. Where I do mention the joint borrower, it is for context only and only references events that are already known to Ms F.

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

If I don't comment on any specific point it's not because I've failed to consider it but because I don't think I need to comment on it in order to reach what I think is the right outcome in the wider context. My remit is to take an overview and decide what's fair "in the round".

The starting point here is that both borrowers were equally responsible for the arrears that accrued on the mortgage, and MMBS could reasonably look to both – whether together or separately – for repayment proposals, and to consider legal action to rely on its security if it didn't think the situation could be resolved any other way.

Part of the problem for MMBS was that during 2022, the two borrowers were clearly at crossed purposes. Ms F's priority was for the property to be sold whereas the joint borrower preferred to rent it out for income. Ms F clearly thinks MMBS should have actively intervened to evict the tenant, but it's not as simple as that. MMBS had to follow the court process, which involved first of all getting a possession order, and then getting the court's permission to enforce it.

On that point, Ms F has taken exception to MMBS's suggestion that she could take steps to remove the tenant herself. She thinks it was unreasonable of MMBS to expect her to put herself at risk of physical harm by confronting the tenant. I think it more likely than not that MMBS was envisaging Ms F appointing an agent to act for her in removing the tenant.

Still on that point, I'll deal with something Ms F said in her email of 5 December 2023 appealing the investigator's opinion on her complaint. Ms F argues that MMBS became responsible for the property when the possession order was granted in August 2022. I'm afraid she is mistaken there; MMBS only became responsible for the property when it took possession in March 2023. During the intervening months, when Ms F says the property's condition suffered greatly, responsibility for its condition, upkeep, and indeed its occupation, remained hers and the joint borrower's.

That takes me to Ms F's argument that MMBS should have taken possession sooner than it did, and back to the point I made earlier about MMBS having to follow what the court said. It was, first of all, the intervention of the court that put back the prospect of MMBS gaining possession until 16 January 2023, even after it learned that the tenant had left. Subsequent to that, the court then rescheduled execution of the warrant to 23 March 2023.

I've noted the email exchange between Ms F and MMBS's solicitor in February 2023. The inference to be drawn from it is that MMBS might have tried to seek voluntary surrender from Ms F and the joint borrower without waiting for the warrant to expire in January 2023 and be rescheduled for March 2023.

Even if MMBS had done that, I'm not sure how much of a material difference that would have made. The attempt at negotiating voluntary surrender in February 2023 ultimately came to nothing because it needed both borrowers to agree and that didn't happen. It's hard for me to conclude anything other than that the same outcome would have resulted if that process had been attempted a month or so earlier. That being the case, MMBS would still have had to seek another warrant to enforce the possession order and in all likelihood, that would still have been handed down with a date in March 2023, quite possibly the same date; i.e. the 23rd.

One last observation I'll make on this point is that even if thought MMBS had delayed possession unreasonably (which I don't) there's no reliable way of telling whether the damage and deterioration to the property occurred before or after the tenant vacated.

Once the property was in its possession, MMBS began the process of selling it. That's not a process that involves the borrowers; it's something for a lender to conduct in its own right, generally by engaging third parties (solicitors, estate agents, and asset managers for example) to act as its agents. All I'd then expect a lender to do is to notify the borrowers once a sale has completed, and account for the transaction. MMBS clearly did that here.

Ms F believes MMBS mis-handled the sale and failed to achieve a fair price for her former property. I appreciate her strength of feeling, but the evidence doesn't support her claim. MMBS took the steps I'd expect it to; that is:

- establish independent professional opinions on the property's likely market value; and
- achieving a balance between selling it for the best price achievable but also within a reasonable amount of time, mindful that interest continues to accrue on the outstanding debt until a sale has completed.

Two separate valuations were commissioned, one from a local estate agent, the other from a qualified surveyor who is an associate member of the Royal Institution of Chartered Surveyors (RICS). By doing that, MMBS complied with the first of the two requirements I've listed above.

The selling agent's appraisal valued the property at £400,000, and recommended it be marketed at that price. The RICS-qualified surveyor recommended an initial asking price of £600,000, with the caveat that it would probably sell at auction for £550,000. Due to the conflicting opinions, the two valuers conferred, and agreed to align their opinions of the market valuation and recommended asking price at £550,000.

If there were shortcomings in the valuations (and to be clear, I make no finding either way – I have no remit to do so) MMBS would not be liable for them. They were the work of independent and suitably qualified professionals, and MMBS was reasonably entitled to rely on their opinions when deciding how much to market the property for. I've seen the valuation from mid-2022 that Ms F submitted to support her claim. This wasn't something that MMBS was obliged to rely on. It was required to take the steps I've outlined above, and then rely on the opinions it received.

In fact, MMBS didn't just follow what the estate agent and surveyor said, and market the property at the recommended £550,000. It also took into account Ms F's expectations of a higher figure and began marketing the house at £595,000, albeit in due course selling it for £550,000.

Ultimately, any property is only worth what someone is willing to pay for it. In my view, MMBS met its duty to Ms F in the way it marketed the property, and the eventual selling price achieved was a fair one.

After all of the sale costs had been accounted for, there wasn't enough left to repay all of the mortgage debt. MMBS can reasonably hold Ms F liable for the shortfall, jointly and severally with the joint borrower.

In the circumstances that exist between the two borrowers, any discussions with each borrower would have to be separate and discrete, and also confidential between MMBS and each borrower. I'm only able to talk in terms of how MMBS treats Ms F going forward. In any discussions about a possible repayment plan, it has a duty to treat her fairly and take her wider circumstances, financial and personal, into account.

I said at the outset that I wouldn't be commenting on every single point, and I haven't. I have, as I said I would, confined myself to those matters that I consider have a material effect on the outcome. I can see how strongly Ms F feels. That's a natural, subjective reaction, and entirely understandable when you're as close to a situation as Ms F has been here.

Be that as it may, I have to take a different approach. I'm impartial and I have to look at things objectively, sometimes taking a step back from the minutiae, focussing on the broader

picture. That's what I've done. Having done so, for all the reasons I've set out, I can't find in Ms F's favour.

My final decision

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 discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss F to accept or reject my decision before 12 June 2024.

Jeff Parrington

Ombudsman