

The complaint

Mr B and Mrs B complain that Pepper (UK) Limited trading as Engage Credit started legal action to repossess their property before all options for the repayment of their interest-only mortgage had been properly considered. They also complain that legal action continued whilst our Service considered a previous complaint and after a final decision was issued.

Mr B and Mrs B are also unhappy about legal fees that Engage added to their mortgage account.

What happened

In 2005, Mr B and Mrs B took out an interest-only mortgage with a lender for a term of 13 years, which Engage went on to administer. In 2007, Mr B and Mrs B added a further loan to the mortgage and in October 2018 the outstanding balance was around £318,000.

From around 2017, Mr B and Mrs B asked Engage to consider at least two proposals to repay the mortgage balance. One of their proposals was to build and sell a property within the title of their existing property. Another was to raise funds by selling a plot of land with planning permission to build another property and secure funding for the remainder of the balance.

Mr B and Mrs B complained to Engage about how it had considered their proposals. Engage didn't uphold Mr B and Mrs B's main concern, but it agreed that its communication had been unsatisfactory, and it offered compensation of £500.

In April 2019, Mr B and Mrs B referred their complaint to this Service. Shortly afterwards, Engage started legal action to repossess the property.

Our service asked Engage to put the legal action on hold, but it didn't agree to do this. A hearing was held in September 2019, but the matter was adjourned. The investigator reviewed the complaint and felt it should be upheld in part. In summary, he said:

- The offer of £500 was appropriate.
- Engage's actions weren't unfair otherwise.
- He didn't think Engage had given full consideration to whether the sale and funding for the second proposal could be done simultaneously.
- If Mr B and Mrs B decided to sell the property, they should be given a reasonable amount of time to do so.

Mr B and Mrs B didn't agree with the investigator, so the complaint was reviewed by an ombudsman who issued a final decision on the complaint in August 2020.

In summary, the ombudsman felt Engage had dealt with the proposals fairly. However, he thought there had been several instances of delay and some lack of clarity in the grounds Engage had given for its decision, but he felt the compensation offered of £500 was fair.

The ombudsman also said that if Mr B and Mrs B could provide evidence that a simultaneous sale and funding could be achieved, he would expect Engage to consider the viability of that.

I understand that Mr B and Mrs B were able to raise funds and the mortgage was fully redeemed in June 2021.

Mr B and Mrs B complained again to Engage in 2021. Amongst other things, they complained about how Engage had handled their proposal to split the title of the property and also that it had started legal action in 2019. They also complained about legal fees that had been added to their mortgage account.

In June 2021, Engage issued another final response letter. In summary, it said that it had already addressed Mr B and Mrs B's concerns about its consideration of their proposal and about it starting legal action when it did in its previous final response letters. Further, this Service had considered their concerns and issued a final decision – so it wouldn't review this further.

However, it did address Mr B and Mrs B's complaint about legal fees that it had added to the mortgage account. It said the legal fees were an accurate reflection of the amount it was charged by its solicitors for the legal action taken, but it did accept it had wrongly charged interest on the fees before it had requested payment and it said it would refund this.

Unhappy with the response they received from Engage, Mr B and Mrs B referred a complaint to our service in November 2021. In summary, they said Engage hadn't properly considered their proposal and it had started legal proceedings to repossess their property in breach of the law and mortgage regulations and guidance - which say repossession should be a last resort.

They also complained that legal action had continued whilst our Service was considering their previous complaint and after a final decision was issued, and also about legal fees Engage had added to their mortgage account.

The investigator didn't think it was appropriate for this Service to consider Mr B and Mrs B's complaint in its entirety – because she felt an ombudsman had already considered and addressed some of their concerns in a final decision issued in August 2020. She also didn't think the complaint points that had not previously been considered by our Service should be upheld. In summary, she said:

- She couldn't see that legal action had continued after our Service had issued a final decision in August 2020.
- She felt Engage had charged legal fees in line with the mortgage terms and conditions, although it had applied interest to the fees too early. However, she could see Engage had already removed the interest charged on these fees and she didn't think it needed to do anything further

Mr B and Mrs B disagreed with the investigator. They reiterated their view that Engage hadn't complied with the law and mortgage regulations and guidance and said that it had previously accepted that it hadn't properly considered one of their proposals.

As agreement couldn't be reached, the complaint was passed to me for a decision.

My provisional decision

In my provisional decision, I said that I had thought carefully about what Mr B and Mrs B had told us, and whilst some of their current complaint points had been framed slightly differently than in their previous complaint, I was satisfied that this Service had already considered their core concerns.

I explained that the Financial Ombudsman Service operates under rules set out in the Dispute Resolution Rules (DISP) section of the Financial Conduct Authority's Handbook. The rules say I can dismiss a complaint without consideration of its merits [DISP 3.3.4A] where:

(5) dealing with such a type of complaint would otherwise seriously impair the effective operation of the Financial Ombudsman Service.

Examples given in the rules of what would seriously impair the operation of our organisation [DISP 3.3.4B], include:

(3) where the subject matter of the complaint has previously been considered or excluded under the Financial Ombudsman Service (unless material new evidence which the Ombudsman considers likely to affect the outcome has subsequently become available to the complainant).

I said that Mr B and Mrs B had previously complained to our service about how Engage had handled their proposals to repay the mortgage balance and a final decision on this complaint was issued in August 2020.

I explained that my ombudsman colleague had considered whether it was reasonable for Engage to reject Mr B and Mrs B's proposals for repaying balance and he'd concluded that Engage had dealt fairly with the proposals put to it. In doing so, he had considered the actions taken by Engage, including its decision to start legal proceedings when it did and he made the following finding on this point:

"Although Engage issued legal proceedings - and I can understand it doing in the absence of a reasonable proposal to pay off the balance - these are on hold pending this decision."

I also explained that my ombudsman colleague had been notified of Mr B and Mrs B's more recent complaint, and he had confirmed that he did consider whether Engage had been justified in starting legal proceedings when it did and he was satisfied that this was addressed in his final decision.

I said that I'd taken into account Mr B and Mrs B's view that the ombudsman didn't comment specifically on whether Engage had complied with relevant regulations and the law and I explained that the ombudsman would have taken account of relevant law, guidance and good practice in reaching his conclusion, as he was required to do - but he wasn't required to set that out in detail. It followed that I didn't think it would be appropriate for me to make findings about that issue now. To do so would be reconsidering something that we have already looked at and made a finding on.

I was also satisfied that no new material evidence that would likely affect the outcome had come to light since my ombudsman colleague issued his final decision in August 2020.

Because of this, I said I didn't intend to consider how Engage handled the proposals Mr B and Mrs B put to it or its decision to take legal action when it did any further.

However, I could see that Mr B and Mrs B had also complained about what had happened since our involvement in their previous complaint and I went on to consider the concerns raised about that and I set out my findings.

Legal action after our final decision

I noted that Mr B and Mrs B had complained about legal action continuing after the final decision was issued by our Service in August 2020.

I explained that I'd carefully reviewed the information available to me, including the invoices provided by the solicitors acting on behalf of Engage, and I couldn't see that any further legal action concerning the repossession of the property had taken place following the final decision dated August 2020. I also said that I had understood Mr B and Mrs B had redeemed the mortgage in June 2021. So, I wasn't able to conclude that Engage has acted unfairly or unreasonably.

Legal costs

I noted that Mr B and Mrs B were unhappy that Engage added legal costs to the mortgage account for the legal action that started in 2019.

I explained that Engage had told us that the legal fees that were added to the account were the costs charged by its solicitors when dealing with the legal proceedings that started in 2019. I explained that I'd reviewed the invoices provided by the solicitors and I was satisfied that the amount Mr B and Mrs B had been charged was an accurate reflection of the legal costs Engage had incurred.

I also said I'd reviewed the mortgage conditions and it is made clear in condition '13.1' under the heading 'Costs and Fees' that Mr B and Mrs B would be responsible for all costs and expenses incurred, amongst other things, for:

- (a) in recovering the mortgage debt; and
- (b) in any legal proceedings concerning the mortgage.

I said that because the mortgage conditions allow the lender to charge Mr B and Mrs B for the costs and expenses incurred by its solicitors dealing with litigation on the account, I was unable to conclude that Engage had acted outside the terms and conditions of the mortgage, or that it was unfair or unreasonable in seeking payment of those costs from Mr B and Mrs B.

I also noted that Engage had reversed the interest incorrectly applied on the fees and charges that had been added to the mortgage account so I wouldn't be asking Engage to do anything further.

Considering everything, I wasn't satisfied Engage had acted unfairly or unreasonably in the circumstances of this complaint.

Responses to my provisional decision

Engage didn't respond to my provisional decision.

Mr B and Mrs B responded to my provisional decision in detail, and I've summarised their key points below:

- They feel the scope of the complaint is being unreasonably restricted by previous matters.
- Engage has provided this Service with incorrect information.
- Legal proceedings commenced in June 2019, not March 2019 and were adjourned to allow Engage the opportunity to examine Mr B and Mrs B's submissions, and for it to review its stance. Further, costs weren't applied for or considered.
- They were told in October 2019 that legal proceedings had been withdrawn, but legal costs were incurred after this time.
- The legal proceedings weren't justified, so any costs incurred by Engage can't have been reasonably incurred, which is a requirement of the terms and conditions of the loan.
- Some of the charges relate to the transfer of the mortgage to another lender, which they shouldn't have been charged for.

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.

I've taken into account Mr B and Mrs B's comments about the outcome reached by my ombudsman colleague, and also their view that this complaint is being unreasonably restricted by previous matters. However, for the reasons I've explained in my provisional decision, I do not agree that it would be appropriate for me to revisit the subject matter that has previously been considered by another ombudsman and a finding reached. The rules the Financial Ombudsman Service operates under provide for me to take that view.

I've also taken into consideration Mr B and Mrs B's view that Engage provided this Service with incorrect information which impacted the decision made by my ombudsman colleague. However, I remain satisfied that no new material evidence that would likely affect the outcome has come to light since my ombudsman colleague issued his final decision in August 2020.

I've also thought about what Mr B and Mrs B have said about the legal costs added to their account, including that they were told in October 2019 that legal proceedings had been withdrawn. However, I can see from the evidence provided that the hearing scheduled to take place in September 2019 was adjourned for a period of time rather than withdrawn. I also understand that further hearings were scheduled to take place and were later adjourned.

I've carefully reviewed the invoices provided by Engage's solicitors, and I remain satisfied that the amount Mr B and Mrs B have been charged is an accurate reflection of the costs Engage was charged by its solicitors when dealing with the legal proceedings that started in 2019. I also haven't seen any evidence to show that this included any costs relating to the transfer of Mr B and Mrs B's mortgage to another lender.

Mr B and Mrs B have reiterated their view that the legal action wasn't justified, so any costs incurred as a result of it cannot be considered to have been reasonably incurred in line with the terms and conditions of the mortgage. However, my ombudsman colleague has already considered whether Engage was justified in taking legal action when it did, and he reached a finding on this.

I was very sorry to learn of the difficulties Mr B and Mrs B have been facing and the impact this matter has had on Mr B's health. I do not underestimate Mr B and Mrs B's strength of feeling about this matter. However, after reviewing everything, I see no reason to depart from my findings in my provisional decision.

My final decision

For the reasons I've given, I dismiss part of this complaint as set out above, because it has been previously considered by this Service.

For the reasons I've explained, I don't uphold Mr B and Mrs B's concerns about legal action continuing after a final decision was issued by this Service and Mr B and Mrs B's concerns about the legal costs that were added to their mortgage account in relation to the legal proceedings that started in 2019.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B and Mrs B to accept or reject my decision before 9 October 2023.

Michelle Griffiths
Ombudsman