

The complaint

Mr H complains that his mortgage with The Co-operative Bank Plc trading as Platform was mis-sold, and that Platform has withheld information from him even after he's made a subject access request.

What happened

Mr H and his former partner took out a mortgage in 2007. The mortgage was originally with another company but is now with The Co-operative Bank Plc trading as Platform.

Mr H and his former partner borrowed around £175,000 plus fees on interest only terms over 15 years. The term of the mortgage therefore came to an end in 2022, but to date the capital remains unpaid.

Mr H has made several complaints over the years, some of which he has then referred to us. In 2018, he complained that the mortgage had been mis-sold. When he referred the complaint to us, one of our investigators said that we couldn't consider the complaint unless his former partner joined it too. That didn't happen so we closed our file.

In October 2022, Mr H asked Platform for copies of various documents, including the original mortgage application. Platform treated that as a subject access request (SAR) and replied to Mr H. Mr H wasn't happy with the response, as he thought some information he was entitled to had been withheld. Platform sent him a further response with some additional information.

Mr H remained unhappy and referred his complaint to us. Another ombudsman said that we shouldn't consider the complaint about the sale of the mortgage, because we'd told Mr H in 2018 that we couldn't look at it without his former partner joining the complaint. Mr H hadn't progressed that at the time, and instead had brought this later complaint also on his own. The ombudsman said that as we'd excluded Mr H's complaint in the past and nothing had changed it wouldn't be appropriate for us to look at it now. But she said we could consider his complaint about whether his SAR had been handled appropriately.

One of our investigators looked at that part of Mr H's complaint and didn't uphold it. So Mr H requested that it be reviewed by an ombudsman.

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.

Another ombudsman has already said that we shouldn't look at the complaint about the sale and lending decision. I agree with her and agree with her reasons. I also add that even if we hadn't already excluded this complaint, there would be difficulties in us considering it – not least because of the passage of time (contrary to what Mr H says, the Limitation Act doesn't apply to complaints to the Financial Ombudsman Service), as well as the fact that Platform wasn't the originating lender. And that in any case the mortgage was sold by a broker – brokers acting as the agent of the borrower, not the lender. I won't therefore be considering

that part of Mr H's complaint here. Instead I'll focus on the handling of the SAR.

This complaint arose because Mr H requested a redemption statement around the end of the term. But he says that a family member, who is also a solicitor, advised him to request copies of the mortgage documentation, including from the time of the sale, before repaying. Mr H followed that advice.

Mr H requested all the paperwork from the time of sale, including the documentation he had himself provided such as bank statements and payslips. He says that a failure to disclose them shows that Platform never had them and so didn't carry out proper checks at the time, or is withholding them because of what they would show.

He says that Platform hasn't provided everything he has asked for – and some of what it has provided has caused him concern, such as a discrepancy in national insurance numbers, and evidence from an accountant he says he doesn't know. He says there's also evidence that Platform made payments to third parties. He doesn't believe the broker that sold the mortgage was registered with the regulator and authorised to do so at the time. He says that Platform has also withheld later documentation he's entitled to, such as copies of letters he sent it in around 2013.

Platform said that this was a self-certified mortgage, meaning evidence of income and expenditure wasn't required. It paid commission to both the broker and the packager who dealt with Mr H's application on his behalf, and that commission was declared at the time. It said that it had complied with his SAR within the required timescale, and also dealt with his follow-up queries.

Mr H is clearly very unhappy about matters. He says that interest should be frozen from the time of his SAR, in November 2022, until the matter is resolved. He says that the mortgage hasn't been repaid because of Platform's failure to comply with data protection law, so missed payments shouldn't be recorded on his credit file.

But I'm afraid there's a limit to what the Financial Ombudsman Service can do here. We've already explained to Mr H that we won't be looking at his complaint about the sale of the mortgage. Most of Mr H's complaints about the information Platform has given to him relate to his concerns about the sale – either because of information he considers he should have received but hasn't, or because of concerns about the content of what he has received. We are not investigating the sale of the mortgage, so I don't think it would be appropriate to investigate the accuracy of the information Platform gave (or said it didn't have) about the sale either.

A subject access request entitles Mr H to receive his personal data. But that's all it entitles him to. Platform has to give him the information it holds about him; nothing more. Platform has responded to Mr H's SAR, and his further queries, and given him what it has.

Whether it has complied with its legal obligations is a question for the Information Commissioner's Office (ICO). The Financial Ombudsman Service doesn't police data protection law, nor can we audit Platform's systems to ensure it's provided everything it has to. The Financial Ombudsman Service deals with the provision of financial services. As part of that, I'd expect Platform to deal with Mr H's requests for information and provide him with what it can, and I'm satisfied, based on the evidence I've seen, that it's done that. Where Mr H disagrees, that's largely because of his concerns about the conduct of the sale – but, as I've said, that's not a matter I'm investigating here.

As I say, enforcement of data protection law is a matter for the ICO. I've not seen any evidence that Platform has withheld information Mr H is entitled to. But even if it had, that

wouldn't mean that it's unfair to charge Mr H interest or unfair to expect him to pay his mortgage. I wouldn't expect a lender to freeze interest in these circumstances, and it wasn't unfair that Platform refused to do so. Nor am I persuaded that Platform prevented Mr H from repaying the capital balance in 2022. Mr H said he had the resources to do so at the time. Repaying it wouldn't have prevented him pursuing the dispute he has about how the mortgage was taken out. It's not unreasonable that Platform wouldn't agree to remove his former partner from the mortgage account while the balance was due but unpaid. And as for the title at the Land Registry, that's a matter between Mr H and his former partner – once the mortgage was repaid, there would be nothing to stop the title being amended. But it's not unreasonable that Platform wouldn't consent to that while it still had a charge over the property and the mortgage remained in joint names.

In conclusion, therefore, I've not seen anything that suggests to me that Platform has acted unreasonably. So I don't uphold this complaint.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 30 July 2024.

Simon Pugh
Ombudsman