

## **The complaint**

Mr and Mrs H complain that Mars Capital Finance Limited (“Mars”) is not supporting them in relation to their second charge mortgage whilst they are facing financial difficulties.

## **What happened**

In November 2006, Mr and Mrs H took out a second charge mortgage for £38,000 over a term of 25 years secured against their property. Mars acquired the loan account from the previous lender in May 2019, therefore I will refer to Mars throughout my decision for ease.

Mr and Mrs H complain that Mars is not treating them fairly whilst they are facing financial difficulties. They say they’ve asked Mars to help by freezing the interest or reducing their monthly repayment but instead Mars is frequently contacting them about repossession. Mr and Mrs H also say the balance of their mortgage is more than they originally borrowed and they are struggling to pay it back. This is severely impacting upon both Mr and Mrs H’s mental health.

Mars disagrees that it has not treated Mr and Mrs H fairly or taken their circumstances into consideration. It says that Mr and Mrs H have not provided details of their income and expenditure (“I&E”) following several requests, so it has therefore been unable to fully review the options available. Mars put a payment holiday in place from December 2021 until May 2021 in order to give them some breathing space and time to return the I&E to allow it to review the options. However, this has still not been provided.

Mars says that it is responsible for making Mr and Mrs H aware of any potential next steps with the account. Given the high amount of arrears, it may consider legal action in the future but it is not considering legal action at present. Mars says that it would not be fair to allow the arrears balance to continue to increase as there is also interest on overdue payments so this may be reviewed in future. It says that it has found no evidence to suggest it has constantly advised Mr and Mrs H about repossession.

In relation to the balance being larger than the amount originally taken, Mars says this is due to the agreed interest and as Mr and Mrs H have not always paid the agreed monthly payment.

Our investigator looked into this complaint and was of the view that Mars hadn’t acted unreasonably and had been fair when approaching Mr and Mrs H’s financial difficulties. He didn’t think it was unreasonable for Mars not to have considered forbearance options until Mr and Mrs H had provided evidence of their financial circumstances and encouraged them to engage with Mars and provide a completed I&E assessment so an agreement could be reached on how best to help their circumstances.

In relation to the balance, the investigator was unable to see anything to suggest that Mars had administered the account unreasonably. He thought that, due to multiple missed payments, the balance had not reduced as expected over the term. In relation to the complaint about threats of repossession, the investigator was unable to say that Mars had regularly threatened repossession and when this had been mentioned it was during a conversation about next steps. The investigator therefore did not request that Mars do anything further.

Mr and Mrs H disagree with this so the case has come to me to make a decision. Mr H says that the impact of the loan on his and Mrs H's mental health has been glossed over and that Mars has shown a lack of understanding, compassion and empathy. They say that the balance is unrealistic and they are in an impossible situation and there is no accountability being placed on Mars. Mr and Mrs H feel that if they complete the I&E this will result in either Mars asking for money that they don't have every month or that if there is no affordability their home will be taken away so they feel they can't win.

Mr and Mrs H have also complained that their mortgage was mis-sold. This service has already addressed a complaint they made against Mars in relation to the mis-sale and a final decision was issued in relation to this on 30 June 2021. So we wouldn't be able to look at this again and I haven't considered it in my decision.

### **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.

Having carefully considered all the evidence and arguments, I agree with the investigator's view for broadly the same reasons and I've explained my reasons further below.

I've first looked at whether Mars has treated Mr and Mrs H fairly in light of their circumstances including their mental health and financial difficulties.

I can see from the contact notes that Mr H sent an email in September 2019 advising Mars about his and his wife's deteriorating mental health and requesting that any correspondence was sent by email. This was something which Mr H said the previous lender had been aware of and was asking if this had been passed on.

Mars responded on 3 October to advise Mr and Mrs H that it had updated the communication preferences going forward and that it had been made aware of the health conditions. However, it also noted that it did need to address the arrears on the account and work with them to agree a suitable and affordable arrangement. It explained that in order to do this it would need to carry out a financial review of Mr and Mrs H's income and expenditure, including bank statements and pay slips. Mars also advised that regulatory letters would still need to be sent by post and that this was something it was not able to change.

Mr H wrote back the following day to indicate that this request had caused his and Mrs H's mental health to deteriorate further, that the stress and anxiety was too much for him to send bank statements and that he wasn't willing to do this as it was an invasion of privacy. He questioned why Mars hadn't mentioned anything about whether the interest should be frozen.

Mars responded on 18 October 2019 to explain that it was aware of the impact upon Mr and Mrs H's health but without this information it would be unable to set up a formal agreement as it would be unable to make an informed decision as to what was affordable, which enables it to meet regulatory requirements. It requested the completed I&E again along with supporting documents in order that it could fully review their circumstances to set up an affordable repayment plan to clear the arrears.

Mr H contacted Mars on 7 November 2019 to advise that he wasn't able to pay the contractual amount and hadn't been for some time and he was told again that he would need to complete the I&E assessment. He asked about the interest being frozen and was advised that Mars would not do that at this stage. He went on to make a complaint about the mis-sale of the mortgage.

On 17 April 2020, Mars contacted Mr H to discuss the situation and inform him that a COVID-19 payment holiday would not be automatically applied and would need to be requested. On 23 June 2020, Mr H contacted Mars as he felt it wasn't supporting him. Mars

advised again that it would need the I&E; Mr H said he would send this but not the bank statements and he was advised that he needed to send the bank statements.

Mr H called again on 24 July 2020 to discuss his circumstances and was again advised to return the I&E in order for it to be able to review the affordability against the options available including concessions and interest only. Mars advised that it wouldn't be treating him fairly as a customer to allow the continued non-payment and for the balance to increase with no payment and no strategy, and that litigation might be considered unless it was able to do this. Following the call, Mr H asked Mars to send an amendable version of the I&E form or to post a copy as he had no access to a printer. Following this, Mars posted a further copy of the I&E documentation to Mr and Mrs H.

On 6 August 2020 Mr H wrote to Mars to say that a mental health charity had told him it thought Mars should be writing off the loan. Mr H called Mars on 10 August 2020 and was told that documentation would be required for it to be able to consider the debt being written off and this would require medical evidence. Mr H said that he was not in the right frame of mind to discuss this and Mars agreed to call back in 16 days. Mars contacted Mr H again on 26 August 2020 and explained that it would need a fully completed I&E in order to look at forbearance and medical evidence to consider writing off the loan. Following this, Mr H responded to indicate the impact of the phone calls and loan on his and Mrs H's mental health.

On 17 September 2020 Mars indicated that it could apply some breathing space due to the circumstances and would stop any contact. It explained that FCA guidance allowed it to provide a three-month COVID-19 payment holiday if there had been any impact due to the pandemic and asked Mr H to let it know if this was required. Mr H responded on 22 September 2020 to say that they would welcome the break and also asked for all information Mars held for the loan account. Mars indicated on 24 September 2020 that it wanted to continue to work with Mr and Mrs H and were looking at all the options. It explained the circumstances in which it could offer a payment holiday due to COVID-19 and how this would work. It also said that it would take Mr and Mrs H's health into consideration but also that it had an obligation to try and maintain the account too.

Mr H did not respond until 23 November 2020 indicating that Mr H was too unwell to sign the data subject access request and asked if there was any update on the options Mars could give to alleviate the stress. On 2 December 2020, Mars confirmed that it had reviewed the account and applied a six-month COVID-19 payment holiday to the account to run from December 2020 until May 2021 to ensure Mr and Mrs H were able to focus on their health and time for it to look into possible options going forward. When responding to Mr and Mrs H's complaint in March 2021, Mars sent a further copy of the I&E form and asked that it be returned along with three months' bank statements at the end of May 2021 in order to allow it to review any available options for the account at the end of the payment holiday.

Having looked at these records, I think that Mars has treated Mr and Mrs H fairly. It is clear that Mars has asked Mr and Mrs H to complete an I&E form and provide evidence of their financial circumstances on numerous occasions. However, this hasn't been received.

Despite this, due to Mr and Mrs H's circumstances, and as they did not confirm that they wished to accept the payment holiday in September 2020, two months' breathing space was applied to the account. When Mars was informed about the deterioration in Mrs H's health in November 2020, it applied a six-month payment holiday to the account from December 2020 until May 2021. I think this was reasonable of Mars in the circumstances. However, this does not resolve the fact that the account is continuing to accrue interest and the arrears are increasing as no payments are being made since the payment holiday ended.

Mars has continued to request details of Mr and Mrs H's financial circumstances in order to review the options available to assist them and I don't think this is unreasonable. Mars lent them the money upon the agreement that this would be repaid over a certain period but

unfortunately Mr and Mrs H have been unable to do this and no payments have been made on the loan at all for a considerable period of time.

Whilst I understand that Mr and Mrs H are going through a difficult time, it is hard to see what Mars can do to help them unless they co-operate with providing the information requested. This is because Mars needs to understand their financial circumstances in order to review what forbearance options are available to them. For example, Mr and Mrs H have asked about the interest on the account being frozen. But there would be no benefit to freezing the interest if this wasn't a sustainable way of Mr and Mrs H repaying the loan as, if they were unable to afford to repay the capital, the situation would not be resolved.

Whilst I appreciate that Mr H thinks he is in a no-win situation in terms of either being asked to pay money he can't afford or having the house repossessed, this cannot be established unless he and Mrs H complete an I&E assessment. It is not in either party's interest for this situation to continue indefinitely and for the arrears to continue to increase as Mars is not getting back any of the money borrowed by Mr and Mrs H and, the longer the situation continues without any resolution, the more the arrears are taking up equity in the property, so Mr and Mrs H will be in a worse position in the long term. As set out above, in order to work out what forbearance options are available, Mars needs to be able to carry out an I&E assessment. I would therefore encourage Mr and Mrs to engage with Mars and provide this information in order to find a way forward. If it remains too difficult for them to engage with Mars directly, they may be able to seek debt advice and have a debt adviser deal with Mars on their behalf.

Mars will also need to work with Mr and Mrs H and do the best it can in the circumstances – for example, by agreeing to work with a third party on their behalf or by forgoing the need for supporting evidence alongside the I&E information if this is difficult for Mr and Mrs H to gather.

In relation to what Mr and Mrs H have said about the threats of repossession, Mars has made it clear that it is not currently taking legal action against them for possession of the property.

I can see that Mars has sent Mr and Mrs H letters relating to the arrears on the account and that these do set out that failure to come to an arrangement to clear the outstanding amount due may result in it instructing solicitors to apply to the Court for an order for possession of their property to repay the loan. Although it is not obliged to send out these letters as the loan is unregulated, it is good industry practice for it to keep customers updated of arrears and potential next steps. I also note from the contact notes that Mars has also spoken about litigation when discussing possible next steps but I can't see from the contact notes that Mars has ever suggested that it has commenced repossession action against Mr and Mrs H.

As set out above, no repayments have been made on the loan for some time and Mr and Mrs H haven't provided Mars with the information requested by completing the I&E form so that it can review the options available. Whilst I appreciate that mention of legal proceedings would be distressing for Mr and Mrs H, ultimately the loan is secured on their property, and I don't think it is unreasonable for Mars to set out the potential next steps if the arrears continue to increase and it is unable to assess forbearance options without the details requested.

In relation to the balance of the account now being more than the original amount borrowed, I can see from the loan agreement that the original loan amount was £38,000 to be repaid with interest over 25 years. The balance as of March 2022 was just over £65,000.

Whilst I appreciate that the balance is higher than Mr and Mrs H would have expected at this point in the term of the loan, this is due to the fact that many payments have been missed over the period of the loan. When a payment is missed, the balance doesn't reduce and so more interest is charged the following month. When many payments are missed, the additional interest can result in the balance increasing substantially, which is what has

happened here. So as Mr and Mrs H have not been able to maintain the monthly repayments as agreed in the loan agreement, the balance has increased. So I haven't seen any evidence to suggest that the balance is inaccurate.

In some situations where this has happened, it might be appropriate for the lender to freeze interest so that future payments are used to reduce the balance and allow the loan to be repaid by the end of the term or in a reasonable period thereafter. Mr and Mrs H have asked Mars to consider this – I think it's reasonable that it wanted to see whether Mr and Mrs H could afford to make payments if the interest was frozen before agreeing to do so. If Mr and Mrs H are now able to provide details of their income and expenditure, this should be one of the options Mars considers.

Taking everything into account, I can't say that Mars has treated Mr and Mrs H unfairly or that it has acted unreasonably. Whilst I appreciate that they are going through a difficult time, I would encourage them to work with Mars in coming to a way forward. If it would be helpful for them to seek advice from a third party which might be able to liaise with Mars on their behalf, they should let the investigator know and he could put them in touch with organisations that might be able to assist.

I know my decision will come as a disappointment to Mr and Mrs H, but I can't say that Mars has acted unfairly in wanting to know more about Mr and Mrs H's circumstances before seeing whether there is anything it can do to help them, and therefore I don't uphold this complaint.

### **My final decision**

For the reasons I've explained above, I don't uphold this complaint and don't require Mars Capital Finance Limited to do anything.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H and Mrs H to accept or reject my decision before 1 February 2023.

Rachel Ellis  
**Ombudsman**