

The complaint

Mr D's complaint is about his three mortgage accounts, originally taken out with a bank, but now held with Mars Capital Finance Limited, which purchased the mortgages in 2021. The mortgages are secured against his home. Mr D believes that the mortgage balances are incorrect and that Mars is demanding higher repayments than it is entitled to.

To settle the complaint, Mr D would like Mars to adjust the accounts to show what Mr D believes are the true balances, and to allow him to negotiate a 'short settlement'.

Mr D has been assisted in bringing the complaint by his son, but for clarity I will refer to Mr D throughout, even where submissions have been made on his behalf.

What happened

I do not need to set out the full background to the complaint. This is because the history of the matter is set out in the correspondence between the parties and our service, so there is no need for me to repeat the details here. In addition, our decisions are published, so it's important I don't include any information that might lead to Mr D being identified. So for these reasons, I will instead concentrate on giving the reasons for my decision.

If I don't mention something, it won't be because I've ignored it; rather, it'll be because I didn't think it was material to the outcome of the complaint. So whilst I've noted all the detailed submissions Mr D has made, I am not required to address each and every point. Our enabling legislation allows me to do this, and to concentrate on deciding the issues that I consider to be the most important.

An investigator looked at what had happened, and issued two detailed letters explaining her conclusions. In the first, she concluded that there was no error with the interest rates applied to the accounts. The investigator noted that there was a suspended possession order from March 2014 which said that Mr D was required to pay the current monthly instalment, plus £112 per month towards the arrears. The investigator initially recommended Mars should re-work the account to show the payment towards the arrears. This conclusion was based on the limited information that had been provided about the three mortgage accounts.

However, Mars later provided further information, which satisfied the investigator that Mr D hadn't been paying the full amount of the monthly repayment across all three accounts, plus £112 per month towards the arrears. She therefore didn't require Mars to re-work the accounts. The investigator was satisfied that there were three separate accounts, all of which had separate interest rates applied, and so payments across all three accounts varied in line with changes in the interest rates applied to each account.

The investigator noted Mr D's vulnerability and health problems, and reminded Mars of its obligation to treat Mr D positively and sympathetically in relation both to litigation and to considering any proposal for a short settlement.

Mr D asked for an ombudsman to review the complaint. He maintains that he has been making the correct payments.

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.

First of all, I am very sorry to note that Mr D has suffered several bereavements over the last few years, and that he is in poor health. I have no doubt that the worry about the mortgage has caused him some distress. I know how important this complaint is to Mr D, and so I know that what I have to say will be unwelcome news, as I am unable to uphold the complaint. But I have to put aside my natural feelings of empathy and decide the case on the basis of the evidence.

This complaint is against Mars, not the previous lender. I can only therefore consider what's happened since Mars took over the mortgage in 2021. That said, the account history with the previous lender is relevant, as it shows the position on the accounts at the time Mars took it over. These were as follows:

Account number:	Balance £	Arrears £
Ending 079Z	18,352.27	3,462.49
Ending 079D	22,943.66	681.24
Ending 079V	8,557.52	2,281.17
Totals	£49,853.45	£6,424.90

Mars has explained that account ending 079Z was previously 0790 and 079V was previously 079E, and these suffixes were changed when forbearance on the account was put in place. The three sub-accounts are on separate variable interest rates, as explained by the investigator, with separate payments that fluctuate as the interest rates on those accounts rise or fall.

Mr D's position is that he is required to pay £696 per month, which includes £120 towards the arrears. However, the monthly repayments for all three accounts are actually more than £696 per month in total. This means that Mr D hasn't been paying enough to cover the monthly repayments, and isn't paying anything off the arrears.

I am not going to go through the entire payment history on the account since Mars took it over. However, the available evidence persuades me that insufficient payments have been made to maintain both the monthly instalments and the £112 ordered by the court to be paid towards the arrears.

I know Mr D feels very strongly that the account balance isn't correct. I will explain that the Financial Ombudsman Service doesn't provide an auditing service, but it's always open to Mr D to arrange to have his own audit of the account carried out by a qualified professional, such as an accountant or actuary. If the result of such an audit was to identify errors by Mars that have resulted in financial loss or detriment to Mr D, he could then raise a new complaint about this, and claim the cost of the audit as part of the redress.

However, in all the circumstances, and based on the evidence I have seen, I am satisfied that the arrears balance on the account is accurate, given that the payments made haven't been enough to cover both the monthly instalments and an amount off the arrears.

Going forward, I note Mr D is vulnerable, and I know Mars is aware of its obligation to treat him fairly and sympathetically. Balanced against that is the fact that Mars is entitled to be paid the amount due under the mortgage contract, and in compliance with the court order.

Repossession is considered to be a last resort, and now that Mr D has been made aware of the *actual* position on all three accounts – as opposed to his previously mistaken belief that he was paying enough to cover the monthly instalments and £120 off the arrears – there is the basis for Mars to work with Mr D to reach a solution about payment of the arrears, hopefully without the need for further legal action.

Any solution is, of course, dependent on co-operation from both sides, so it is important Mr D is open to engaging with Mars to try to reach a resolution that is satisfactory to both parties, and which is based on the true position on the account, rather than the position Mr D believes is correct. In this regard, Mr D might find it helpful to have some advice from one of the free debt advisory services such as StepChange, Shelter or Citizens Advice. We can provide Mr D with contact details for those agencies, if he'd like us to.

I know this isn't the outcome Mr D was hoping for. From what he's told us, Mr D sees wrongdoing, fraud and criminal action in almost everything Mars has done (or not done). That's understandable when you're as close to the situation as Mr D is. But I have a different remit; I have to reach my decision on the basis of the evidence, without being swayed by emotion. And, having given careful consideration to everything Mr D and Mars have said, I'm unable to find in his favour.

My final decision

I am truly sorry if my decision causes Mr D any further distress, but I don't uphold this complaint.

This final decision concludes the Financial Ombudsman Service's review of this complaint. This means that we are unable to consider the complaint any further, nor enter into any correspondence about the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 30 October 2023.

Jan O'Leary
Ombudsman