

The complaint

Mr H has complained about how Preferred Mortgages Limited has treated him whilst he's been in financial difficulties. Mr H's complaint can be broken down into the following broad categories:

- Request for a temporary switch to interest-only
- Litigation
- Fees and charges
- Communication
- Credit file.

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here. The facts are not in dispute, so I'll focus on giving my reasons for my decision.

Although I've read and considered the whole file, I'll keep my comments to what I think is relevant. If I don't comment on any specific point, it's not because I've not considered it but because I don't think I need to comment on it in order to reach the right outcome.

I've read and understood everything Mr H has told us about his health and I've a great deal of sympathy for what he's been – and is going – through. I won't go into any detail about his ill-health in this decision to protect his privacy, but I have taken it into account.

As our investigator has explained, we can only deal with matters that happened before the complaint was progressed with us in October 2019. Anything that has happened since then – including any fees and charges added to the account - would need to be raised as a new complaint with Preferred. If Mr H was unhappy with Preferred's response then he could refer that to us as a new complaint at the time (subject to our usual rules, of course).

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.

Interest-only

Mr H requested a switch to interest-only in September 2018. At that time he was in arrears and Preferred asked him to complete an income and expenditure form and provide medical evidence as Mr H had explained about his ill-health.

After correspondence back and forth Preferred received the income and expenditure information from Mr H, but the medical evidence was still outstanding.

Unfortunately, the information Mr H provided showed his outgoings were higher than his income so even if the mortgage was changed to interest-only it would still have been unaffordable.

I understand Mr H feels a change to interest-only would help him, but interest-only would normally only be considered as a short-term measure, for example for a consumer that was briefly out of work just to give them a month or so breathing space. It's not normally considered a long-term option for financial difficulties, as it just moves the problem further down the line. Mr H has no way of repaying an interest-only mortgage at the end of the term, and a temporary switch to interest-only would mean his payments would be even higher by the time the mortgage was switched back to capital repayment, so would make things worse in the longer term.

Arrears reporting is based on the number of months in arrears a person is, so a change to interest-only – if the payments then still weren't affordable and so weren't made – could actually make things worse. To explain (I've taken the approximate figures from April 2017).

On a repayment basis (as this mortgage is) Mr H needed to pay £482 a month. At the start of the month he was £539 in arrears, and at the end of the month he was £1,021 in arrears. If you divide the amount of arrears by the monthly payment you get that Mr H was 1.1 months in arrears at the start of the month, and 2.1 months in arrears at the end of the month.

If the account had been switched to interest-only then the monthly payment would have been £187. Dividing those same amounts of arrears (£539 and £1,021) by the now lower monthly payment (£187) you get that Mr H was 2.9 months in arrears at the start of the month, and 5.5 months in arrears at the end of the month.

So on a repayment basis the account was recorded as 1.1 months and 2.1 months in arrears, but if the account had been switched to interest-only those arrears would instead have been recorded as 2.9 months and 5.5 months; a much worse situation and one more likely to proceed to litigation.

Having considered everything I'm satisfied Preferred didn't treat Mr H unfairly when it didn't agree to switch his mortgage onto an interest-only basis.

Litigation

As Mr H's income and expenditure information showed his outgoings were higher than his income, there were no options available to Preferred to make changes to the mortgage to help Mr H. Anything it did would be unaffordable, other than allowing Mr H to live in the house and not have to make any payments, and that wouldn't be something Preferred would be expected to do.

Preferred asked Mr H to send the medical evidence as that was still outstanding, and also asked for proof the property was on the market as Mr H said he was selling it. Preferred put a 30-day hold on the account to prevent further action being taken whilst it awaited that information.

As the information wasn't received Preferred moved things to litigation. By that time Mr H hadn't made any payments in over a year, and it had been six-months since a payment had been received from the Department of Work and Pensions (DWP). Mr H had said the property had been on the market for around six-months at that point.

Whilst I've great deal of sympathy for the situation Mr H was in, having considered everything very carefully I don't think Preferred acted unreasonably when it decided to move things forward to litigation at that time.

Mr H said he wasn't notified in advance of the court hearing, so he wanted the order set aside. Preferred's solicitor wrote to Mr H on 26 June 2019 to let him know the hearing was set for 7 August 2019. As that letter was correctly addressed, I'm satisfied enough was done by Preferred and its solicitor to make Mr H aware of the date of the hearing.

Fees and charges

As was agreed, we can only look at the fees and charges that were incurred between September 2013 and October 2019.

Preferred has already agreed to reverse various fees and charges from the account. The following have either already been reversed, or will be reversed if Mr H accepts this final decision:

Date	Description	Amount
28 April 2014	Arrears Management Fee (AMF)	£70
28 July 2014	AMF	£70
28 October 2014	AMF	£70
4 December 2014	Service Charge / Ground Rent Fee	£100
4 December 2014	Service Charge / Ground Rent	£1,431.62
28 July 2015	AMF	£70
28 December 2015	AMF	£70
4 October 2017	AMF	£55
3 November 2017	AMF	£55
11 January 2018	Legal Costs (part of the overall £801 charged)	£159
6 March 2018	AMF	£35
3 September 2018	AMF	£35
4 October 2018	AMF	£35
3 January 2019	AMF	£35
6 March 2019	AMF	£35
24 April 2019	AMF	£35
3 August 2019	AMF	£35
6 September 2019	Legal Costs	£243.20
4 October 2019	AMF	£35

That leaves the following AMFs and legal charges on Mr H's account:

Date	Description	Amount
6 March 2017	AMF	£55
3 April 2017	AMF	£55
19 August 2017	AMF	£55
3 September 2017	AMF	£55
26 October 2017	Referral to Solicitors Fee	£90
11 January 2018	Legal Costs (part of the overall £801 charged)	£642
6 May 2018	AMF	£35
3 June 2018	AMF	£35
4 July 2018	AMF	£35
3 August 2018	AMF	£35
8 October 2018	Referral to Solicitors Fee	£90
30 October 2018	Legal Costs	£41.20
3 November 2018	AMF	£35
4 December 2018	AMF	£35
31 December 2018	Legal Costs	£243.20

3 February 2019	AMF	£35
7 March 2019	Referral to Solicitors Fee	£90
10 April 2019	Legal Costs	£40
4 May 2019	AMF	£35
3 June 2019	AMF	£35
4 July 2019	AMF	£35
16 August 2019	Legal Costs	£243.20

I've considered the remaining fees very carefully, along with the contact notes, Mr H's submissions and the conduct of the account. Having done so I think all the remaining AMFs were fairly charged apart from one, which I will detail below. The AMFs were charged when the account was in arrears and a full payment hadn't been made. Whilst I acknowledge Mr H's difficulties, the AMFs are an integral part of the account and can be charged in these circumstances. Having considered everything there are no grounds for me to order these be reversed, other than one.

The fee charged on 3 April 2017 was following Mr H paying £350 of the £482 due in March, and a phone call between the parties on 29 March. At that time the interest due was around £187 so the £350 payment more than covered that. In that call it was recorded that Mr H said he won't have any income for three months and he needed some help. It was recorded that he had a negative disposable income.

The account was referred to a specialist team, but the follow up call wasn't made until 5 April. In that call it was agreed that Mr H wouldn't make a payment for the next three months, but by then he'd already been charged the AMF for March. It seems Preferred accepted Mr H couldn't afford his payments at that time, yet he still managed to pay £350 of the £482 due, so all things considered I'm satisfied the AMF charged on 3 April 2017 should be reversed off the account.

Preferred has provided copies of the invoices it received from its legal representatives and I'm satisfied those match the amounts charged to Mr H's mortgage account. Under the terms and conditions of the account Preferred is allowed to pass on any third-party costs it incurs on the account – such as legal fees – onto Mr H, so Preferred did nothing wrong in adding those legal costs onto Mr H's mortgage account.

Having considered everything, Preferred should reverse all the fees and charges listed in the first table (if it hasn't already done so), and also reverse the £55 AMF charged on 3 April 2017.

Communication

Mr H often used a 'contact us' form on Preferred's website. I understand Mr H felt some of his messages should have been dealt with as complaints, but as our investigator explained, wording such as "*I request that you move me to an interest only arrangement for 2 years*" would be dealt with as an enquiry to amend an account, not a formal complaint. For that reason, we can't hold Preferred liable for not responding to everything using the formal complaints procedure.

Mr H has said that because Preferred doesn't have a time stamp on its website contact form page then he doesn't know when each of his messages was submitted. He's also commented on the fact not all the letters he received from Preferred have a complaint reference number or date on them. We're not the regulator and it's not our role to tell a business how it should operate in general terms. Whilst I can understand how it would help

Mr H keep track of matters, these aren't things I could order Preferred to change as it isn't within my power to do so.

Whilst it is clear there has been a lot of communication between the parties, I can't see any of Mr H's messages weren't dealt with in some form, and so I don't uphold this part of Mr H's complaint.

Credit file

Mr H has asked that Preferred change the adverse information recorded on his credit file, but unfortunately that isn't something we would order Preferred to do.

It's normal industry practice for a lender to record any arrears on a credit file. In fact, lenders have a *duty* to report that information. In this case I don't think Preferred did anything wrong in reporting the true arrears position of Mr H's mortgage account. The fact some AMFs will be refunded is unconnected to the credit file reporting. The credit file reporting has to be a true statement of Mr H's account, so all the time his mortgage is in arrears his credit file will reflect that.

Putting things right

Preferred needs to remove the following debits from Mr H's mortgage account (if it hasn't already done so), backdated to the date each was charged for interest purposes:

Date	Description	Amount
28 April 2014	Arrears Management Fee (AMF)	£70
28 July 2014	AMF	£70
28 October 2014	AMF	£70
4 December 2014	Service Charge / Ground Rent Fee	£100
4 December 2014	Service Charge / Ground Rent	£1,431.62
28 July 2015	AMF	£70
28 December 2015	AMF	£70
3 April 2017	AMF	£55
4 October 2017	AMF	£55
3 November 2017	AMF	£55
11 January 2018	Legal Costs (part of the overall £801 charged)	£159
6 March 2018	AMF	£35
3 September 2018	AMF	£35
4 October 2018	AMF	£35
3 January 2019	AMF	£35
6 March 2019	AMF	£35
24 April 2019	AMF	£35
3 August 2019	AMF	£35
6 September 2019	Legal Costs	£243.20
4 October 2019	AMF	35

I make no other order or award.

My final decision

I uphold this complaint and order Preferred Mortgages Limited to remove the debits I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 27 April 2021.

Julia Meadows

Ombudsman