

The complaint

Mr C's complaint is about a mortgage he has with Bradford & Bingley Limited (B&B). He has told us that B&B started possession proceedings in November 2022, but it didn't issue him with the necessary documentation to allow it to do so. As such, Mr C doesn't believe the possession and eviction should have happened. In addition, he believes that B&B was wrong about the term of the mortgage; it didn't expire in 2019, because a new contract was entered into in 2003.

Solicitors have acted at times for B&B during the activities being complained about. However, for simplicity, I will refer to B&B throughout whether it undertook the actions involved directly or its solicitors did so on its behalf.

What happened

Mr C arranged his mortgage with B&B in 1994 for just under £44,000. It had a term of 25 years and was on an interest-only basis. In 2003 a home improvement loan was applied for over four years, which was repaid by the end of that term. Mr C also attached a new interest rate product to the main mortgage.

From 2009 the mortgage was not maintained by Mr C in line with the terms and conditions and B&B applied to the courts for possession due to the arrears on the account. A suspended possession order was issued in March 2015.

Following the term of the mortgage ending on 1 August 2019, Mr C was due to repay the entire amount owing. Mr C didn't do so. B&B applied to the courts for the possession order of 2015 to be enforced. This was agreed, but subsequently that permission was set aside.

In 2022, B&B applied to the courts for a new possession order due to the term having ended and no payment having been received. A suspended possession order was granted in October 2022. It stated that Mr C had to either give possession of the property to B&B on or before 1 November 2022 or pay B&B the balance then owing on the mortgage account of £54,727.17.

On 1 November 2022 B&B sent Mr C a letter about the mortgage and enclosed a statement of account, which confirmed the outstanding balances – both the total owed and the amount of arrears. B&B gave Mr C the option of speaking to it and explaining his circumstances in order to hopefully come to an agreement for repaying the debt.

On 4 November 2022 B&B wrote to Mr C as it had not heard from him following the court issuing the suspended possession order. It was effectively reminding him that he needed under the order to pay the outstanding mortgage in full within 14 days. It gave Mr C the option of speaking to it if he was unable to do so.

On 16 December 2022 Mr C emailed B&B and informed it that on 27 March 2015 a possession order had been made by the courts. He provided details of it and the solicitors that had been working for B&B at the time. In response, B&B sent Mr C a copy of the court order of October 2022. B&B explained that the 2015 court order had expired in 2021 and so

it had the option of either asking the courts to extend the 2015 order, or to apply for a new one. It had done the latter.

On 3 January 2023 Mr C sent B&B two emails. The first email asked B&B for various documents relating to the possession and eviction proceedings. They were emailed to him the same day.

The second email referenced the letter of 4 November 2022 and stated details of the court order and the payment required were not enclosed. Mr C asked that the letter be resent with details of the court order and payment required.

A warrant of eviction was granted to B&B with a date for the eviction of 11 January 2023. Mr C applied for the warrant to be set aside and it was suspended until a hearing with both parties could be conducted. B&B applied for a warrant for possession again at the beginning of February 2023. This was granted and an eviction date was set for a date in March 2023. However, Mr C again applied for the warrant to be set aside. The Court suspended the warrant in light of his complaint being considered by this service. A hearing date was set for 30 March 2023 for the matter to be considered further. A further warrant was issued by the Court and the property was subsequently repossessed in April 2023.

On 16 February 2023 Mr C wrote to B&B in relation to the possession proceedings in 2022. He said the facts of the first claim were not provided as part of the application and asked that B&B correct this. The specifics were that he had not received the formal demand for payment of the amount owed dated 14 July 2022. In addition, Mr C said that he did not believe the mortgage term had expired and so he was not in breach of the conditions of the mortgage deed. As such, he wanted the eviction process stopped.

B&B responded to Mr C's complaint in its letter of 23 March 2023. It said that while its letter of 4 November 2022 didn't include information Mr C thought it should and had subsequently asked for, he had been provided with this information previously. It referenced its letter of 1 November 2022 having included the outstanding mortgage balance. B&B also provided a copy of the court order and confirmed it had asked its solicitors to send Mr C a copy of the order and a redemption statement at the beginning of January 2023. It also said that its solicitors had confirmed that all of the documentation Mr C had requested had previously been sent to him and it disagreed that the correct documentation had not been given to him. The complaint was rejected.

Mr C asked us to consider his complaint as he was not satisfied with B&B's response. He said B&B held more than one court/possession order and so the letter of 4 November 2022 needed to state the date of the court order being referenced. Mr C also introduced a new aspect to the complaint when he contacted us - he said that he had proof his mortgage didn't have a set term, implying he hadn't been due to repay it in 2019 and subsequently referenced a new mortgage offer sent to him in 2003. He provided us with a copy of a letter from 2003, which confirmed that a new interest rate product had been added to the existing mortgage.

One of our investigators considered the complaint, but he didn't recommend that it be upheld. He confirmed initially that we were unable to interfere or comment on any decisions the court had made. This meant any concerns Mr C had about the processes that had been gone through for the repossession of his home were something he would need to raise with the court. As such, he confirmed he was considering the matter of the correspondence B&B had with him in the lead up to the legal action in 2023 and the issue he had about the term of his mortgage. He didn't recommend either aspect of the complaint was upheld.

Mr C didn't accept the Investigator's conclusions and asked that an Ombudsman make a final decision on his complaint. Mr C said that he disagreed because he started a new mortgage contract with B&B in 2003 with different terms and conditions. In addition, Mr C highlighted that a checklist from 1994 detailed 'Borrowers – Age & Term' stated '65'.

Our investigator confirmed in response that no evidence had been provided that the term of the mortgage had been changed – it had been documented as 25 years ending in 2019 in the documentation in 1994. The Investigator also confirmed that even if B&B had used an incorrect term end date, the court had given it possession of the property and that was not something we could change.

Mr C said that the mortgage was taken out with B&B when it was a building society and it had changed to a bank in 2000. As such, he considered that B&B should have provided us with a copy of the 2000 mortgage terms. He highlighted clause 5.2 of the 1992 mortgage terms and expressed the opinion that as there is no term documented in this clause and it required payment each month, it means there was no end to the mortgage term. He reiterated that he had started a new contract in 2003. Subsequently, Mr C provided copies of documentation regarding the changes to the mortgage in 2003, which confirmed that it was the addition of an interest rate product to the existing mortgage, rather than a new mortgage being entered into. The changed terms referred to were those linked to the product, such as the early repayment charge.

The complaint was passed to me for consideration.

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.

Before considering the specifics of Mr C's complaint, I believe that it would be appropriate to confirm that this service would not attempt to interfere with the decisions of the courts. As such, while Mr C is unhappy that B&B applied for and was granted possession of his property, and with the process that was gone through to reach that point, that was a matter for the judges involved. If Mr C believed that due process had not happened, it was something that could have been raised with the courts. However, what I can consider, is whether B&B acted reasonably when deciding to start proceedings to apply for a replacement possession order and for warrants to evict him from his home.

Mr C's initial concerns were about B&B's letter of 4 November 2022 and the fact that it did not include a copy of the court order referred to and didn't detail the outstanding mortgage balance. While that may have been the case, I can't find that this disadvantaged Mr C in any way. He would have been provided with a copy of the court order when it had been issued the previous month and he had also been sent correspondence a few days earlier detailing the outstanding balance of the mortgage. As such, while Mr C might have liked 4 November letter to be in a different format with a further copy of the court order attached, I don't consider there was anything wrong with the communication or that he didn't have all the information he needed at that time.

As the Investigator pointed out the issue of B&B deciding to take legal action has been considered previously by one of my Ombudsman colleagues – she issued a final decision in April 2020 in which she concluded that the action had been reasonable in the circumstances at that time. In light of this I will only be considering the events that occurred after that point.

Mr C has said the term of his mortgage had not expire in 2019 as B&B said. As such, the balance of the mortgage was not due at that time and B&B should not have made the

decision to apply for a further possession order in 2022. I don't agree. The documentation we have relating to the mortgage advanced in 1994 shows that it had a term of 25 years. This is the term Mr C and his then wife asked for and the term that was granted. As such, the term of the mortgage ended in 2019.

In 2003 Mr C and his then wife applied for a home improvement loan over a term of four years. This would have been subject to the relevant terms and conditions from that time. However, it was a separate contract and would not have affected the main mortgage that is subject to this complaint.

The only information regarding a change to the main mortgage in 2003 relates to the addition of a new interest rate product being added to the mortgage, with associated terms. As we have recently confirmed to Mr C, an interest rate product is added to a mortgage, but doesn't alter the underlying mortgage contract. The product will have had its own terms, which would have related to things like porting, but they would have run alongside the existing mortgage terms and conditions, not replacing them.

While Mr C has said a new mortgage contract was entered into in 2003, I have seen no evidence that was the case. We requested B&B search its records for any evidence of a change to the mortgage contract in 2003, but it has been unable to find any such evidence. In addition, I note that the mortgage account number – the contract number – remained the same throughout. Had a new mortgage contract been entered into in 2003 it would have been allocated a new account number, which would have been used thereafter.

In his most recent submissions Mr C mentioned that the 2003 illustration for the interest rate product mentioned how much he would pay over the remainder of the mortgage term, if the product was added to the mortgage. He commented that he had paid that amount and so had repaid the amount owed within the 25 years. To assist Mr C in his consideration of that figure I would explain that it was the amount Mr C would be expected to pay from the time the interest rate product was added to the mortgage, and anything he had already paid would not form part of that figure. In addition, the figure was calculated assuming the mortgage account was run in line with the terms and conditions; so all payments being made on time and in full. Any arrears, charges and additional interest because the account was not managed in line with the terms and conditions, would be payable on top of the quoted figure.

As our investigator highlighted, the mortgage terms and conditions allowed B&B to move to legal action to repossess the property after two monthly payments were unpaid. However, this should not be the first action taken when a borrower is in financial difficulties. My Ombudsman colleague was satisfied that B&B had been reasonable to pursue legal action in 2019/2020. Nothing that happened thereafter would mean that continuing to do so was unreasonable. This is particularly so given the significant increase in the amount owing that built up in that period.

Overall, while I know this will disappoint Mr C, I don't consider B&B did anything wrong in 2022 and 2023, either in its communications or in deciding to continue to pursue legal action.

My final decision

My final decision is that I do not uphold this complaint. Under the rules of the Financial Ombudsman Service, I am required to ask Mr C to accept or reject my decision before 10 August 2023.

Derry Baxter
Ombudsman