

The complaint

Mr and Mrs W complain that Mortgage Express took reckless action to repossess their home when their mortgage term ended in 2018. They said Mortgage Express have undervalued their property and they sold it to a cash buyer at a substantial loss.

Since this complaint has been with us, Mortgage Express have transferred Mr and Mrs W's mortgage account to Topaz Finance Limited, trading as Hyalite Mortgages.

What happened

Mr and Mrs W purchased their property with a mortgage from Mortgage Express in 2008. Mr and Mrs W's mortgage term expired in 2018 and Mortgage Express took possession of the property so that they could sell it.

Mr and Mrs W's property is affected by cladding and the remedial works to the property were going to be completed by the developer who agreed to fund the works – but said it could take many months. Because of this, Mr and Mrs W were unable to remortgage to other lenders so Mortgage Express put the property on the market for £175,000 for cash buyers only.

Mortgage Express said they obtained independent valuations from the Royal Institution of Chartered Surveyors (RICS) and two local estate agents. The agents said they were in receipt of an offer for £260,000 which they accepted in August 2022 but Mr and Mrs W didn't agree with this, as they said their property was worth much more. Mortgage Express said they were trying to get the best price for the property with the issues it had with cladding.

Mr and Mrs W appointed a solicitor to act on their behalf who sent a Letter of Claim to Mortgage Express. Mortgage Express agreed to delay exchange of contracts so they could get their solicitors to investigate the claim.

The claim was investigated, and a further valuation was to be requested. Mr and Mrs W's solicitor asked that Mr and Mrs W should be allowed to appoint their own valuer and they asked Mortgage Express to wait until it was carried out – which they did.

The valuation was carried out in November 2022 and the surveyor gave the opinion that the property value should be £400,000 but Mortgage Express said this was based on 'many assumptions'. They said given the disparity between the £400,000 valuation and the ones they had done they wanted to understand this further, so they sent this report to their valuer to review and a further valuation was received which supported Mortgage Express' previous valuations.

Mr and Mrs W's solicitor asked if Mortgage Express would agree to a joint valuation expert, which they did, but Mortgage Express said that due to the increasing mortgage debt and predicted shortfall – it should be done quickly.

Mortgage Express asked Mr and Mrs W's solicitor to provide a list of experts so Mortgage Express could agree one and a deadline was set for 31 March 2023. This deadline was extended to 12 April and then again to 28 April.

Mortgage Express said they had given Mr and Mrs W's solicitors a reasonable amount of time to provide a list of experts and were told that Mr W had some health issues. They said they were also told there were issues with finding a surveyor who could carry out the

valuation based on the nature of what they were being asked. So Mortgage Express proceeded to sell the property and Mr and Mrs W's solicitor responded to say they were no longer acting for Mr and Mrs W. The sale was agreed for £220,000 on 7 June 2023.

Mr and Mrs W were unhappy with how Mortgage Express has dealt with things, so they brought their complaint to the Financial Ombudsman Service on 12 June 2023 where it was looked at by one of our Investigators. Our Investigator found that we couldn't look into all the complaint points that Mr and Mrs W had made, as some were made out of the relevant time limits. But he said we could look at the actions that Mortgage Express had taken with regards to the latest valuation of £400,000. But he said we couldn't look into anything to do with the repossession, the term extension concerns or anything in relation to the cladding issues on the property. For the part that our investigator could look into, he didn't think that Mortgage Express had acted unfairly.

Mr and Mrs W disagreed and said they were disappointed with the limitations that could be looked at and asked for an ombudsman to review everything from the commencement of the end of the mortgage term to the present day.

As Mr and Mrs W disagreed with the investigator, the complaint has been passed to me to decide.

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.

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I have already issued a jurisdiction decision explaining to Mr and Mrs W what I could and couldn't consider on their complaint. I said that the only part of their complaint that could be considered was what had happened since the offer of £260,000 had been accepted by Mortgage Express and their actions taken when they received the valuation of £400,000.

Mr and Mrs W's property was taken into possession on 9 July 2021. Mortgage Express told us that an offer was accepted on the property in July/August 2022 for £260,000 which was a cash offer.

Mr and Mrs W appointed a solicitor to act on their behalf and the solicitor sent a Letter of Claim to Mortgage Express' solicitors around a similar time. Mortgage Express agreed to delay exchange of contracts so that the claim could be investigated, and they instructed their own solicitor to deal with the claim.

I have seen the letter of response from Mortgage Express' solicitor dated 28 September 2022 with regard to the Claim which says that Mortgage Express does not accept the Letter and would seek to defend any action brought on the basis of a sale at an undervalue in its entirety. One of the paragraphs stated that it was not accepted that the proposed sale price of £260,000 would represent a sale of the property at an undervalue. The response stated that no evidence had been provided which showed the property should be valued higher. It was noted that a joint surveyor should be instructed but it wasn't approved at this point.

Once the Claim was investigated, Mr and Mrs W wanted to carry out a further valuation. Mr and Mrs W's solicitor asked if Mr and Mrs W could appoint their own valuer which Mortgage Express agreed to. They also agreed to wait until this valuation was carried out. It doesn't appear that anything had been sent so an email was then sent to Mr and Mrs W's solicitor giving them seven days' notice to exchange contracts and that the sale would now be for £220,000. This email was dated 22 December 2022 and exchange of contracts was set for 3 January 2023.

I know that Mr and Mrs W were unhappy that at this point, Mortgage Express gave seven days' notice during the Christmas period which they feel was unfair as there wouldn't have been any chance of them being able to get anything sorted out. I agree with that to some extent however, this situation had been going on for quite some time and Mortgage Express had made it clear on a number of occasions that they were concerned about the debt that continued to rise – so I do understand why they wanted to get things sorted out. But I do agree that these timings would have been difficult to try and get anything sorted out during this period of time.

That being said, Mr and Mrs W's solicitor emailed Mortgage Express asking for postponement of exchange of contracts as they had received a valuation which showed the property was worth much more than it had already been valued. Mortgage Express then agreed to wait until this valuation had been received so they postponed exchange of contracts.

I have seen a copy of the valuation which was carried out in November 2022 and the surveyor gave the opinion that the property value should be £400,000 but Mortgage Express said this was based on 'many assumptions'. They said given the disparity between the £400,000 valuation and the ones they had done, they wanted to understand this further so they sent this report to their valuer to review, and a further valuation was received. This valuation was dated 10 January 2023 and it valued the property at £200,000 and with works completed, it gave a value of £275,000.

I don't think that Mortgage Express acted unreasonably here. They had concerns that based on their previous valuations and the one provided at £400,000 was very different to the values they had obtained before. Once they referred this to their own valuer, the valuation came back similar to the ones they had obtained before, so Mortgage Express had the right to go with the valuation they believed was accurate based on what they knew about the property and based on the professional opinions of the valuers they used.

On the 18 January 2023, Mr and Mrs W's solicitor requested that a joint valuer was appointed, and Mortgage Express agreed to this on 9 February 2023. Mortgage Express said that the valuation evidence provided by Mr and Mrs W was significantly different to the ones that they obtained, so they agreed to a one single joint valuation expert to prepare the report.

I have seen an email sent from Mortgage Express' solicitors to that of Mr and Mrs W's which states that they are to provide a list of proposed experts which should all be RICS qualified and should be sent to Mortgage Express for them to consider. They would then confirm which expert should be instructed. This email was sent on 9 February 2023 giving a deadline of 17 February 2023.

I have seen an email dated 23 February 2023 whereby this had been chased as no response had been received. A further email was sent to Mr and Mrs W's solicitor explaining that nothing had been received and a further deadline was given to the 12 April 2023.

There is an email from Mr and Mrs W's solicitor dated 17 April saying that there had been an issue with them receiving emails, but this had now been resolved. It was explained that Mr and Mrs W hadn't been available but that a meeting had been arranged with them on 20 April to discuss the current position and the next steps that Mortgage Express were going to take. A further deadline was requested to 28 April. Mortgage Express responded to advise that they still hadn't received the list of experts.

Mortgage Express' solicitors then sent an email to Mr and Mrs W's solicitors on 10 May 2023 stating that no further communication had been received by them despite having a telephone conversation with them on 28 April 2023.

The letter indicates that a call had happened on 28 April whereby it was explained that Mortgage Express had allowed ample time to try and resolve the matter by getting a joint

valuation. Mortgage Express said they were told on the telephone call that Mr W's health had not been good, so he was unable to provide any further instructions. It was also noted that there were issues in instructing a surveyor due to the nature of the valuation report that was required and that Mr and Mrs W still believe the property to be worth more than the proposed valuation and purchase offer received by the bank.

It was then clearly noted that Mortgage Express would not allow this to continue, and they were giving Mr and Mrs W seven days' notice to market and sell the property. I have then seen an email dated 12 May 2023 sent from Mr and Mrs W's solicitor advising Mortgage Express that they are no longer acting for Mr and Mrs W. Mortgage Express said that a sale had been agreed on 7 June 2023 for £220,000.

Having looked carefully at the timeline of events and what has happened in this situation, I think that Mortgage Express have given a reasonable amount of time for Mr and Mrs W's solicitors to provide the list of experts in order to arrange a joint valuation.

Mortgage Express didn't have to agree to this, but they did. They held off exchange of contracts a number of times and were willing to try and resolve this matter seeing that the valuation amounts were being disputed but Mr and Mrs W didn't provide Mortgage Express with the information they needed.

I can't therefore say that Mortgage Express have acted unreasonably or unfairly here. The term of the mortgage had ended in 2018 and the mortgage debt continued to rise so Mortgage Express were entitled to rely on the valuations they had obtained to sell the property as quickly as they could.

For completeness, I wanted to clarify the situation as it stands now as Mr and Mrs W have raised some concerns while the complaint has been with us as they are unsure as to what is happening at the moment.

They said they have received letters from Mortgage Express in September and October 2023 explaining the property is still to be sold. They have also been told that the mortgage has been transferred to another company – so they are unsure what is happening.

We contacted Mortgage Express to get an update on the mortgage and they told us that Mr and Mrs W's account (along with others) has been transferred to Hyalite Mortgages. Hyalite will now be responsible for Mr and Mrs W's mortgage account. I can see that Mr and Mrs W have received letters about this.

Mortgage Express confirmed that the sale on the property was agreed on 7 June 2023 and there is a note on the account from 7 November 2023 from the solicitor explaining that they have everything needed and they will see if they are ready to exchange contracts.

As it currently stands, the outstanding balance on the mortgage is £364,094.11 so there will be a substantial shortfall once the sale has gone through. Mortgage Express said once the sale has gone through, the funds will be applied to the mortgage and the account will be closed. They said that any shortfall will be moved to their recoveries team, and they will work with Mr and Mrs W to come to some agreeable arrangement with them to repay the debt.

I appreciate that Mr and Mrs W will be disappointed with my outcome, but I'm satisfied that Mortgage Express have dealt with this reasonably in the circumstances of this case.

My final decision

For the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W and Mr W to accept or reject my decision before 15 December 2023.

Maria Drury
Ombudsman