DRN-4339931

The complaint

Ms J complains about her mortgage with Pepper (UK) Limited, trading as Engage Credit. She says the mortgage was mis-sold because it was unaffordable and the lender didn't check she could repay it at the end of the term.

Ms J is also concerned that a broker fee and insurance costs may have been added to the mortgage, and complains that she wasn't offered any help over the years when she was struggling with the mortgage payments and when she asked for a better interest rate, and asked to change the mortgage to a capital and interest repayment basis.

What happened

Ms J took out this mortgage in 2008, through a broker. She borrowed £188,500. The mortgage was set up on an interest-only basis, at an initial three-year fixed interest rate of 8.49%, over a term of 22 years.

In 2010, Ms J made a complaint to her mortgage lender about the sale of the mortgage, which she subsequently referred to the Financial Ombudsman Service. In 2011, an adjudicator here looked into that complaint and didn't recommend it be upheld.

In 2015, Ms J's mortgage was transferred to Engage. On 28 February 2022, Ms J wrote to Engage complaining, in summary, that:

- the original lender mis-sold the mortgage because it had failed to check she could maintain the mortgage payments or repay the mortgage at the end of the term;

- the broker may have added their fee to the mortgage without her knowledge, and she wanted to know whether insurance costs had been added to the mortgage;

- she wasn't offered any support and no corrective action was taken when it came to light in 2008 that she had been given the wrong mortgage, and no help from her mortgage lender over the years while she has struggled to meet the monthly mortgage payments;

- her repeated requests for a better interest rate and the payment basis of the mortgage to be changed to a capital and interest basis were turned down, and instead she was pressured to make payments she couldn't afford.

Engage sent Ms J its final response in March 2022. It said she had left it too late to complain about the mortgage product she had been sold in 2008. It also said it wasn't upholding her complaints about a broker fee and insurance premiums. It said no broker fee had been added to the mortgage, and it could refund recent buildings insurance premiums it had charged her if she provided insurance schedules from June 2020 to date.

In June 2022, Ms J asked the Financial Ombudsman Service to look into her complaint. Our Investigator found that we had considered Ms J's complaint about the mis-sale of the mortgage in 2011, so he said we wouldn't investigate that complaint again now. He also concluded that Ms J's complaint about the type of mortgage she has and any fees that were added to it had been made too late, so we couldn't look into it.

Ms J didn't accept that conclusion and asked for it to be reviewed. She said her 2011 complaint was different from this one, and she only became aware that the lender should have done more checks before granting the mortgage when a legal adviser pointed this out to her in late 2021.

I issued a decision setting out the parts of this complaint the Financial Ombudsman Service has the power to consider. I concluded that we wouldn't consider Ms J's complaint about the sale of the mortgage or the broker fee, but we can consider her complaint about Engage's treatment of her financial difficulty and her requests for a lower interest rate and to change the payment basis of the mortgage, and about buildings insurance premiums added to the mortgage – but only from 28 February 2016 onwards.

Following my decision about our jurisdiction in this case, our Investigator looked into the parts of the complaint he could consider, and didn't recommend the complaint be upheld.

Ms J asked for a review. She still felt she had been treated very unfairly over the years, and said Engage had lied and misrepresented what happened.

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.

Ms J has been clear that she doesn't accept the conclusions I reached about the Financial Ombudsman Service's power to consider this complaint. I've issued a separate decision about the scope of our jurisdiction and explained the reasons for my conclusions. Ms J hasn't said anything new which changes my view about that. I'm required to apply the rules of the Financial Ombudsman scheme – which include rules about time limits as I said in my previous decision – in determining what complaints I can consider, rather than the Limitation Act or other law. The rules of this scheme mean I must consider when the events Ms J has complained about took place, and also when Ms J knew, or ought reasonably to have known, of her cause for complaint. I must also consider whether we have looked into complaints before, because it's not generally appropriate for us to reconsider a complaint we've already dealt with. My conclusions about this haven't changed, which means that I can't consider all elements of Ms J's complaint.

I'll now set out my findings about the parts of Ms J's complaint which I can consider: Engage's treatment of her financial difficulty and her requests for a lower interest rate and to change the payment basis of the mortgage, and her complaint about buildings insurance premiums added to the mortgage – but only from 28 February 2016 onwards.

Ms J considers that Engage's records of contact with her over the years are incomplete or wrong. I've taken into account everything she has said, and I'm satisfied that I have enough information to make a final decision.

My role is to come to a fair and reasonable outcome in all the circumstances. While I must explain my reasons for my decision, I'm not required to set out in detail my findings about every point a complainant has made; my focus is on what is material to the overall outcome.

<u>Financial difficulty, interest rate and payment basis of the mortgage since 28 February 2016</u>

Ms J's mortgage has been on an interest-only basis since inception and for the whole of the period I can consider, since 28 February 2016. It's not for me to decide whether this was the right basis for the mortgage to have been originally set up on in 2008, because I can't consider Ms J's complaint about the sale and the operation of the mortgage before 28 February 2016. It may nevertheless be helpful to point out that the rules of mortgage regulation have changed a great deal since 2008: interest-only mortgages taken out then were subject to different rules and requirements to those that apply to new mortgages taken out now.

Ms J complains that Engage has treated her very unfairly, pressuring her to pay more towards the mortgage when she hasn't been able to afford to do so and leaving her in significant hardship. She says she should have been put on a more affordable package, on a capital and interest repayment basis so that the mortgage will be repaid at the end of the term, but Engage has consistently refused to offer any help.

I've looked carefully at what Ms J has said, as well as at Engage's records of its contact with her since February 2016, and the mortgage statements. The mortgage has consistently been in arrears, and Ms J has explained the severe financial difficulty she has experienced. I recognise that she has faced significant challenges, but I don't find that Engage failed in its duty to offer her appropriate support. In reaching that conclusion, I have kept in mind what Ms J has said about failings in Engage's record-keeping. I'm nevertheless satisfied from the evidence I've seen that Engage discussed Ms J's financial situation with her on a regular basis, and agreed payment arrangements with her in order that the arrears could be repaid gradually within the remaining mortgage term. I think that was reasonable.

Engage didn't always agree to Ms J's requests to make lower payments, but its records indicate that this was after considering information she provided about her income and expenditure. In May and June 2019, for example, it didn't agree to reduced mortgage payments as Ms J wanted in order that she could pay more towards her unsecured debt. A mortgage is secured on the borrower's home, so it's not unreasonable or unusual for a mortgage lender to expect mortgage payments to be prioritised over payments to debts that aren't secured. In the circumstances, I don't think I can fairly say that Engage treated Ms J unfairly here.

Ms J says that Engage should have offered her a more affordable package, sustainable over the long term, in order that she isn't left with an outstanding mortgage and no means to repay it at the end of the term. But I think it's difficult to see how her financial situation would have accommodated such an arrangement. She was struggling to afford interest-only mortgage payments and had fallen into arrears, and has said that she had to rely on credit to buy essentials which she then struggled to repay.

I'm satisfied that, during the period I can consider in this complaint, Engage discussed changing the mortgage onto a capital and interest repayment basis with Ms J several times. Doing so wasn't affordable. In September 2020, for example, the monthly mortgage interest was just under £750, and the mortgage was in arrears. Capital and interest repayments over the remaining term of just under ten years at the then current interest rate of just over 4.5% would have been just under £2,000 a month.

A repayment mortgage would only result in the mortgage being repaid at the end of the term if Ms J could afford the monthly payments. It's clear that she couldn't have afforded the necessary capital and interest payments. She could, however, have made overpayments had she been able to do so, and that option will remain open to her in future in order to reduce the balance once she has repaid the arrears. A term extension also wouldn't have helped Ms J, since it wouldn't have affected the monthly mortgage interest payments.

I find nothing to indicate that Ms J asked Engage for a new interest rate product during the period I'm considering. In any event, a new interest rate often means a fixed rate, which comes with an early repayment charge (ERC). There's nothing to say that Engage had a rate available which would have made Ms J's mortgage affordable, and there would have been a risk of an ERC becoming payable if the arrears increased further and the property eventually needed to be sold. ERCs can be substantial, and this may have worsened Ms J's overall situation. In the circumstances, I don't think Engage treated Ms J unfairly in not offering her a new interest rate.

Mortgage lenders must treat borrowers fairly and explore forbearance measures when a borrower is in financial difficulty. But the purpose of forbearance is to give the borrower some breathing space to get things back on track. I'm satisfied that Engage has done that, and it has done what it could to assist Ms J. If Ms J is unable to afford the mortgage in the long term, it's for her to review her situation, with appropriate support if she wishes, and consider whether to move her mortgage elsewhere or sell the property, for example. A mortgage is a secured debt, and is treated differently to an unsecured credit card or overdraft: there is an underlying asset – the property – which can ultimately be sold if necessary to repay the debt. Engage has directed Ms J to sources of free debt advice and support, and that wasn't unreasonable; indeed, it's something I'd expect a responsible lender to do.

Overall, I don't consider that Engage has treated Ms J unfairly, or that it has failed to take account of her vulnerability, in respect of not making long term changes to the mortgage and in respect of its handling of the mortgage arrears since February 2016.

<u>Buildings insurance premiums since 28 February 2016</u>

Engage has charged Ms J for buildings insurance each month, unless she provided evidence that she had her own policy, and has said this is provided for in its terms and conditions. This isn't an unreasonable policy for it to have had – the mortgage terms require Ms J to keep the property insured, and Engage has added Ms J's property to its own insurance in order to protect its security when Ms J hasn't shown that she has insured the property herself. It has then added the cost of its insurance to Ms J's mortgage. I'm satisfied that it has kept Ms J informed about this, including by phone, and reminded her to provide her insurance policy documents where she has them in order for it to remove her property from its policy and either stop charging for periods when she has cover or make refunds.

The statements for Ms J's mortgage satisfy me that Engage has made various refunds and removed the property from its policy a number of times since February 2016. It has also provided us with details of the periods for which it hasn't received documents showing Ms J had her own buildings insurance, and our Investigator has relayed them to Ms J. Ms J hasn't provided anything to show that she had her own insurance cover for these periods, so I can't fairly require Engage to make any further refunds.

<u>Conclusion</u>

While I realise this isn't the outcome Ms J was hoping for, I find no basis on which I can fairly uphold this complaint.

My final decision

For these reasons, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Ms J to accept or reject my decision before 5 February 2024.

Janet Millington
Ombudsman