

The complaint

Mr and Mrs J complain that UCB Home Loans Corporation Ltd ignored their requests to switch their mortgage onto a capital repayment basis and extend the term. As a result, their mortgage term expired with an unpaid balance.

What happened

Mr and Mrs J took out a mortgage with UCB on a repayment basis. They switched their mortgage to interest only payments in 2006. Mr and Mrs J say they asked to switch for 12 months, but UCB made the switch permanent. Mr and Mrs J say they asked repeatedly to switch back onto a capital repayment basis, but UCB ignored these requests.

The mortgage term expired (one part in April 2020 and the second part in January 2021) with an unpaid balance of about £180,000. Mrs J says this is because UCB didn't convert the mortgage back to repayment terms.

Mr and Mrs J say they have no means to repay the balance at this time. They expect to be able to repay it if the term is extended for between five and 20 years. Members of their family have disabilities, and they say it would take some years to de-clutter the property for a sale. They say UCB hasn't dealt with their request for a term extension fairly.

We explained to Mr and Mrs J that time limits in our rules mean we can't look into all of their complaints. We said we can't look into their complaint about the mortgage being switched to interest only terms in 2006, or that it wasn't switched back onto repayment terms before 2012. We said we can look into Mr and Mrs J's complaint that UCB didn't extend the mortgage term and, since December 2012, it refused to convert the mortgage onto repayment terms.

Our investigator said given the conduct of Mr and Mrs J's account (which has been in arrears) it was unlikely they'd have been able to make the larger monthly payments required if they switched to a repayment basis. She said it was fair for UCB to decline to switch the mortgage to capital repayment.

Our investigator didn't uphold Mr and Mrs J's complaint about UCB not offering a term extension. She said UCB had considered their request fairly and found that monthly payments would be unaffordable, even on an interest only basis. Our investigator said she couldn't require UCB to rely on possible future income such as an expected inheritance and benefits Mr and Mrs J intend to claim in future, and Mr and Mrs J didn't have a credible plan to repay the capital. There was a risk they'd find themselves in the same position at the end of any extension.

Mrs J said they could afford monthly payments and intended to repay the mortgage by switching back to a repayment basis. She said if UCB had told her it wouldn't allow a switch to a repayment basis she'd have looked for a policy to repay the capital. She said she didn't make overpayments because she wasn't asked to do so.

Mrs J said UCB hadn't taken into account her family's multiple disabilities and health issues, the difficulty of getting the house ready for a sale, and that their children with disabilities can't

live independently. Mrs J also said UCB hadn't taken into account that recently they've been paying their mortgage without a problem and she can access lump sums in future.

Mrs J also said they wanted to look into re-mortgaging, but this would need time due to her disabilities. And UCB had recorded arrears on their credit files which made this difficult.

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.

Mrs J has recently raised some new issues. For instance, that she made additional payments which UCB took in fees instead of applying them to reduce the capital. I can't fairly address these issues in a final decision until UCB has had an opportunity to respond and they've been looked into by one of our investigators. I don't think it would be fair to delay issuing a final decision while this happens. This complaint has been with us for some time and I'm aware that Mrs J wants a resolution to that she can discuss the next steps with UCB.

Here, I'm looking into whether UCB was unfair not to convert Mr and Mrs J's mortgage onto repayment terms and offer a term extension.

Mr and Mrs J's account was in arrears from March 2011 until 2019. Although Mr and Mrs J made payments in most months during this period, there were months when no payments were made and overall the arrears balance increased. UCB started court proceedings which were halted when Mr and Mrs J cleared the arrears in early 2019. Mr and Mrs J's account fell into arrears again from mid-2020. The arrears balance continued to increase up to late 2022, when UCB provided its records to us. UCB says monthly payments are now being maintained.

Mr and Mrs J agreed a payment deferral with UCB in March to May 2020, during the Covid-19 pandemic. I note that UCB's records for March 2020 to May 2020 say no payments were due or received and the arrears balance didn't change. I don't think the payment deferral was the cause of Mr and Mrs J's arrears prior to this, or for the arrears increasing up to late 2022. Mrs J raised a separate complaint with UCB as to whether the payment deferral was reported correctly to the credit reference agencies, and I'm not looking into or making any findings about that here.

UCB has a duty to report accurate and up to date information to the credit reference agencies. As I said, I'm not looking into or making findings about what information UCB reported during any period that a payment deferral was agreed. But outside of that period, I don't think it was incorrect or unfair for UCB to report that Mr and Mrs J's mortgage was in arrears. While I appreciate having arrears on their credit files could make re-mortgaging more difficult, I can't fairly require UCB to remove this information.

I should explain briefly that the rules on mortgage regulation (set out in the FCA's handbook under MCOB) require lenders to carry out a detailed affordability assessment before agreeing to lend or vary a mortgage. Mr and Mrs J were asking UCB to vary their mortgage, so UCB needed to carry out an affordability assessment. There are only limited exceptions to this. MCOB 11.7.3 allows UCB to extend the term of an interest only mortgage without an affordability assessment if certain conditions are met and this is in Mr and Mrs J's best interests. MCOB 13.3 (which applies when a mortgage is in arrears, as was the case here) requires UCB to consider extending the term. And UCB has an obligation to treat Mr and Mrs J fairly and take their particular circumstances and best interests into account.

Mrs J drew my attention to recent announcements about the support mortgage lenders can

offer to borrowers who are struggling with the current economic situation. I'd expect UCB to take any relevant guidance into account, as well as the rules on mortgage regulation and its duty to treat Mr and Mrs J fairly.

Monthly mortgage payments are higher when a mortgage is on a capital repayment basis as compared to an interest only basis. That's because the monthly payment includes an amount towards repaying the capital as well as the interest due that month. While the amount of capital to be repaid each month can be reduced by extending the term, payments would still be higher than for a mortgage on an interest only basis.

I think it was fair for UCB to assess whether Mr and Mrs J could afford the higher payments if they switched to repayment terms, and to ask them for information about their income and expenditure to do so. Even if – as Mrs J says – UCB declined or failed to respond to her requests because of their arrears this doesn't change my decision. Mr and Mrs J were unable to maintain payments on an interest only basis, so it seems unlikely UCB would have assessed higher monthly payments on a capital repayment basis as affordable. If UCB had converted the mortgage to repayment terms, it's unlikely Mr and Mrs J would have been able to maintain the monthly payments. It's likely their mortgage would have fallen into arrears and they'd be in much the same position as they are now.

Mrs J said they didn't make overpayments to reduce the capital balance because no-one told them to do so. And if UCB had told her it wouldn't convert the mortgage to a repayment basis she'd have looked for a policy to repay the balance. Equally though, Mrs J says she was aware of the need to repay the balance before the end of the term, so if Mr and Mrs J did have funds available they could have made lump sum repayments. I don't know if a policy would have been available to Mr and Mrs J that would have provided sufficient funds to repay the mortgage balance. It seems unlikely they'd have had the funds available to pay for such a policy when they were struggling with their monthly mortgage payments.

Mrs J complained in early 2022 that she hadn't had a response to her most recent request to switch to repayment terms. UCB said it had sent letters and tried to contact Mr and Mrs J by phone to discuss the mortgage. It said it would need income and expenditure information to consider Mrs J's request, which Mrs J then provided.

UCB wrote to Mr and Mrs J in February 2022 saying a capital repayment mortgage wasn't affordable. It asked if they'd taken advice on the implications of drawing pension funds, and said there might be options if the balance was reduced and the remainder converted to a repayment basis.

UCB wrote to Mr and Mrs J again in mid-2022 saying it declined their request for a 20-year term extension on a repayment basis because monthly payments wouldn't be affordable. It explained what income it had taken into account, and that inheritance isn't an acceptable repayment plan. It said recovery action would be on hold while it referred Mr and Mrs J's account to senior managers for review in September 2022 to see what options could be available. Following the review, UCB said an extension wasn't affordable, even with a longer term, and Mr and Mrs J didn't meet criteria for a lifetime product. It said it would hold action for three months while Mr and Mrs J took independent financial advice.

Mrs J explained the difficulties for her family in moving to another property at this time, and I understand how important it is for Mr and Mrs J to find a solution which will allow them to stay in the property if that's possible. I'd expect UCB to take Mr and Mrs J's circumstances into account when considering what support it can offer and what's fair and in their best interests. This doesn't mean it has to agree to Mr and Mrs J's requests, or that a term extension would be in their best interests. While Mrs J hopes it will be easier for her family to move in future, there's no guarantee that would be the case. There's no certainty that Mr and

Mrs J's health will improve, or that there will be better support available for their children to live more independently. Mr and Mrs J could find it more difficult to move when they are older. Property prices won't necessarily rise or stay the same. A fall in property prices would reduce the amount of equity available to Mr and Mrs J from a sale, or could limit their ability to re-mortgage. UCB needs to take all of this into account when considering what's in Mr and Mrs J's best interests. While Mrs J says it will take time to de-clutter the property, I must take into account that the term expired in early 2021 so Mr and Mrs J have already had time to plan for this.

I think UCB fairly considered what options it could offer to Mr and Mrs J. I don't think it was unfair for UCB to decline Mr and Mrs J's requests to convert the mortgage onto repayment terms and extend the term. Based on the information it had about Mr and Mrs J's circumstances, I think it was reasonable for UCB to assess monthly payments for a capital repayment mortgage as unaffordable and Mr and Mrs J don't have an acceptable repayment plan for any interest only balance. At the end of any term extension, Mr and Mrs J could find themselves in the same position with a balance they can't repay and could struggle with monthly payments in the meantime. In the circumstances, I don't think it's fair to require UCB to extend the term of Mr and Mrs J's mortgage.

Mrs J says both she and Mr J now receive pension income as well as self-employed income. Mrs J says she's able to draw a tax-free lump sum from her pension to reduce the outstanding balance, which she says would make repayments affordable. I note that Mrs J also told UCB she can't draw a pension lump sum at this time without it affecting her benefits and pension entitlements. Mrs J says their income has increased and expenditure reduced since early 2022. Mrs J will need to provide evidence of this to UCB so that it can fairly consider her proposals and what support it can offer.

When Mr and Mrs J took out the mortgage they agreed to repay it by the end of the term. That's the basis of the contract they entered into. The term of Mr and Mrs J's mortgage expired more than two years ago with an unpaid balance and no agreement as to how the debt will be repaid. I hope Mr and Mrs J will be able to find a solution that allows them to stay in their home. But ultimately if this isn't possible and they can't repay the debt, UCB will be entitled to take steps to recover it, such as taking possession of the property.

I'd encourage Mr and Mrs J to consider taking independent financial advice about what options might be available. Mrs J says they have resources, such as her pension and a share in another property. An independent financial adviser might be able to help them find a solution which they can discuss with UCB, and advise them on the implications of different options (such as drawing a pension lump sum). While I don't know if other lenders offer products suitable for Mr and Mrs J, or if Mr and Mrs J would meet the relevant lending criteria, they'd be able to explore this with an independent financial adviser.

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 J and Mrs J to accept or reject my decision before 2 August 2023.

Ruth Stevenson
Ombudsman