

The complaint

Mr D complains that The Co-operative Bank Plc trading as Platform (Co-op) didn't write-off a shortfall balance on his buy to let mortgage, which resulted from the compulsory purchase of his property by his local authority.

What happened

Mr D took a buy to let mortgage for approximately £73,000 in 2006. The mortgage had a term of 20 years and payments were based on interest only.

In 2017, Mr D's property was subject to a compulsory purchase order (CPO) by his local authority. The evidence available indicates that Mr D accepted an offer from the local authority of £53,500, in July 2017. And, in August 2017, £53,500 was paid to Co-op to partially redeem his mortgage. But that left a balance on Mr D's mortgage account of approximately £11,000.

Mr D says he had no choice in the matter and the local authority set the price it would pay for his property. He said that, when another of his properties had been subject to a CPO, the lender had written-off the remaining balance, and he assumed the same had happened in this instance. Mr D also says Co-op have never sent him any statements following the partial redemption, and he only found out he had a balance outstanding when a check was made on his credit file. And he says Co-op should have taken legal action when it became apparent there would be a shortfall so that he would be protected against the circumstances he now finds himself in. Mr D complained to Co-op.

In its final response letter dated 26 July 2023, Co-op said it wouldn't simply write-off the debt. And, although it isn't currently chasing Mr D for repayment, he remains liable for the balance until it is repaid in full. Co-op also said it wrote to Mr D, most recently, on 24 February 2022, confirming the outstanding balance and including a statement of the account.

Dissatisfied with Co-op's response to his complain, Mr D asked us to consider it. In its responses to our enquiries, Co-op said it confirmed to Mr D in a letter dated 31 May 2017 – before the partial redemption – that he would be liable for any shortfall. And it said it had sent him annual mortgage statements which show the shortfall.

Our investigator didn't think Co-op has acted unfairly and was satisfied it had the right to seek repayment of the outstanding balance. She said the copies of the mortgage statements provided by Co-op show that they were addressed correctly, and she's seen no evidence to suggest they were not delivered successfully. She also explained that Co-op has until August 2029 to begin recovery action – that's 12 years from the partial redemption and no subsequent payments by Mr D.

Mr D didn't agree. He's not specifically disputed any of our investigator's findings, but as he disagrees, his complaint has been passed to me for a 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.

To decide Mr D's complaint, I've thought about whether Co-op should have written-off the outstanding balance after the partial redemption on Mr D's mortgage. And I've considered whether it's likely, given the evidence available, Co-op adequately informed Mr D he was still liable for the debt.

Should Co-op have written-off the debt?

The evidence available indicates that Mr D purchased his property in 2007. To do that, he successfully applied to Co-op for a loan lasting 20 years. And, in exchange for that loan, Co-op wanted the property as security for the loan – making it a mortgage loan. So, in its simplest form, Mr D's relationship with Co-op was as a borrower, and he owned the property. Co-op is the lender but did not own the property. Co-op had a right to take possession of the property should Mr D default on the mortgage loan.

The mortgage conditions are such that they allow either party certain rights, both generally and in specific circumstances – and, in this case, the mortgage conditions are designed to allow Mr D to let the property. But the specific circumstances of a compulsory purchase order are not covered in the mortgage conditions, so I've thought about the fairness of Co-op's stance with the basic lender/borrower relationship – as outlined above – in mind.

As part of the purchase process Mr D would have engaged the services of a conveyancing solicitor. Part of the solicitor's role would have been to carry out searches to safeguard against buying a property that was in foreseeable risk of events that may negatively affect its value. Given that process was undertaken, I think it's fair to conclude that Mr D wasn't made aware of plans by the local authority for a compulsory purchase, probably because any such plans were either non-existent at that time or were not public knowledge. But I think that also means Co-op couldn't have known either. So, I don't think there's anything to suggest that Co-op shouldn't have lent to Mr D because of any such concerns.

While, in all likelihood, Mr D did not know of the risk to the property – over and above the risk of a potential future CPO on any property, he did agree to the offer made by the local authority. I understand that he may have felt he had very little option but to agree, but it was for him to agree that offer as the owner of the property. I note that Co-op also accepted the offer, as an interested party, but it is clear from the evidence available that it did so only after Mr D had already accepted. It's also worth noting here that, in a letter dated 15 June 2017, Co-op appears to be encouraging Mr D to challenge the offer made by the local authority. But it's unclear whether that letter led to any action by Mr D.

I think it's unlikely that the compulsory purchase could have proceeded with Co-op's acceptance alone. So, I don't think Co-op had influence on the offer Mr D accepted, though I understand that neither party may have had much option but to accept. And, as Co-op wasn't the owner of the property, I don't think it was obliged to resist the CPO if Mr D hadn't.

As the owner of the property, Mr D suffered the loss of the property being purchased for an amount that appears to have been lower than its open market value. Mr D owed a specific amount – the mortgage loan balance – to Co-op, irrespective of the property's value or sale price. So, when that mortgage balance wasn't cleared by the sale proceeds of the property, albeit in the most unfortunate circumstances for Mr D, the balance remained payable by him. The loss to Co-op is that it no longer has the property as security for the remaining balance Mr D owes.

Does the evidence indicate Co-op informed Mr D of the outstanding balance?

Co-op has provided copies of correspondence from the time of the compulsory purchase. I've seen, in correspondence from before the compulsory purchase – a letter dated 31 May 2017 – that Co-op specifically said Mr D “*would remain liable for any shortfall following receipt of the proceeds of the compulsory purchase order.*” And I've seen annual mortgage statements dated after the compulsory purchase showing the remaining balance. All of the correspondence I've seen appears to have been correctly addressed, and I've seen nothing to suggest it wouldn't have been sent. So, even if Mr D received none of that correspondence, I don't think Co-op did less than I would expect, to inform Mr D of his liability.

Summary

As owner of the property, I think the loss incurred due to the compulsory purchase of Mr D's property was his. I haven't seen anything to suggest that his liability for the full repayment of the loan ought to have ended with its partial redemption from the proceeds of the compulsory purchase. So, I don't think Co-op has acted unfairly by not writing-off the balance. And I don't think Co-op failed to inform Mr D of his ongoing liability for the outstanding balance. So, I don't uphold his complaint.

My final decision

My final decision is I don't uphold Mr D's complaint about The Co-operative Bank Plc trading as Platform.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 10 January 2024.

Gavin Cook
Ombudsman