

The complaint

Mr J has complained about the lending policy of Principality Building Society (PBS) which he says is unfair. Mr J is also unhappy about the way PBS dealt with his complaint after his application for additional borrowing on his mortgage was declined.

To settle the complaint he wants PBS to consider his application fairly.

On 24 July 2023 I issued a jurisdiction decision explaining that I have no power to consider Mr J's complaint about how PBS handled the complaint he made following the decision to decline the further advance. The decision that follows is about Mr J's complaint that PBS declined his application for a further advance.

What happened

I will summarise the complaint in less detail than it's been presented. There are several reasons for this. First of all, the history of the matter is set out in detail in correspondence, and in the investigator's letter dated 7 February 2023. All parties have a copy of that letter, so there is no need for me to repeat the details here. I will instead concentrate on giving the reasons for my decision.

In addition, our decisions are published, so it's important I don't include any information that might lead to Mr J being identified. So for these reasons, I will keep my summary of what happened quite brief.

Mr J has a mortgage with PBS taken out in January 2018. The events giving rise to the complaint arose in August 2022. Mr J was on a fixed interest rate product that was due to expire. He owed about £132,000 on his mortgage, on a capital repayment basis, with a loan-to-value ratio (LTV) of about 45%.

On 1 August 2022 Mr J switched his mortgage onto a new five-year fixed rate, beginning the following month and ending in September 2027. If he repays the mortgage in full or in part during that time, an early repayment charge (ERC) will be payable. Mr J also said he wanted to borrow additional funds for debt consolidation.

Mr J discussed this with PBS on 25 August 2022, when he spoke on the phone to an adviser I will call SJ. Mr J asked to borrow an additional £20,000 for debt consolidation. There were two calls, the first when SJ took details of Mr J's financial commitments. At the end of that call SJ said the application hadn't passed affordability, but he would speak to someone about this and call him back.

During the second call, SJ explained that he'd spoken to underwriters, but the application still couldn't be approved, because the existing debt was affecting affordability.

Mr J was unhappy about this and told SJ he wanted to raise a complaint. He said he thought the policy was "*stupid*" and said he wanted to argue this until PBS approved the additional borrowing. SJ said he would arrange for someone to call him. Mr J spoke to a staff member I will call MG on 26 August 2022, but the call wasn't recorded.

There was another call on 30 August 2022, when Mr J spoke to a staff member I will call CR. That was followed up by a written complaint made by Mr J to PBS, initially to the CEO but replied to by a staff member who dealt with complaints, TP.

In his email to TP dated 8 September 2022 Mr J was adamant that he'd been told by SJ that, if property prices fell as they had in 2008, he'd be in negative equity. Mr J said this was ridiculous, because, with the additional borrowing, his LTV would still only be about 50%, so his property would need to fall in value by 50%.

Mr J said he had done some research about this and hadn't found any evidence to suggest house prices were going to fall by 50%. Mr J said *"I'm not sure what point [SJ] was trying to make by referencing a housing market crash of 50% unless he was trying to intimidate me into backing down from my equity release application. I am still waiting for confirmation from [PBS] if a housing market crash of 50% is your official position..."*

PBS didn't uphold the complaint. It explained that its lending policy was that where further borrowing was taken out to clear debts, the affordability assessment would include those debts. That's because the advance is made to the customer, not the creditors, so there is no guarantee the debts would be repaid, hence the need to consider them in the affordability assessment.

To resolve the complaint PBS agreed, because Mr J had only recently taken out a new product, to waive the ERC if he wanted to re-mortgage to a new lender.

Mr J was still unhappy and complained to the Financial Ombudsman Service. An investigator looked at what had happened, but didn't think the complaint should be upheld. He noted that, although PBS had sent in call recordings (including two calls with SJ), there was one call on 26 August 2022 with MG that wasn't available. Mr J says that this is the crucial call in which he'd been told that his loan application was being refused because his property could fall into negative equity.

Mr J maintains he's not been treated fairly and so it falls to me to review the complaint.

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 will explain first that the Financial Ombudsman Service is independent of both consumers and the businesses they are complaining about. This means that we don't act for consumers, nor do we take instructions either from consumers or businesses, or allow either party to direct the course of our investigations; were we to do so, it would compromise our independence and impartiality.

It's up to us to determine what evidence we need in order to investigate a complaint. So although I've noted the questions which Mr J would like answered, it's not my role to put those questions to PBS or act as a representative or go-between on this case.

Mr J was adamant when he made his complaint to PBS in early September 2022 that it was SJ who told him that property prices would fall by 50% when he spoke to him to discuss his application. Mr J had only two conversations with SJ – both on 25 August 2022.

I note that there is a call that PBS wasn't able to provide a recording for, with a member of staff I will call MG, which took place on 26 August 2022. Mr J has now told us that this was the call where he was told that his property could fall into negative equity.

However, having looked at what Mr J told PBS, I'm not persuaded that this is correct, given that Mr J was insistent in his email of 8 September 2022 that it was SJ who had told him this. I'm satisfied, from listening to the calls with SJ on 25 August 2022 that SJ did not mention at any point that there was a danger of Mr J falling into negative equity.

Mr J thinks there might be something sinister or untoward on the part of PBS because it couldn't provide a recording of his call with MG on 26 August 2022. However, because Mr J made it clear in his email to PBS of 8 September 2022 that it was SJ who had said his property could fall into negative equity, the call with MG is therefore of no relevance to that issue.

I can't tell PBS what lending criteria it must apply; that's a matter for its own commercial judgement and risk appetite. Indeed, I note that SJ explained to Mr J that PBS was one of the more risk-averse lenders in this regard. All lenders are allowed to decide the terms on which they will lend. In relation to further advances some, like PBS, take into account the existing credit commitments when assessing affordability; others do not. There are also lenders that will not allow further advances for debt consolidation under any circumstances.

PBS's rationale is that further advances are paid directly to the customers, and so it has no control over whether those customers actually pay off the debts they were intending to consolidate or not. Therefore it will take into account when assessing affordability that this might not happen. That is not unreasonable, in my opinion.

In the circumstances, I'm satisfied that PBS fairly applied its lending criteria to Mr J's application. Having done so, PBS was entitled to decline the application. I understand why Mr J thinks this is unfair, but I can't see that, by applying its lending criteria to this particular application, PBS has treated him any differently from any other customer in the same circumstances. I don't have the power to order PBS to make an exception to its lending policy specifically for Mr J.

I know this isn't the outcome Mr J was hoping for. It remains open to him to re-apply to PBS for a further advance if his circumstances change, or to re-mortgage to another lender. I note PBS said almost a year ago that it would waive any ERC if Mr J wanted to remortgage. However, that was right at the start of his new fixed-rate product, so I don't know if that situation still stands. PBS should clarify this with Mr J. I don't have any power to order PBS not to apply any contractual ERC, so if PBS does decide to waive it, this would be as a gesture of goodwill only.

My final decision

My final decision is that I don't uphold this complaint.

This final decision concludes the Financial Ombudsman Service's review of this complaint. This means that we are unable to consider the complaint any further, nor enter into any correspondence about the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 22 August 2023.

Jan O'Leary

Ombudsman