

complaint

Miss L has complained that Platform Home Loans Ltd has continued to hold her responsible for a mortgage for which she is no longer liable, and it has recorded information about that mortgage on her credit reference file.

background

I issued my provisional decision in March 2015. A copy of my provisional findings is attached to this final decision and forms part of it. In my provisional decision I explained why I was minded to uphold Miss L's complaint. I invited both parties to let me have any further submissions before I reached a final decision.

Miss L accepted my provisional decision and had nothing further to add. Platform responded to say it thought some information in the decision was incorrect.

my findings

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

Platform has said that as the Insolvency Act predominantly covers unsecured debt, the act doesn't cover secured mortgage loans. It says this means it has the power to chase the borrowers for the debt, and to register information on their credit record. It also feels the mortgage shouldn't be marked as satisfied as it's still outstanding, otherwise it would effectively be writing-off the mortgage and giving the property to the borrowers debt-free.

To clarify, the Insolvency Act covers secured as well as unsecured debts. The main difference being that most unsecured debts will be written-off as there's no asset the creditor can take into possession to recover the debt. With a mortgage (or indeed a loan secured against any asset, such as a car for example) the lender can repossess the item the loan was secured against – in this case a property – to repay some, or all, of the debt. This doesn't mean secured debts don't fall within the Insolvency Act, just that the lender has an additional level of security as there is an item it can take possession of so it doesn't just write-off the debt. This is the difference between the right to enforce its security over a property, and the right to require a borrower to repay the debt.

Platform doesn't have the power to chase Miss L for the mortgage as under the terms of her bankruptcy Platform no longer has the right to require her to repay it. But the consequence for a consumer of not making payments to any secured debt – even in bankruptcy – is that the lender may decide to take possession of the asset (in this case the property). It's up to Platform to consider whether it now wishes to look to enforce its security by taking possession of – and selling – the property the mortgage is secured against. This is a slightly unusual case in that Miss L's ex-partner is also named on the mortgage, and as part of their divorce proceedings took a beneficial interest in the property. It may be that Miss L's ex-partner is maintaining the mortgage to a sufficient extent that Platform chooses not to enforce its security over the property. But that doesn't mean it can contact Miss L about the conduct of the account.

Platform has raised concerns that by marking the debt as satisfied it would effectively be writing-off the debt and giving the property to the borrowers debt-free. As laid out in my provisional decision, I only require Platform to mark the debt as '*partially satisfied*' on

Miss L's credit file. Unless there's a reason why it shouldn't - such as he's also bankrupt, for example - Platform can record information on the joint borrower's credit file as normal. Even if they both become bankrupt Platform wouldn't be giving the property to them debt-free as, if no mortgage payments were forthcoming, it could then look to enforce its security over the property.

If mortgage payments aren't made a lender can look to take possession of a property, even if the borrower has been made bankrupt. It can also contact the borrower at that time if it's required for the purpose of enforcing that security. What it can't do is contact a borrower to chase mortgage payments and record any missed payments on their credit file, as they're not required to make them once bankrupt.

my final decision

For the reasons I've given I uphold Miss L's complaint about Platform Home Loans Ltd. For clarity I've slightly amended the wording of what I require Platform to do, but this doesn't change the actual requirements:

- mark the entry on Miss L's credit record as '*partially satisfied*' or '*partially settled*' as at the date Miss L was discharged from bankruptcy,
- mark the account as having defaulted as at the date of Miss L's bankruptcy order on her credit record,
- not contact Miss L regarding the mortgage except insofar as this is necessary for the purpose of enforcing its security,
- stop providing information about the mortgage in respect of Miss L to credit reference agencies,
- pay Miss L £300 in respect of the inconvenience it has caused her.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss L to accept or reject my decision before 20 May 2015

Julia Chapman
ombudsman

COPY OF PROVISIONAL DECISION

complaint

Miss L has complained that Platform Home Loans Ltd has continued to hold her responsible for a mortgage for which she is no longer liable, and it has recorded information about that mortgage on her credit reference file.

background

Miss L was made bankrupt in 2013. Prior to her bankruptcy she was a joint owner of a buy-to-let property that was mortgaged to Platform.

As part of her divorce proceedings in 2012 the beneficial interest in the property was given to her husband, albeit he didn't remove her from the mortgage and she remains a joint owner of the legal title.

Miss L says that Platform should have marked the mortgage as satisfied or partially satisfied on her credit file when she went bankrupt, and that any payments missed by her ex-husband shouldn't show on her credit reference file.

Our adjudicator didn't recommend that the complaint should be upheld. She considered that the mortgage didn't form part of Miss L's bankruptcy, and that information on a credit reference file must be correct therefore any missed payments would be recorded as such.

Miss L didn't accept our adjudicator's recommendation.

my provisional findings

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

I think it's necessary to distinguish between a lender's right to enforce its security over a property, eg by exercising a power of sale, and a lender's right to require a borrower to repay the debt.

The right to enforce the security in the event of discharge from bankruptcy is preserved by section 281(2) of the Insolvency Act 1986. However, section 281(1) says that where a bankrupt is discharged, the discharge releases the borrower from all the bankruptcy debts.

This means that, although Platform is entitled to enforce its security over the property, Miss L isn't liable to pay the monthly instalments and Platform shouldn't pursue her for payment. I do, however, accept that, whilst Miss L remains a legal owner of the property, she would have to be named in any proceedings for possession.

It follows that, if Miss L is not liable to pay the monthly instalments, the fact that the monthly instalments aren't being paid shouldn't be reported to credit reference agencies in respect of Miss L.

There's no doubt that the Platform mortgage was a provable debt in Miss L's bankruptcy. As such it would have been included in her bankruptcy regardless of whether the trustee had an

interest in it (due to the negative equity). When a person is discharged from bankruptcy, lenders whose debts were included in the bankruptcy should mark the entry on the credit record as '*partially satisfied*' or '*partially settled*'. The bankruptcy entry should remain on Miss L's credit file for six years from the date of the bankruptcy order even though she's been discharged.

my provisional decision

Subject to any further submissions, my provisional decision is that I would uphold this complaint. I propose to require Platform Home Loans Ltd to;

- mark the entry on Miss L's credit record as '*partially satisfied*' or '*partially settled*',
- not contact Miss L regarding the mortgage except insofar as this is necessary for the purpose of enforcing its security,
- stop providing information about the mortgage in respect of Miss L to credit reference agencies,
- pay Miss L £300 in respect of the inconvenience it has caused her.

Julia Chapman
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