

The complaint

Mr S complains that Metro Bank PLC delayed giving consent to a second charge on his property. During the delays the second charge lender increased its interest rates and changed its lending criteria. He asks that Metro Bank capitalises his arrears, so that he can take out the second charge loan and consolidate his unsecured debts.

What happened

Mr S works in an industry that was badly affected by the Covid-19 pandemic. His mortgage with Metro Bank fell into arrears. Mr S says Metro Bank failed to offer support, and this was the subject of a previous complaint to this service.

Mr S says by mid-2022 he was in a position to address his mortgage arrears (of about £26,000 at that time) and unsecured debts (of about £130,000). After taking independent financial advice, he decided to take out a second charge loan to consolidate his debts. This would have reduced his monthly debt repayment costs by about £2,300.

Mr S says he'll have access to a pension lump sum within four years which would be sufficient to clear the second charge loan, or he could look at re-mortgaging. He says currently he's paying significant interest on the unsecured loans, which means only a minimal amount goes towards reducing them.

In early September 2022 Mr S told Metro Bank what he intended to do. Metro Bank told him its policy is not to consent to second charge loans when a mortgage is in arrears. It said Mr S would have to clear the arrears first.

After Mr S complained, Metro Bank said it had wrongly given Mr S the impression it wouldn't consider his request and paid £100 towards his arrears. It said it would always consider requests of this type on an individual basis. Metro Bank said, having taken into account that Mr S had maintained payments for six months, that consolidating debt would reduce his monthly outgoings and that he'd taken independent advice it would consent to the second charge. It said this was on the basis the mortgage arrears were repaid when the loan completed.

Mr S said there were further delays as Metro Bank didn't return the required forms to the second charge lender for two months. Mr S says the delays caused him financial loss. He said the second charge lender changed its criteria in late 2022 and said it would only lend if the mortgage arrears were cleared first. It also increased the interest rate substantially.

Mr S's mortgage product expired in late November 2022. He can't take out a new product while he has mortgage arrears, meaning Metro Bank's standard variable rate (SVR) is being applied to his mortgage. His contractual monthly payments increased from about £3,100 to about £4,200.

In December 2022 Mr S asked Metro Bank to capitalise his arrears so that he could take out the second charge loan and a new interest rate product. Metro Bank declined. It said capitalisation is a last resort and, as Mr S had said he intended to repay the arrears with a

second charge loan, wasn't necessary here. Metro Bank also noted that Mr S had said his monthly payments while on the SVR were unaffordable, and capitalising arrears would increase Mr S's monthly payments.

Our investigator said Metro Bank hadn't treated Mr S fairly. He said it should re-assess Mr S's application to capitalise arrears. I sent a provisional decision in which I said I was inclined to agree with the investigator's recommendation but needed more information and evidence from both parties.

After both parties provided further information and evidence, I sent a second provisional decision. I said I didn't intend to uphold the complaint. In summary, I said I didn't think Metro Bank was solely responsible for delays or that this was the only reason the second charge lender didn't offer a loan to Mr S. And while I didn't think the reason Metro Bank had given for declining Mr S's request to capitalise his arrears in late 2022 was fair, I thought it was unlikely it would have agreed to capitalise his arrears if it had considered Mr S's request.

Metro Bank agreed. Mr S didn't agree, and sent further comments and evidence.

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.

Mr S has referred a number of times to a previous complaint. This was resolved when our investigator issued a view in mid-2021 which upheld Mr S's complaint that he hadn't been treated fairly and said Metro Bank should consider what tailored support it could offer. Our investigator said because of the complicated circumstances, Mr S should take advice and, having done so, contact Metro Bank to discuss the options available. Our investigator said if agreement was reached this should be backdated to when Mr S first asked Metro Bank for support. If agreement couldn't be reached and Mr S remained unhappy, our investigator said he could raise a further complaint.

Mr S has asked that we view this complaint as a continuation of his previous complaint. My colleagues have explained that we can't do that. I can consider what's happened since then.

The evidence here hasn't always been complete, clear or consistent. I've asked the parties for further information and evidence. They haven't always been able to provide this, but I think I have enough evidence to reach a fair decision. I should also explain that where the evidence is incomplete, inconclusive or contradictory, I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

Mr S's income was affected by the Covid-19 pandemic. Metro Bank agreed payment deferrals from May to October 2020. After this, Mr S made payments which covered interest, but not the full contractual monthly payment. From early 2022 Mr S made payments of slightly more than the contractual monthly payment.

Mr S made proposals to Metro Bank between late 2021 and mid-2022 about what he'd like to happen, such as switching permanently to interest only payments and capitalising his arrears. Metro Bank said it couldn't proceed with Mr S's requests because he didn't provide the information it required from him.

Mr S disputes this and says he sent Metro Bank both income and expenditure information and bank statements on two or three occasions. He says he can't provide evidence of this. I've commented further on this issue below.

By mid-2022 Mr S had taken independent financial advice. He says he was advised to take out a second charge loan and use the proceeds to clear the mortgage arrears and unsecured debts. This would have reduced Mr S's monthly outgoings.

Metro Bank initially told Mr S it wouldn't consent to the second charge while his account was in arrears. After Mr S complained it confirmed it would consent. However, there were delays in the consent forms being returned to the second charge lender.

Mr S provided an email from an intermediary advisor dated early December 2022. This said due to the delay in required paperwork being returned and market conditions the second charge lender wouldn't now lend until the mortgage account was brought up to date.

Mr S wrote to Metro Bank in mid-December 2022 saying the second charge lender would now only lend if the mortgage arrears were cleared first. He attached a copy of the email from the adviser to support this. Mr S told Metro Bank he was worried that his arrears prevented him taking out a new product at a time of rising interest rates, which would make the mortgage less affordable. He asked that Metro Bank capitalise the arrears so that he could proceed with the second charge loan.

Metro Bank declined to capitalise the arrears.

Mr S's request for consent to the second charge loan

Metro Bank says while it made an error in its initial response to Mr S's request for consent to a second charge loan, it then escalated the matter and provided consent on 29 September 2022. It says it didn't realise it also needed to complete and return a questionnaire (referred to as a BSQ), and the broker didn't say this was missing until 1 November 2022. It says it provided the BSQ on 10 November 2022.

Metro Bank says if the parties were working to complete the second charge loan it would have expected the broker to chase it for the BSQ. We asked Mr S about this, and whether he could provide evidence of his broker chasing Metro Bank before 1 November 2022.

Mr S provided a copy of a letter dated 7 September 2022 addressed to Metro Bank which asks for information about the mortgage account (this is the BSQ). He provided his own email dated 1 November 2022 to Metro Bank attaching this. He provided the applicant authority form which was signed on 14 September 2022. And a message from his broker dated 26 September 2022 asking him to contact Metro Bank and confirm his authority to grant consent to the second charge loan as the broker hadn't had a response.

Mr S provided a recent email from his broker which said they chased Metro Bank on 15 September 2022 and were told there was a 10-day turnaround for the BSQ and consent, it received the consent from Metro Bank on 7 October 2022 and it chased Metro Bank for the BSQ on 1 November 2022.

While Mr S said he'd provide evidence that the broker chased Metro Bank for the BSQ between late September and 1 November 2022 he hasn't provided this.

Mr S provided phone records showing he called Metro Bank three times in October 2022. Metro Bank's records don't mention these calls or what was discussed. Its notes at that time refer to holding arrears contact as Mr S intended to clear the arrears with a second charge loan. The first mention of the BSQ in Metro Bank's records is on 1 November 2022.

While Mr S says the BSQ was sent with the request for consent to the second charge in early September 2022, it's unclear that this was the case. Metro Bank's records don't list the

BSQ as one of the documents received with the request for consent to the second charge. Mr S says Metro Bank must have received the BSQ as it later returned it. However, Mr S sent the BSQ to Metro Bank on 1 November 2022.

But even if Metro Bank did receive the BSQ before 1 November 2022, I don't think it's fair to say that Metro Bank was solely responsible for the delays, or for the decision of the second charge lender not to lend while Mr S's arrears remained outstanding.

First, I don't think I can fairly find the second charge lender would have provided the loan if Metro Bank hadn't caused delays. While Mr S says I can make this finding on the balance of probabilities, I don't think that would be fair. Mr S provided a decision in principle, but I haven't seen an offer to lend from the second charge lender. There could have been other issues with the application.

Second, if the BSQ had been the only matter outstanding I'd have expected the broker and Mr S to have chased Metro Bank for it in October 2022. There's no evidence they did do so. This suggests there could have been other reasons (or other outstanding documents) which meant the application to the second charge lender didn't progress more quickly.

Mr S's request in December 2022 to capitalise his arrears

Mr S wrote to Metro Bank in mid-December 2022 saying the second charge lender would now only lend if the mortgage arrears were cleared first and asking it to agree to this.

I said in my first provisional decision that Metro Bank hadn't shown its decision not to capitalise Mr S's arrears was reached fairly. The main reason it gave was that Mr S could clear the arrears with the proceeds of the second charge loan. However, Mr S had told Metro Bank this wasn't possible, because the second charge lender wouldn't lend while his arrears were outstanding. And while Mr S had said he was concerned about future interest rate rises while he was on the SVR, I didn't think it was fair for Metro Bank to interpret this as him saying the mortgage wasn't affordable and use this as a reason to decline his request to capitalise arrears.

However, both parties provided further comments and evidence. I'm not persuaded that it was unfair for Metro Bank to decline to capitalise Mr S's arrears in December 2022. This is for the following reasons.

- Metro Bank says the income and expenditure information it received from Mr S in December 2022 showed a deficit position even before the mortgage went onto its SVR.

Mr S disputes this, and refers to spread sheets he sent to Metro Bank in December 2022 with income and expenditure scenarios. These spread sheets show a budget surplus if Metro Bank agreed to capitalise his arrears and he cleared his unsecured debts with a second charge loan. And a deficit if this didn't happen.

Mr S says that mortgage payments would be affordable once he'd taken out the second charge loan and repaid his unsecured debts. But Metro Bank couldn't have been certain that the second charge loan would be offered to him, even if it did capitalise the arrears. Mr S didn't provide a spread sheet for the scenario where his arrears were capitalised and his unsecured debts were not cleared by a second charge loan. But if his arrears were capitalised Mr S's monthly payments would be higher. Based on the information Mr S provided I think it was reasonable for Metro Bank to say this would be unaffordable.

Mr S says clearing his arrears would mean he could take out a new fixed rate product, which would reduce his monthly payments. I don't know when Mr S would be able to take out a

new product – this depends on Metro Bank’s policy. But it’s likely the products available in late 2022 and early 2023 had higher rates than Mr S’s previous product.

Mr S’s spread sheet assumed he’d take out a rate of about 5.75% after his arrears were capitalised, resulting in monthly payments of about £4,000. This appears affordable in his spread sheet as he assumes he’d make monthly payments of about £1,000 for a second charge loan instead of about £3,500 for his unsecured debts. Metro Bank couldn’t have been certain that the second charge loan would be offered to Mr S.

- Metro Bank says it didn’t receive bank statements from Mr S previously, despite repeated requests.

Metro Bank provided copies of letters requesting three months’ bank statements, from late 2021 onwards, including a letter dated 3 March 2023. Metro Bank says it first received three months bank statements in May 2023, after my first provisional decision.

Metro Bank provided evidence it requested bank statements when Mr S asked it to capitalise his arrears in late 2021, and sent a reminder asking again when they weren’t received.

Previously, Mr S disputed that bank statements were requested. More recently he said he’s adamant these were provided on two or three occasions, but he’s unable to provide evidence of this.

I haven’t seen evidence that, before May 2023, Mr S provided bank statements when Metro Bank requested them. I don’t think I can fairly find he’d have done so if this had been requested in December 2022. And, if bank statements had been provided, they might not have evidenced that the CMP was affordable. Metro Bank says it still hasn’t received evidence from Mr S to establish that his CMP is affordable.

- Metro Bank says in January 2023 Mr S and his broker again requested consent to the second charge to enable him to repay his arrears – suggesting capitalisation wasn’t his only option.

Metro Bank didn’t provide evidence of this request being made in January 2023, although it refers to it in its final response letter. Mr S recently provided an email from his broker saying they didn’t request this in January 2023.

In response to my first provisional decision, Mr S provided an undated document which said there were three lenders willing to lend with a second charge on the property. He proposed increasing payments towards the arrears once the second charge loan was in place. This supported what Metro Bank had said, in that a second charge loan was an option for Mr S regardless of whether his arrears are capitalised.

Mr S has clarified that this was a reference to the position in March 2022, and these lenders are no longer willing to lend. He says capitalisation is now his only option.

This confusion about whether a second charge loan is currently an option for Mr S is unfortunate. However, given the issues with affordability, I don’t think this makes Metro Bank’s decision not to capitalise Mr S’s arrears in late 2022 unfair.

What should happen now?

I don’t think Metro Bank was unfair when it didn’t agree to capitalise Mr S’s arrears in December 2022. I think it was reasonable for it to assess payments as unaffordable based on the information Mr S provided. In the circumstances, there would have been little point in

Metro Bank asking Mr S to provide the information it needed to consider the request, especially as he hadn't provided bank statements when it had requested them previously.

I appreciate that Mr S has limited options, and his position will have been made more difficult with interest rate rises.

It's unclear if Mr S has taken recent advice from an independent financial adviser. If not, he might consider doing so. I assume it's still Mr S's intention to address his unsecured debts as well as the mortgage arrears. He might have different options compared to 12 months ago, and advice about the best options for him might now be different.

Mr S says Metro Bank made errors, including incorrectly saying it hadn't received documents. He says it hasn't yet explained what discrepancies it's concerned about in the information he sent after my provisional decision. While I understand Mr S's frustration, this doesn't itself make it fair and reasonable to require Metro Bank to capitalise his arrears.

I'm not saying here that Metro Bank shouldn't agree to capitalise Mr S's arrears. This is something it should consider fairly and in accordance with its criteria and rules on mortgage regulation. But I don't think, based on the available evidence, it's fair and reasonable for me to require Metro Bank to capitalise Mr S's arrears. I don't think it's fair and reasonable to order Metro Bank to pay further compensation.

Metro Bank says parts of its process didn't run as smoothly as it hoped, and its communications haven't always been as clear as they should have been. It says this in part reflects the complicated nature of the requests made by Mr S. It says it will fully consider Mr S's request to capitalise arrears subject to receiving all the information it needs and resolving discrepancies. I think this is fair.

This decision is the end of our process and I hope the parties will now engage directly with the aim of reaching agreement about how Mr S's arrears will be addressed. Metro Bank will need to ask Mr S for the further information and evidence it needs to fairly consider his request to capitalise his arrears. I would encourage Mr S to engage with Metro Bank and provide the information and evidence it asks for.

My final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 18 September 2023.

Ruth Stevenson
Ombudsman