

The complaint

Miss C complains that Capital Home Loans Limited (trading as CHL Mortgages) unfairly proceeded to take possession of her property when she'd told it she had funds to repay her mortgage arrears.

Miss C authorised a representative to help her with this complaint.

What happened

Miss C took out a mortgage with CHL in 2003. She's often struggled to maintain payments. CHL had previously taken recovery action and been granted suspended possession orders.

Miss C's account fell into arrears in early 2019 and the arrears increased. Miss C told us she couldn't clear the arrears and monthly payments were not affordable for her on a pension. CHL was granted an order for possession in June 2023.

In July 2023 Miss C told CHL a family member would provide funds to repay the arrears. CHL said it needed information about the source of funds. It sent a list of the required documents, some of which needed to be certified copies, to Miss C in July 2023.

An eviction date was set for mid-November 2023. CHL told Miss C this in August 2023. Miss C told CHL in September 2023 and October 2023 that she hadn't yet asked the family member for the funds.

In early November 2023, Miss C said the family member had transferred the funds to her. CHL re-sent the list of required documents regarding the source of funds. Mrs C provided some of the information on 8 November 2023. CHL contacted Miss C for the missing information. Miss C asked for more time as she was on holiday overseas with limited access to phones and internet. CHL proceeded with the eviction.

Miss C says this was unfair and caused her embarrassment, inconvenience and financial loss. Miss C says CHL should have given her more time to provide the documents regarding the source of funds.

CHL received a payment from Miss C's solicitor which repaid most of the balance in December 2023. The mortgage was repaid fully in early 2024.

Our investigator said, in the circumstances, it was fair for CHL to proceed with the eviction.

Miss C's representative didn't agree. He said Miss C's arrears history was irrelevant as she had the funds to repay the arrears. He said if Miss C had been in the country she'd have applied to court to cancel the eviction and CHL took advantage of her being away.

The representative said Miss C had little control over the proof of funds from a third party, and questioned whether this was necessary and not already satisfactorily proven.

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.

Where the evidence is incomplete, inconclusive or contradictory, I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

Miss C's representative said CHL didn't take into account Miss C's vulnerabilities due to her age (she's over 70), or consider whether it could put an arrangement in place to clear the arrears by the end of the term. The representative said CHL should have taken possession only as a last resort. These are matters I'd expect CHL to have considered. However, a court had issued an order for possession before the events that are the subject of this complaint. Miss C would have been able to raise these issues with the court. What I need to consider is whether it was fair for CHL to proceed with the eviction when Miss C had said she had funds to clear the arrears.

CHL was granted an order for possession in June 2023. This required Miss C to leave the property by 12 July 2023 or CHL could apply for an eviction order. At this point her arrears were about £25,000.

In early July 2023 Miss C told CHL a family member would provide funds to clear the arrears. CHL explained its requirements for evidence about the source of funds. It applied for an eviction date, which was set for 21 November 2023.

In early November 2023 Miss C told CHL the family member had transferred the funds to her. On 8 November 2023 she provided some, but not all, of the documents CHL had requested regarding the source of funds. The missing documents included Miss C's own bank statement showing the funds and certified copies of identity documents and proof of residence for the family member providing the funds. CHL sent emails to Miss C on 14 and 17 November 2023 asking for the missing information. It also asked for some further information it required after reviewing the documents it had received. It said if these documents were not received it would proceed with the eviction. Miss C didn't provide the required documents before the eviction date. She was overseas on holiday and said she had limited access to the internet.

I don't think it was unfair for CHL to ask for information about the source of funds. It has to comply with relevant law and regulations, and those regarding proceeds of crime and anti-money laundering place extensive obligations on financial businesses. CHL is required to put in place and follow policies and processes to ensure it complies. Having looked at the information CHL requested, I don't think this was unreasonable or unduly onerous to provide. And it had given Miss C the list of information in July 2023 – some four months prior to the eviction date.

Miss C's representative says CHL took advantage of Miss C being overseas to press ahead with the eviction, so that it could require Miss C to repay the whole balance. I don't think that's a fair comment. Miss C was aware of the order for possession issued in June 2023. She'd been aware of the eviction date since August 2023. If Miss C had grounds to challenge this in court she could have done so. She'd been told about CHL's requirement regarding the source of funds in July 2023. Miss C didn't confirm the family member would provide the funds until early November 2023. She provided some – but not all – of the requested documents on 8 November 2023, only two weeks before the eviction date, and then went away on holiday. If Miss C had problems providing the evidence regarding the source of funds due to the timing or being overseas that wasn't due to any error by CHL.

Miss C's representative says Miss C left it until November 2023 to ask for help as she was taking advice and looking into other options. I can understand it might have been difficult for Miss C to ask for help, even from family. And in addition to the funds themselves she had to ask the family member to provide certified copies of identity documents and information about their finances. But that doesn't mean it was wrong or unfair for CHL to ask for these documents.

I appreciate that Miss C's representative disagrees. But I think it was fair and reasonable for CHL to take the conduct of Miss C's account and her circumstances into account when deciding whether to proceed with the eviction. While Miss C had cleared her arrears in 2016, the account fell into arrears again from early 2019. The arrears increased consistently and by November 2023 Miss C had arrears of about £27,000. CHL said delaying the eviction would have meant additional legal and court costs (which would be added to the mortgage balance) without any guarantee that the arrears would be cleared. Miss C told us the mortgage was not affordable for her.

When Miss C returned from holiday CHL had taken possession of her property and she had to stay with family until she repaid the mortgage. This was inconvenient and embarrassing as she had to explain why she couldn't go home. Miss C says she had to borrow money from a neighbour to repay the mortgage. She says she incurred legal fees as she had to instruct a solicitor to manage the repayment, to avoid further problems with information about the source of funds. Miss C says she's had to instruct a broker to help her source an equity release mortgage to repay the money she's borrowed and incurred refinancing costs.

I appreciate how upsetting this must have been for Miss C. But I don't think in the circumstances it was unfair or unreasonable for CHL to proceed with the eviction. It follows that I don't think it's fair and reasonable to require CHL to pay compensation for any costs Miss C incurred.

My final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 1 October 2024.

Ruth Stevenson
Ombudsman