

The complaint

Mrs E complains that Mortgage Express (“MEx”) went ahead with a repossession of her Buy To Let (“BTL”) property, despite her offer of partial payment and a private sale. She said it then sold her house at well below the market value, leaving her facing a shortfall.

What happened

Mrs E bought a BTL property some years ago, on an interest only mortgage. She said she’d planned to hold the property for a while, then sell. But the value of the house dropped, and Mrs E said she was left in negative equity. The mortgage ended in 2017. Mrs E said putting the property on the market with an agent wouldn’t have realised enough to pay the loan, and her efforts to sell it privately weren’t successful.

Mrs E said she kept making her payments, and some overpayments. MEx gave her grace periods to try to sell. Mrs E told us about some difficult personal circumstances during this time. But in December 2021, MEx told Mrs E it had instructed solicitors to begin possession proceedings.

Mrs E said she was still trying to sell, but the buyer’s purchase funds didn’t come through. She said repossession was averted on a few occasions in 2022, but because there was no formal confirmation of a sale moving ahead, MEx took possession of the property on 7 October 2022. Mrs E said the value of properties in the area had been increasing, and she’d pleaded with MEx to allow her to make further overpayments and also put the property on the market with a local agent within the week. Mrs E said she thought that would let her repay the mortgage and have some money left over as a nest egg.

MEx refused, and took possession. Mrs E said then she didn’t hear anything from MEx, and had to chase to find out what was happening. She told us it took a month for MEx just to put the property on the market. When it was listed, it was with an agent in another town, and well below the valuations she said she’d received from two local agents.

Mrs E said she complained, but MEx gave her the wrong address, and her letter of complaint was returned. The house price was then reduced, and Mrs E said her complaint wasn’t dealt with until the house had sold.

Mrs E said she was left with a considerable shortfall, and she was now deeply worried about how she would pay this.

MEx has shown our service responses it sent to previous complaints by Mrs E. In October 2018, it wrote to say that her interest only mortgage had ended in August 2017, and she hadn’t yet paid back the capital. MEx had put legal action on hold, as Mrs E said then that the property was being sold, but after the planned completion date passed with no sale, legal action was then due to resume.

MEx sent us a further complaint response from February 2022. That was a lengthy response, which set out a detailed history of the mortgage since the original mortgage term

ended. The letter set out a number of times when MEx had granted grace periods, deferring legal action, because Mrs E had told it about a sale in progress, but unfortunately no such sale had gone through, starting in April 2018, and running up to September 2021. MEx also said Mrs E told it she'd tried, and failed, to remortgage elsewhere.

MEx said it cancelled the hearing due to take place in January 2022, because Mrs E received no notice of the hearing. Mrs E said again then that a sale was progressing. But MEx said it had again received no evidence of a sale in progress, so it planned to go ahead with proceedings once Mrs E had been made aware of these.

MEx also sent our service its response to this complaint by Mrs E. It said it had responded to many of the points Mrs E was raising now, in its previous letter. And it thought it had acted reasonably once the property was in its possession.

MEx said it got valuations from two estate agents and from an independent qualified surveyor before taking any decision about the price to set for marketing purposes. It then put the property on the market just over a month after it was taken into possession, which MEx thought was reasonable.

MEx said it was governed by the relevant Code, the Mortgage Conduct of Business rules, which said it had to market the property as soon as possible, and obtain *"...the best price that might reasonably be paid, taking account of the factors such as market conditions as well as the continuing increase in the amount owed by the customer under the regulated mortgage contract."*

So MEx pointed out that in a sale like this, it has to take account of the arrears that were building up on Mrs E's outstanding mortgage. That meant it couldn't just extend time for a sale to happen. It reviewed the position within a month of beginning marketing, and because there had been no interest at all, it reduced the price. The property then sold. Unfortunately, it did leave a shortfall. No further interest would be charged on that.

MEx was satisfied it had correctly followed the accepted industry practice and guidance, before selling Mrs E's property for the best price possible under the circumstances. It didn't think it had done anything wrong in the sale. It said it was sorry it hadn't dealt with Mrs E's complaint before the sale, but that was just due to the pressure of work at the time.

MEx accepted it had given Mrs E the wrong address for her complaint letter. It offered her £50 to cover the cost of postage and phone calls.

Our investigator said we couldn't look at what happened up until the February 2022 letter, because Mrs E hadn't complained to our service in time. Both sides have accepted that.

Our investigator thought we could look at Mrs E's complaints that MEx refused to allow her to make overpayments and privately sell the property in October 2022, and that it sold her property for less than it was worth leaving her a shortfall. But he didn't think those complaint points should be upheld.

Our investigator said he could only see one instance where Mrs E offered a lump-sum payment to cancel the eviction, on 31 August 2022. MEx said then it would cancel the eviction if Mrs E's solicitor provided documentation evidencing an exchange and completion date for the ongoing sale. But no evidence was provided and so the eviction was re-instated. Our investigator thought that was reasonable.

Our investigator said MEx took professional advice on how to price Mrs E's property, and he thought it had made a reasonable decision based on that advice. As there was unfortunately no interest in the property, it was reasonable for MEx to then reduce the price. Our investigator said it was very unlikely to sell for the much higher value Mrs E was given.

Mrs E didn't agree. She said there might not be written evidence of her offering further overpayments if MEx allowed her to market the property herself, but she had phoned MEx on the morning of the repossession, 7 October, to plead with them over the phone. But MEx refused. Mrs E said she'd made further payments, but MEx had added substantial fees, and she'd had no breakdown of these.

Mrs E said the two local agents she spoke to were more than confident they could secure a sale, for considerably more, in a local market which was still buoyant in October 2022. She thought MEx was only worried about recovering what it was owed. Mrs E said she'd bought another local property too, and run into problems with that one as well. She contrasted the treatment she received from that lender with MEx's behaviour.

Our investigator didn't change his mind. He said there wasn't evidence of a call on the date of the repossession, so he couldn't say MEx had acted unfairly in not stopping the eviction on the day. And he said if Mrs E was unhappy she hadn't received a breakdown of fees charged, she'd need to raise that as an issue with MEx before our service could look into that for her.

On the price achieved by MEx, he thought just because an estate agent gave Mrs E an initial estimate of what they felt was achievable on her property, doesn't mean that it would've been guaranteed to sell for this amount. Our investigator thought that if the figure Mrs E had been given was realistically achievable, then the figure MEx first marketed the property at (which was £20,000 lower than the price Mrs E was given) would definitely have been achievable. But even that much lower price generated no interest at all.

Our investigator said he understood Mrs E's point about the different treatment she'd experienced with another lender, but said we could only look at what MEx had done here.

Mrs E still thought if she'd been able to repaint and repair the house, to make it more appealing, she could have achieved a better price with a local agent. Mrs E wanted an ombudsman to consider her complaint, so it was passed to me for a final decision.

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.

I've reached the same overall conclusion on this complaint as our investigator.

MEx has shared with our service a considerable amount of the previous history on Mrs E's mortgage account. Like our investigator, I don't think our service is able to consider the issues that Mrs E has previously complained about, and received a final response letter for in February 2022. But I do think the previous history on this account is relevant to what has happened since, and I've taken that into account in reaching my decision.

In short, Mrs E's mortgage fell due in 2017. Since then, she has been trying to arrange a private sale of the mortgaged property, unfortunately without success. In 2022, MEx renewed its possession proceedings.

Mrs E complained that MEx wouldn't let her make an overpayment and sell the property in October 2022, but instead went ahead with a scheduled eviction. And she says MEx then sold the property for considerably less than it was worth.

Our investigator said he could only see that Mrs E had made an offer of a lump sum on 31 August, when Mrs E offered £8,000 from her savings, and said a friend would also contribute £20,000 shortly. At that time MEx cancelled eviction proceedings, and asked for evidence of an exchange and completion date for a sale Mrs E said was ongoing. As no evidence was provided, MEx then rebooked a new eviction date. Our investigator thought this was reasonable, and I also think that.

Mrs E said there wouldn't be written evidence of the later offer, because it was done over the phone. But I note that MEx keeps call logs, and does seem to have what appear to be quite comprehensive notes from the time.

I can't see notes of a call on the date Mrs E refers to, 7 October. I can see Mrs E had made a request for a redemption statement close to the time of the eviction, and it looks as if MEx did try to contact Mrs E the day before the possession action, to check again whether there was yet firm evidence of a sale going ahead.

By this time, I think MEx had made its position clear. It wouldn't defer the possession action again, without proof Mrs E's sale was finally going ahead. As MEx had previously deferred possession on this basis, and not received the requested proof of a sale proceeding, most recently at the end of August 2022, I don't think MEx had to defer again in October 2022, without evidence a sale would complete. This evidence unfortunately wasn't produced in October. So I don't think it was unreasonable for MEx to go ahead with the eviction.

Mrs E said MEx then sold the property for much less than it was worth. I don't agree. I think MEx acted reasonably quickly, once it had possession of the property, to arrange for the property to be cleaned and prepared for sale, and to obtain valuations and decide an initial price, before it then put the property on the market.

MEx got valuations from a qualified surveyor and two separate estate agents. These valuations set out a market value and gave advice on an asking price. I think that the initial price set by MEx was in line with this advice.

MEx had been advised that, at this price, the property would generate interest, and should have about ten viewings in the first two weeks. But the market had experienced a slowdown, and no viewings took place. I note that MEx then reviewed the asking price promptly, at this point, and reduced the price accordingly.

I should say, for the avoidance of doubt, that I don't think it would have been appropriate for MEx to wait, and hope the market would improve. There was, of course, no guarantee it would do so, and in the meantime Mrs E's debt would continue to increase. I know that a lower selling price would leave Mrs E with a shortfall, but I do think the price reduction MEx made was appropriate in the circumstances.

The property then sold at £100,000. I know that Mrs E is very worried about how she will pay this shortfall, and I'm sorry to hear about the difficulties she's now facing. But I don't think that is because of mistakes that MEx made, either in proceeding with the eviction in October 2022, or in arranging the subsequent sale.

I know MEx offered £50 for giving Mrs E the wrong address to send her complaint, and I can't see that this has yet been paid. I think that is a fair and reasonable way of resolving that part of Mrs E's complaint, so I'll require MEx to pay that now, if it hasn't already done so.

I don't think MEx has to do more than that, in this case. I know Mrs E will be disappointed, but I don't think her complaint should be upheld.

My final decision

My final decision is that Mortgage Express must pay Mrs E £50 in compensation which it offered in its final response letter of 2 March 2023, if it hasn't already done so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs E to accept or reject my decision before 16 November 2023.

Esther Absalom-Gough

Ombudsman