

## **The complaint**

Mr and Mrs F complained that there would be a balance remaining on a secured loan account they held with Mars Capital Finance Limited at the end of the loan term.

## **What happened**

Mr and Mrs F took out this secured loan in March 2007 over a 15-year term. The loan was originally taken out with a different lender and has then been sold on. Mars took on the loan in May 2019.

Mr and Mrs F previously got into financial difficulties and at the time the loan was passed to Mars in May 2019 there were arrears on the account which Mr and Mrs F were making additional monthly payments towards.

Since May 2019 Mr and Mrs F paid an additional £200 most months on top of their normal contractual monthly payment.

In February 2021 Mrs F spoke to Mars to ask whether the arrears had been cleared. She was told that they'd need to make the higher payment for February, then a slightly lower payment in March and then from April 2021 their payments would revert to the normal contractual monthly payment. The direct debit was automatically adjusted to meet those payments.

After receiving a statement of the account, Mrs F phoned to complain on 16 August 2021 as the statement showed they still owed around £11,000 with only seven months left to run. Mars responded to the complaint in October 2021. It said it was aware of the issue of the loan payments not being recalculated by the previous loan company and was working to remediate it. However, as Mr and Mrs F's loan term was due to end in March 2022 it was unlikely to have completed the remediation project by then. It apologised for not contacting Mr and Mrs F over the time it had held the loan to discuss increasing the monthly payments and said it would pay £200 compensation for that.

Mr and Mrs F referred the complaint to our service, and then redeemed the loan in December 2021.

Our investigator said Mars shouldn't have told Mrs F in February 2021 that the payments would be lowered as there was still a substantial balance outstanding at that time. He said if Mrs F hadn't been told that then he felt the higher payments would have still been made. He said Mars should recalculate the account as if the higher monthly payments were maintained until August 2021, but after that Mr and Mrs F were on notice of the error so could have made the higher payments from September 2021 if they wanted to. He said that Mars should refund the difference between what Mr and Mrs F paid to redeem the account and what they would instead have paid, plus pay 8% simple interest on that resulting sum from the date the loan was redeemed until the date of settlement.

Mr and Mrs F accepted his assessment. Mars, despite acknowledging receipt of our investigator's assessment and multiple chasers from this service, didn't respond. As we can't keep cases in abeyance indefinitely the complaint has now been passed to me to decide.

### **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.

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.

Historically Mr and Mrs F had been struggling to pay their loan but in recent years they'd – most months - not only maintained their monthly payments but they'd paid extra towards the arrears.

The figures on the loan agreement are based on a person paying all of the contractual monthly repayments in full and on time and no fees or charges being added. Clearly that didn't happen here as Mr and Mrs F have been in arrears. As interest is constantly being charged this means it's not as simple as making up a missed payment, there's also the extra interest incurred for every day that payment is overdue. This interest can add up significantly.

Mars has said it knew from when it took over the book of loan accounts from the previous loan company in May 2019 about the issue of payments not being set at a level sufficient to ensure the loans would be repaid by the end of the term. It also said it hadn't told Mr and Mrs F about the issue. It has apologised for that and said it would pay £200 compensation. So I've considered whether that is enough.

I've carefully considered whether I think Mr and Mrs F would have been able to make higher payments and I'm not persuaded they would have been in a position to do so. Having reviewed the transactions on the account, along with the contact notes, I can see Mr and Mrs F couldn't always make the higher payment that they had agreed to pay, so it seems unlikely that they could have comfortably sustained an even higher payment each month for that two year period if they'd been aware of the need for it.

That said, I agree with Mars and our investigator that Mars could have let Mr and Mrs F know what was happening. Having considered everything I agree that the £200 compensation already offered by Mars is fair for this omission.

From there I've considered what happened in February 2021 when Mars reduced the amount the direct debit was due to collect. Having considered everything, I uphold this part of the complaint.

I've no reason to believe that Mr and Mrs F wouldn't have maintained their existing higher payment if they'd been told that it was needed. They'd been paying that sum on a regular basis for a number of years and, having considered everything, Mars hasn't given me any reason to think Mr and Mrs F wouldn't have continued to have done so but for Mars reducing the direct debit payment following the February 2021 call.

However, I agree with our investigator that Mr and Mrs F were put on notice in August 2021 that just the contractual monthly payments wouldn't be enough to repay the loan on time and so they could have increased their payment back up to the higher amount from September

2021. For that reason I don't find Mars liable for the fact lower payments were made from September 2021 until the loan was redeemed in December 2021.

In summary, in respect of this part of the complaint, I find Mars is liable for the reduced payments between March and August 2021 (inclusive) as I'm satisfied Mr and Mrs F would have continued paying at their existing higher level but for the February 2021 phone call and Mars reducing the direct debit mandate collection amount.

This should be treated in the same way as we'd look at a mortgage underfunding case. That is, the business should change the account balance to what it would be if the correct payments had been made (in this case, that's the existing higher payments Mr and Mrs F had been making) for the period between March and August 2021 (inclusive).

### **Putting things right**

To resolve this complaint I order Mars Capital Finance Limited to:

- Calculate what the balance of Mr and Mrs F's account would have been at redemption if they'd continued to pay £630 a month between March and August 2021 (inclusive). Refund to Mr and Mrs F the difference between what they paid at redemption and the revised redemption amount as calculated, plus 8% simple interest \* on that amount from the date of redemption to the date of settlement.
- Pay £200 compensation as offered in its response to the complaint (if not already paid).

\* Mars may deduct income tax from this element of my award, if it considers it should do so. But it should give Mr and Mrs F the necessary paperwork for them to reclaim the tax from HMRC if they're entitled to do so, if they ask for it.

### **My final decision**

I uphold this complaint and order Mars Capital Finance Limited to resolve it as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs F to accept or reject my decision before 24 October 2022.

Julia Meadows

**Ombudsman**