

## **The complaint**

Mr F complains that Mars Capital Finance Limited trading as Mars Capital is taking legal action over the arrears on his mortgage. He said he was trying to sell the property, that sale had run into problems, and he just wanted Mars to wait until those were resolved.

## **What happened**

Mr F said this was previously a relative's property, but he'd had a mortgage on this property for some time. The first mortgage lender had gone bankrupt, and so had the second. He said the current provider, Mars, had upped interest rates last year, so Mr F decided to sell the property. He said he had buyers in place, but while he was preparing for a sale, a charge over the property put in place by his ex-wife was discovered.

Mr F said his ex-wife had fraudulently signed documents in his name, and he said he was trying to resolve the issue of the charge so the house could be sold. But Mars wouldn't wait. It was taking legal action against him. Mr F said his buyers were going to pull out of the purchase because of the delay all this had caused.

Mr F also queried whether he really needed to pay this lender, as it wasn't the company he'd taken the mortgage out with. He thought because the original lender had gone bankrupt, he shouldn't have to pay.

Mars said that by the end of July 2023 Mr F had £7,659.15 in mortgage arrears. It said he'd been keeping in touch with it until the start of June 2023, but then hadn't been in touch after that. Mars said it did need to hear from Mr F regularly, even if the sale of his property hadn't completed. So it had tried to contact him in July and at the start of August, but when all its attempts to speak to him were unsuccessful, it then decided to start legal action.

Mars asked Mr F to send it either proof of a sale agreement, or an update from his solicitor on the timeline for completion of the sale.

Mars didn't think it had acted unfairly. It said it couldn't agree that the letters and emails it had been sending were threatening or unnecessary. It said it had to let Mr F know what might happen next on the account. It asked Mr F to keep in touch, and said it wouldn't put a hold on legal proceedings at that time, although it would review this decision if Mr F could show the sale was progressing.

After this case came to our service, in November 2023, Mars did put its litigation on hold. Mr F's arrears had increased to around £11,000 by then.

Our investigator didn't think this complaint should be upheld. She said Mr F took this mortgage out in 2007, although a relative had previously used the house, it was now Mr F's home. Our investigator noted that Mr F's mortgage had been in arrears for some years.

Our investigator said she understood that Mr F was intending to sell the property, but the sale stalled following the discovery of an unknown interest in the property, and Mr F has told

us he's pursuing action about that. But our investigator said this complaint only deals with the agreement between Mr F and his mortgage lender, Mars. We can't look into the issues Mr F had raised about his ex-wife, and how the charge had come to be registered over this property. Those issues remain separate to this complaint, although our investigator said she'd considered them, when thinking about whether Mars should have done anything different.

Our investigator said Mr F had told us that he's self-employed, but payments to the mortgage haven't been regular as Mr F hasn't always been in work. He has a recurring health condition. Our investigator noted that Mr F's mortgage lender was expecting a payment each month, but Mr F hadn't always been able to pay. She said in these circumstances, it was particularly important that Mr F stayed in touch with Mars.

Our investigator said Mars had previously put arrangements in place to try to help Mr F clear the arrears, but in the last few years arrears had started to increase again, and few payments had been made in the last twelve months. Unfortunately, our investigator did think Mr F had been in persistent and long term arrears, and she said that once there is a situation of long-term arrears, with no means or signs of improvement, a lender might work with the borrower to support a sale. But our investigator said Mars would expect to see progress towards that sale being achieved. She thought Mars had given Mr F a reasonable amount of time to progress his sale. She understood Mr F wanted to resolve issues with his ex-wife, but she said she couldn't see that the mortgage had been made a priority. So with no progress on the sale, and also no contact from Mr F, she didn't think that Mars had made a mistake by taking litigation action.

Our investigator said Mr F hadn't raised with Mars the question of whether he should be paying the mortgage at all, as it wasn't the original lender. She said she'd ask Mars to look into that now. But she said as a general comment, most mortgages include in their terms that the mortgage can be sold to another lender, and the subsequent lender will take over the rights of the previous. Under those circumstances there was generally still an obligation to make payments to the new lender if possible.

Mr F didn't agree. He said the problems in 2014 had been the result of a serious accident. He told us more about the difficulties he'd had with his ex-wife. And he said that he just needed a little more time to resolve matters. Mr F wanted his complaint to be considered by an ombudsman, so the case was passed to me for a final 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.

I've reached the same overall conclusion on this complaint as our investigator.

I should say from the outset that our investigator was quite right to say that our service cannot get involved in the apparent dispute between Mr F and his ex-wife. Like her, I have also considered that as part of the background to the current complaint, but I don't think it would be appropriate for me to make any other comment on this.

Mr F has told us about the health problems he's dealing with, and explained this means he isn't always able to work. So I understand how the problems with his mortgage have arisen. But unfortunately, they have been going on for some time. I can see that in July 2022 Mr F made an overpayment, but then there were no payments for some months after this. Our service expects lenders to work with a borrower to try to find ways to get over any temporary

or short term problems with payments, but here, it doesn't appear that Mr F was in a position to resume his contractual monthly payments, or to make any contribution towards the arrears, during this time. Rather, he'd decided to sell the property. Mr F told Mars in January 2023 that a sale of the property was agreed.

Mr F told us he then discovered a charge over his property that he wasn't previously aware of, and said he wanted to resolve that before he sold. However, Mr F was still only making payments to the mortgage sporadically, and for amounts well below the contractual monthly payment. Mr F hasn't suggested he could pay any more than this at the time.

It appears that Mars was continuing to wait for Mr F's sale to progress in the first half of 2023. It spoke to him about this in June 2023, but then wasn't able to make any contact with him in July or in early August. Given the overall position of Mr F's mortgage at that time with arrears increasing, the lack of any apparently progress towards a sale (which Mr F now says may be delayed until a further court case has resolved the issue of the charge) and no contact from Mr F, I don't think it was unfair or unreasonable for Mars to start action to repossess the house.

I know that Mr F told Mars he found its contact with it threatening. But I do think Mars is obliged to keep Mr F informed of the position of his account, and it's also required to let him know what the next steps might be. I understand that it can be distressing to receive this information, but I don't think Mars made a mistake by keeping Mr F informed of the position of his account, and up to date on its intentions for the future.

Mars has suspended its litigation action while our service was considering this complaint. It has expressed concern that Mr F's mortgage debt continued to rise during this time.

Most recently, Mr F has told our service that this reference to our service has assisted in buying him time, and he's now secured some months of work, which will allow him to restart payments on the mortgage, and pay towards the arrears. I hope that Mr F succeeds in this aim. But I don't think it would be appropriate for our service to request any further stay in litigation by Mars in this case.

I understand that the question of whether Mr F does indeed need to make regular mortgage payments to Mars hasn't been raised with the lender, so I won't comment on that point here.

I know that Mr F will be disappointed, but I don't think this complaint should be upheld.

### **My final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 13 May 2024.

Esther Absalom-Gough

**Ombudsman**