



BRIEFING NOTE



TELFORD LAW COURTS

Mortgage possession proceedings: when is a court order final?

*Mohammed Azhar v Accord Mortgages Limited (unreported),
Bradford County Court 7 December 2018*

In brief

A borrower's claim that a lender had overcharged interest and fees on his mortgage account was struck out. Several years earlier the lender had obtained a money judgment against the borrower, which had not been appealed.

Case background

In 2010 Accord obtained a suspended possession order and money judgment against Mr Azhar after he defaulted on his mortgage.

In 2012 Accord enforced the possession order, though in January 2013 the borrower managed to redeem the loan in full and the lender handed the property back to him.

In 2018 Mr Azhar commenced a claim against Accord for breach of contract and statutory duty, alleging he had been overcharged interest, fees and charges on the mortgage account in the sum of £17.5k.

The lender defended the claim on the basis the issues in dispute had already been decided. The borrower had acknowledged the debt in the possession claim, paid it, and did not appeal.

The money judgment obtained in 2010 was the final decision of the court and it was not open to the borrower to try and re-litigate an issue which has already been determined.

Comment

Lenders can take comfort from the fact that the Court was reluctant to allow a situation in which thousands of judgments in mortgage possession cases could potentially be challenged.

Aberdeen Considine is instructed on a number of cases in which borrowers are challenging the lender's mortgage accounting and consequently seeking to recover overcharged interest, fees and other charges.

For further advice or assistance please do not hesitate to contact the Banking Litigation team.



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