

The complaint

Mr and Mrs T have complained about their mortgage they held with Intrum Mortgages UK Finance Limited. They've said Intrum was just looking out for itself and never had any intention to allow a shortfall sale, instead it was just stringing them along until it could repossess their property. Mr and Mrs T have said they would like financial redress for all the stress and time they took trying to find a solution for the mortgage arrears.

What happened

Mr and Mrs T took this mortgage out in 2006. According to the original mortgage offer, they were borrowing just under £105,000 (plus fees) on a repayment basis over a 30-year term. The mortgage had a rate of interest that was fixed at 6.19% until 30 November 2009, after which it would revert to a variable rate.

It seems that at some point over the years the mortgage was transferred to being held on an interest only basis. I understand Mr and Mrs T moved out and their son lived in the property. The account has been in arrears on and off for a number of years and I understand a suspended possession order had been granted in 2016.

The account was transferred to Intrum (formally known as Mars Capital) in February 2023.

In March 2023 Mr and Mrs T said their son was living in the property and would only pay £500 a month. At that time Mr and Mrs T indicated the property was in negative equity and they wanted to work with Intrum. It was agreed that Mr and Mrs T would fill in an income and expenditure form and then things could be discussed once that had been received by Intrum.

In April Mr and Mrs T said they couldn't afford the full amount needed and said they wouldn't be paying anything further to the mortgage if the property was going to be taken into possession. Their income and expenditure information showed a deficit, and it was left that Mr and Mrs T would send in a further copy of their bank statements as Intrum couldn't read the copies it had received. Mr and Mrs T sent photos of their bank statements the following day.

In May Intrum discussed the option of a voluntary surrender with Mr and Mrs T. It sent the paperwork to them, and Mr and Mrs T decided to go ahead with that, sending the property keys to Intrum in June.

On 23 June Mr and Mrs T contacted Intrum to ask when the property would be taken into possession, and they were told it wouldn't be immediately as there was a process that needed to be followed. Mr and Mrs T indicated they'd been forced to send the keys by Intrum, so it offered to return the keys and stop the process, which Mr and Mrs T declined.

On 26 June Mr and Mrs T phoned Intrum as they said they'd seen in the news that lenders won't take properties into possession for 12 months and said they wanted the keys back. Intrum agreed to do so, but said an arrangement to pay would need to be put in place otherwise legal action would be taken. The following day Mr and Mrs T said they had decided to sell the property themselves.

On 18 July Mr and Mrs T emailed Intrum, enclosing two estate agents' marketing appraisals, saying the property was in negative equity and asking what Intrum's intentions were. Intrum replied saying that it was happy to work with Mr and Mrs T if they were in a position to set a payment plan, and if they weren't then it could consider a shortfall sale. It said to do that it would need two independent valuations of the property, a completed assets and liability form, three months' bank statements for all accounts held by both Mr and Mrs T, and a proposal of how they would repay the shortfall.

Mr and Mrs T emailed Intrum the following day saying they had some questions to ask, and a follow up phone call took place on 20 July, in which Mr and Mrs T said they might surrender the property if Intrum moved to legal action, and their son had left the property. The information was provided to Intrum over the next few weeks.

On 15 August Mr and Mrs T called as they'd received a letter from Intrum's solicitor. Intrum said that it was still willing to consider a shortfall sale, but the legal action would run alongside it as it couldn't allow the arrears to grow further as the property was already in negative equity. Mr and Mrs T said they weren't willing to proceed with the shortfall sale as they would need to pay a solicitor and an estate agent, and so it was agreed that the voluntary possession paperwork would be reissued.

Subsequently, Mr and Mrs T said they were no longer proceeding with the voluntary possession, and a court hearing was arranged for October 2023. Intrum was awarded possession of the property in 28 days.

The property was formally taken into possession in January 2024, and it was sold in July 2024 leaving a shortfall of around £68,000.

In the meantime, Mr and Mrs T had raised a complaint with Intrum which it responded to in September 2023. It apologised for the lack of clarity about the format it needed the bank statements in and offered £50 compensation for that, but it didn't uphold the remainder of the complaint.

Our Investigator thought Intrum could have taken action sooner, saying he thought the property should have been marketed as a voluntary surrender in May 2023. He said, had it done so, the legal fees would have been avoided and Mr and Mrs T would have saved around seven months of mortgage interest (assuming the sale would have taken the same amount of time to complete). He thought those sums should be taken off the outstanding mortgage balance, and £700 compensation should be paid to Mr and Mrs T.

Intrum didn't agree and so the case was passed to me to decide.

What I've decided – and why

I issued a provisional decision earlier this month, the findings of which said:

'It's not in dispute that Mr and Mrs T sent the keys to Intrum in June 2023 as they wanted to voluntarily surrender the property.

But having listened to the calls later that month Mr and Mrs T clearly withdrew their consent for a voluntary sale and wanted the keys returned to them. In a call on 26 June Intrum said it was Mr and Mrs T's decision about whether or not they had the keys back, to which Mr T responded "I'll have the keys back, I'll have them back and then we'll see what happens."

Once Mr and Mrs T withdrew their consent and requested the keys be returned to them there was nothing else Intrum could do in that respect other than return the keys. The voluntary surrender process can only be used if all the parties agree to it, so once Mr and Mrs T's agreement was withdrawn then the process had to come to an end. Mr and Mrs T said they were going to market and sell the property themselves.

For that reason I can't hold Intrum liable for any delays at that point as once the property had been removed from the voluntary possession process then the account needed to return to normal collections activity, which would be looking at various forbearance measures, trying to enter into a payment arrangement to clear the arrears and, if all that wasn't successful, pursuing legal action with a view to taking possession of the property.

Having considered everything very carefully I'm satisfied that's what Intrum did here.

Mr and Mrs T were clear they weren't in a position to clear the arrears, and as the account was already held on an interest only basis Intrum wasn't able to reduce the monthly payments by switching to interest only (as the account was already held on that basis) or extending the mortgage term (as that would only reduce the payments if it was a repayment mortgage).

In mid-July Mr and Mrs T told Intrum the property was worth less than the outstanding mortgage balance. They said that meant they couldn't sell it themselves and asked what Intrum's intentions were, and it said it would consider a shortfall sale.

Intrum spoke to Mr T on 20 July about the shortfall sale process. It explained it would still be a private sale by Mr and Mrs T, just that it would agree to remove its charge despite the full mortgage balance not being repaid with an agreement for Mr and Mrs T to pay the remainder back in a payment plan. The Intrum call handler said that once Mr and Mrs T received an offer on the property it would need to be referred to an Intrum manager with all the supporting information so an agreement to proceed could be considered. Intrum said a form would be posted to Mr and Mrs T for them to complete and agreed a follow up. The call ended with Intrum warning Mr and Mrs T that a letter before action had been issued and the account would be reviewed to see if further action would be taken. Mr T said he would hold off as it would be pointless instructing an estate agent if Intrum was going to repossess anyway.

In that call Mr T said that his son had been paying £500 a month and was willing to put another couple of hundred pounds in, but Mr and Mrs T had previously said he had told them he couldn't do that. Mr T said his son left the property as he thought he was going to be evicted, but had that misinformation not been given then the situation might have been very different. And in an email to our Investigator Mr and Mrs T said that if their son had remained in the property paying £500 a month, then the shortfall debt would have been

around £4,000 less than it was.

But I've listened to the earlier calls and Mr T was clear in those that his son wouldn't be willing to pay anymore, some examples being:

- 13 March Mr T said his son will pay £500 every month, but he'll not pay any more.
- 31 March Mr T said his son was still willing to pay the £500 but he's not willing to pay any more because he's saving for his own house
- 13 April Mr T said his son couldn't afford the £759 that the mortgage payment had gone up to, and in any event he wouldn't be willing to pay more than £500 a month as he was saving for his own house.
- 25 April Mr T said his son will continue to pay £500 a month.

I'm also not persuaded by the argument that Mr and Mrs T's son would have remained in the property for longer, as in the call on 9 May it was made clear that if Mr and Mrs T wanted to go down the voluntary surrender route then the lender needed vacant possession – that is the property needed to be cleared and Mr and Mrs T's son needed to have moved out. As Mr and Mrs T opted to go down that route, returning the keys in June, then their son would always have needed to have moved out. In addition, in the various calls Mr T said that their son wouldn't remain in the property paying £500 a month if the property was to be repossessed, as he would instead move in with his brother and save that money to put towards his own house deposit.

Repossession is always a last resort, so I don't find Intrum acted inappropriately when it held off progressing with legal action whilst Mr and Mrs T discussed other options. In May and June Mr and Mrs T were discussing a voluntary surrender and had sent the keys to Intrum, only to withdraw their permission at the end of June. It is only right Intrum didn't commence legal action at a time it seemed Mr and Mrs T were going to give voluntary possession to it.

Mr and Mrs T then said they would be selling the property themselves, and when they asked what would happen due to the negative equity Intrum gave them the option of going through the shortfall sale process. The paperwork for that was posted to Mr and Mrs T on 20 July.

I understand Mr and Mrs T were unhappy that Intrum instructed its solicitor on 8 August whilst the shortfall sale process was still being discussed, but as Intrum explained it couldn't allow the situation to continue to worsen indefinitely so it would have run the two processes alongside each other; that is, allow Mr and Mrs T to market the property themselves with Intrum considering a shortfall sale, whilst still starting the legal process so that could be progressed if Mr and Mrs T either couldn't sell the property themselves, or changed their mind and took the property back off the market.

That seems sensible and if Mr and Mrs T had progressed with marketing the property themselves, I see no reason to believe Intrum wouldn't have held off progressing the legal action to allow them a reasonable time to complete any sale.

Instead, on 15 August, Mr and Mrs T chose not to proceed with selling the property themselves, and a voluntary surrender was again discussed with Mr and Mrs T.

On 8 September Mr and Mrs T said they didn't want to proceed with the voluntary surrender, which meant the only remaining option was for Intrum to progress with the legal

action.

I don't think it was inappropriate for Intrum to not pursue legal action throughout May, June and July as it was giving Mr and Mrs T time to explore other options. And whilst I understand Mr and Mrs T's confusion that legal action was started in August before the discussions about Mr and Mrs T selling the property themselves had completed, I can understand why Intrum decided to take that step.

Whilst the legal action was started at that time, it could have easily been put on hold if Mr and Mrs T marketed their property and achieved a sale that was agreed by Intrum. But if the action hadn't been started then, and then either Mr and Mrs T changed their mind and didn't market the property themselves, or if no reasonable offer was received on the property, then legal action would have been started from scratch at a time that was maybe months later.

As part of Mr and Mrs T's complaint is that the property should have been taken into possession and sold sooner, then that wouldn't have helped as both possession and an eventual sale would have been pushed back further.

There is never an ideal time to take possession of a property, and it is easy with hindsight to say that should have happened either sooner or later than it did. But Intrum was acting in the moment without the benefit of hindsight, and it had to work with Mr and Mrs T to ensure that repossession was the last resort. Whilst Mr and Mrs T were discussing other options – such as a voluntary surrender of the property, or marketing it for sale themselves – then it is understandable that Intrum didn't push ahead with the legal action.

Intrum's solicitor decided it was clear to proceed at the end of August, with all other options having been exhausted and, at that time, the court listed the matter for a hearing on 10 October. Once the court had granted the possession order there had to be a further 28 days without action as that is what the court had ordered, and then once that period had passed there was a slight delay as Mr and Mrs T had raised a separate complaint about the witnessing of the original mortgage deed which meant Intrum needed to check with its solicitor if that would interfere with the enforcement process. It was confirmed it wouldn't and so the court order enforcement process was started. On 27 December it was confirmed Bailiffs would undertake the enforcement on 17 January 2024.

Matters involving the courts take time, and there is a process that has to be followed. Having considered everything very carefully I don't think Intrum delayed matters once legal action was started in August 2023.

I acknowledge Mr and Mrs T were frustrated by the process, saying they provided marketing appraisals to Intrum which it didn't look at properly, and that their bank statements needed to be in PDF form rather than screenshots. But there will always be some degree of inconvenience when dealing with an unfortunate situation like this. I can see why an Intrum adviser thought one of them was an online valuation when he looked at them, but once Mr and Mrs T explained it was a full estate agent visit then that was accepted.

Intrum has accepted that it should have been made clear to Mr and Mrs T that full versions of their bank statements were needed (whether that be PDFs or printed copies) rather than just screenshots. It has apologised for that and offered to pay £50 compensation. Having considered everything very carefully I'm satisfied that offer is fair and reasonable.

Overall, whilst I've a great deal of sympathy for the situation Mr and Mrs T found themselves in - with the property in negative equity, needing to move out, the property next

door causing issues, all against the backdrop of their own personal and financial situation - I don't think Intrum acted unreasonably in relation to its actions it took since it took over the mortgage.'

Both sides responded to my provisional decision. Intrum said it accepted my provisional findings and had nothing further to add. Mr and Mrs T said, in summary:

- Intrum was never clear in what it said and its account managers contradicted each other.
- They asked for the keys back as they felt they weren't getting any support.
- They don't accept it took from June to January to take possession of the property.
- I can't say their son wouldn't have stayed in the house as he would have.
- At the time lenders were told not to take possession action for 12 months, but Intrum made it clear it was going to do that anyway.
- Intrum didn't care about the stress and anxiety that Mr and Mrs T were caused.
- They had no choice not to go ahead with a shortfall sale as they would have had to commit to paying estate agent fees of around £1,200.
- They had to phone the solicitor to beg them to get Intrum to instruct a bailiff, even after a possession order had been granted.

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

There's little I can add to my provisional findings as these are points Mr and Mrs T have raised previously, so they'd been part of my considerations when I issued the provisional decision. For that reason, I will only deal with each of these points briefly.

I understand Mr and Mrs T feel Intrum wasn't clear, and that its account managers contradicted each other. Having considered everything very carefully I think Intrum set out the options to Mr and Mrs T and was as clear as it could be at the relevant times about what was happening. When Mr and Mrs T changed their mind about the way they wanted to proceed it set out the alternatives, and it gave them time to think about their options. Intrum has admitted that it could have been made clear to Mr and Mrs T that full versions of their bank statements were needed rather than just screenshots, and it apologised and paid £50 compensation for that.

Mr and Mrs T have said they didn't go ahead with the shortfall sale as they were concerned about incurring estate agent fees. I understand their concerns and understand why they decided not to proceed but that doesn't mean Intrum did anything wrong. Mr and Mrs T have mainly complained that the repossession took too long, but if Intrum had delayed the commencement of legal action to allow Mr and Mrs T more time under the shortfall sale process, then the repossession process would have been pushed back even further (if Mr and Mrs T hadn't managed to sell the property themselves). As I said in my provisional decision, there is never an ideal time to take possession of a property as demonstrated in this complaint with some of Mr and Mrs T's arguments being that the property should have been taken into possession and sold sooner, and others that the lender pushed ahead with action when it shouldn't have done so.

At the time Mr and Mrs T asked for the keys back Intrum had only had the keys for a matter of days, so it is difficult to see what support Mr and Mrs T feel was lacking in terms of that process. Handing the keys to a property back doesn't mean the property is immediately

taken into possession and sold, there is still a process that needs to be followed. It is unfortunate that Mr and Mrs T asked for the keys back at that time as I'm satisfied, had they allowed that process to continue, the property would have been sold much sooner and with lower costs (as it wouldn't have needed the additional legal action to take possession of the property and complete a formal eviction process). I'm not persuaded Mr and Mrs T's son would have stayed in the property because, quite simply, he had to move out when Mr and Mrs T chose to hand the keys to Intrum in June 2023. He couldn't stay in the property at that time as Mr and Mrs T had to give vacant possession to Intrum (that is, the property needed to be cleared of all belongings and there could be no-one living in it). It was Mr and Mrs T's choice to hand the keys back at that time so I can't hold Intrum liable for their son moving out.

As I demonstrated in my provisional decision, it didn't take from June to January to take possession of the property. Up until the end of June Mr and Mrs T were going to give voluntary possession of the property (so Intrum wouldn't need to take legal action), then throughout July Mr and Mrs T were going to sell the property themselves using the shortfall sale process. Again that meant Intrum wouldn't need to take legal action if the property was sold privately. Had Intrum commenced legal action in June or July then that would have been inappropriate as there was potentially an exit route at that time without needing the additional costs of legal action. Legal action was then started in August as things were no further forward and I think that was the right time; not too soon and not too late. Repossession is a legal process and certain steps have to be followed to protect all the parties involved, the process is also at the mercy of the court's diary and how soon it is able to book things in. Intrum's solicitor was in a position to book a court hearing in at the end of August, but unfortunately the first date that was available for the hearing wasn't until 10 October. I can't hold Intrum liable for that. There had to be a further 28 days after the court hearing as that was what the court order said, which takes us until 7 November, and once that date had passed Intrum and its solicitor needed to review things again to ensure there was no reason why they couldn't proceed to eviction. This was delayed due to the fact Mr and Mrs T raised a further complaint, this time about the validity of the mortgage contract, and outside of that legal processes take time and Mr and Mrs T had the option, at any time, to voluntarily give up the keys of the property if they wanted to hasten the process. Having considered the full legal process I'm satisfied this wasn't unduly delayed by Intrum or its solicitor.

Mr and Mrs T have said that at the time lenders had been told not to take possession action for 12 months, but I think they've misunderstood exactly what the Mortgage Charter (which is the set of standards that they are referring to) says. The Charter says 'From 26th June, a borrower will not be forced to leave their home without their consent unless in exceptional circumstances, in less than a year from their first missed payment'. But although this was a residential mortgage, it wasn't Mr and Mrs T's home as they'd moved out long before so they wouldn't have been 'forced to leave their home'. And it also says 'in less than a year from their first missed payment', not 'in less than a year from now'. Mr and Mrs T's mortgage had been in arrears (that is, had missed payments) on and off for a number of years so it wasn't 'less than a year from their first missed payment'. Therefore Mr and Mrs T's mortgage wasn't caught by this statement and so Intrum wouldn't have needed to have waited 12 months, it could have taken action immediately.

I've not seen anything to support Mr and Mrs T's belief that Intrum didn't care about the stress and anxiety that Mr and Mrs T were caused. The calls I've listened to were supportive, with the call handlers showing empathy. Unfortunately this was a long term situation, that had recently worsened, and there's nothing Intrum could do to change that. It could offer options, which I'm satisfied it did do such as a voluntary surrender, a payment arrangement to clear the arrears, or a shortfall sale, but in the end something had to happen as the situation couldn't be allowed to continue to worsen indefinitely. I was very sorry to see the

impact this has had on Mr and Mrs T, and I've a great deal of sympathy for their situation, but having considered everything very carefully I see no reason to depart from my provisional findings.

My final decision

Intrum Mortgages UK Finance Limited has already made an offer to pay £50 to settle the complaint and I think this offer is fair in all the circumstances. My final decision is that Intrum Mortgages UK Finance Limited should pay £50 to Mr and Mrs T.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs T to accept or reject my decision before 14 January 2025.

Julia Meadows
Ombudsman