

The complaint

Miss L complains that Progressive Building Society said, just after it issued a mortgage offer to her, that this offer could be extended towards the end of its three month validity period. But then it wouldn't extend after all, and she had to take a mortgage at higher interest rates.

What happened

Miss L's complaint has been brought by a representative, who acted as her mortgage broker in this case. He told us that Progressive offered Miss L a mortgage on 4 February 2022. That was valid until 5 May 2022. Miss L knew the people she was buying a house from probably wouldn't be able to move within this timescale, so her broker asked if the offer could be extended. He'd understood Progressive's response made a commitment to extending the offer for a further three months in future. He said he relied on that, and didn't then source a different mortgage offer, with a longer validity period, for Miss L.

When Miss L's broker then asked for an extension to the offer, on 29 April, Progressive said it no longer did that. It would issue a new offer instead, subject to its new interest rates. Miss L said she had to accept this, because she was very close to completion on her new home.

Miss L said her first mortgage offer was for £435.31 a month with an interest rate of 1.69% but she then had to accept the new offer of £514.66 a month at the rate of 2.79%. This meant she would pay an additional £1,904.40 over the two-year fixed rate period.

Miss L's broker complained to Progressive on her behalf, and it said its offers are valid for 90 days. It won't consider whether to extend until close to the expiry date, and there's never any guarantee this will be granted. When the broker asked about an extension, Progressive didn't warn him about an interest rate change because that wasn't its policy at the time. But on 1 March, Progressive changed its procedure, so now it will review interest rates at the same time as deciding whether to extend offers. Progressive said it had emailed the broker to confirm this change.

Progressive wouldn't honour the previous rate, and it didn't think it had done anything wrong.

The broker said he wasn't told about this change on 1 March. He did get an email on 8 March, from Progressive, titled "expired offers" but he didn't read that, because he didn't have any expired offers with Progressive. He felt this email was incorrectly titled. And anyway, mortgage rates had already risen by this time, so Miss L would always have suffered some disadvantage.

Our investigator didn't think this complaint should be upheld. He said that there was no confirmation, when Progressive initially said the offer could be extended, that interest rates would stay the same. And there was no guarantee that the extension would be granted. The expiry date on the first offer was clear. Progressive then had a policy change, and told the broker about this by email. Our investigator didn't think Progressive was responsible for Miss L's broker not reading that email, and he thought the title was clear enough.

Our investigator said that lenders are able to set their own lending policies, as long as they

apply them fairly and reasonably. By the time an extension was requested for Miss L, the policy had changed. So it was fair and reasonable for Progressive to offer the new mortgage offer with the current rates available at the time, in line with its changed policy.

Our investigator said Progressive's agent just didn't know this change would happen, when she responded to Miss L's broker about an extension. He said Progressive was then allowed to change its policy, and Miss L's broker should have realised this had happened, from the email he received on 8 March 2022. Our investigator thought the change was a legitimate exercise of the lender's commercial judgment, so we wouldn't interfere with it.

Our investigator said he understood that Miss L would be disappointed, but he thought that she was just a victim of unfortunate timing.

Miss L didn't agree. She said Progressive should at least have told her about the change in policy before it was made. She also sent a letter from her broker.

Miss L's broker said that Progressive's mortgage offer was binding. Any extension would be an extension of that offer at those rates. If it wasn't at those rates, it wouldn't be an extension, it would be a new offer. The broker thought the response on an extension was explicit. And he said our investigator had referred to an extension to expired offers, but Progressive had never extended expired offers, no lender does that. He said Miss L's offer hadn't expired when the email telling him about the policy change arrived, so that email wasn't clear enough. And Miss L's offer still hadn't expired when he asked for the extension.

Miss L's broker said the earlier email, of 14 February, was still relevant to that offer. The broker still felt he hadn't been properly informed of the policy change on 8 March, this email was only sent a week after the change. So Miss L would still have been prejudiced then, particularly as he said the subsequent interest rate rise on 17 March was widely expected and mostly priced in already by lenders. He also said that we couldn't know that Progressive did announce this change on its website, and we shouldn't make judgments about things which cannot be proven by the evidence presented.

Both Miss L and her representative wanted this complaint to be considered by an ombudsman, so this case was passed to me for a final decision. I then reached my provisional decision on this case.

My provisional decision

I issued a provisional decision on this complaint and explained why I proposed to uphold it in part. This is what I said then:

First, I'd like to consider the response that Miss L's broker got, when he initially asked, shortly after the offer had been issued, if Miss L's offer could be extended. That was as follows –

Offer is originally only for 3 months but with the option that we then can arrange for an extension closer to the expiry date – we will just ask for an up to date bank statement / payslip to make sure her financial situation has not changed detrimentally and then we issue extension letters which last for a further 3 months – we only offer 6 months initially on a new build application of a self build.

There is no cast iron guarantee of extension here. But what there is, is a set of fairly clear criteria for granting an extension, and a reassuring statement about what will happen if those criteria are met. There are no other conditions, or warnings of changes

to the original offer. I think it would be reasonable to conclude, from this email, that any extension would be an extension to the original offer – including the interest rate.

I also note that what Progressive said in its final response letter to Miss L was that the agent who sent this email about extending Miss L's offer in future "*... did not state that an interest rate review would take place as, at that time, this was not the Society's procedure.*" That makes me think Progressive meant this email to be read in the same way that I'm reading it. So the email says Miss L's offer can be extended, and there's no suggestion the interest rate will be changed, because at the time the email was sent, Progressive wouldn't have changed the rate when it extended the offer.

Miss L's broker has told us that if this statement hadn't been made, he would have looked elsewhere for a different mortgage offer for Miss L, with a longer validity period. I accept that – he had asked Progressive about an extension because he knew that Miss L wouldn't be in a position to take up the mortgage offer with the three-month validity period. I think the email Progressive sent on 14 February, was likely to make him think he didn't need to look elsewhere, because Progressive would extend the offer so long as Miss L's circumstances hadn't changed. And, importantly, I also think that Progressive either realised, or ought to have realised, that Miss L and her broker were likely to rely on this statement. Its email didn't say an extension was subject to possible future policy changes, for example.

But Progressive then says it changed its policy, and we know it emailed the broker on 8 March to set out a policy on extending offers. I think it's reasonable for Progressive to say that it had then set out a policy which doesn't appear to be compatible with the previous email. So if Miss L or her broker didn't contact Progressive on 8 March to check whether the arrangements it had previously set out in its email would still be available to Miss L, or alternatively didn't act to protect her position by obtaining a new mortgage offer then, that wouldn't be Progressive's fault.

I don't think that it was wrong for Progressive to change its policy here. It was entitled to do that. But what I do think, is that this adversely affected Miss L's position – because of what Progressive had said earlier. If she or her broker relied on what was said by Progressive on 14 February (which they have said they did, and which I've said I think would be both reasonable and foreseeable) then when Progressive changed its mind, it was too late now for Miss L to get a mortgage deal she could've got on 14 February, if Progressive hadn't said it would extend her offer. Her broker said her position had already been prejudiced, because interest rates had increased since then.

I think, therefore, it would be fair for me to hold Progressive responsible for any losses Miss L incurred, because between 14 February and 8 March, Progressive had given Miss L and her broker to understand that Miss L could have an extension on her existing offer, when it was coming to an end. But after this, I don't think it would be fair for me to hold Progressive responsible for any further rise in interest rates which adversely affected Miss L.

That leads me to the conclusion that it's fair and reasonable for Progressive to refund the additional costs that Miss L will pay over the first two years of her mortgage, because she didn't know, and could not have known, that Progressive wouldn't extend its offer after all, until 8 March. But I don't think it's fair and reasonable for Progressive to cover any additional costs that Miss L incurred because her new mortgage offer wasn't actually obtained until around two months later.

I know that Miss L's broker said that he felt Progressive should have warned him, and by extension Miss L, about its policy change earlier, and indeed, before it actually

happened. But I think the relevant time is when I can see that Progressive's policy is no longer compatible with what it had said previously. And I think that is 8 March 2022.

And that means I think that Progressive should ensure that Miss L suffers no detriment from having relied, between 14 February and 8 March 2022, on what I think was a commitment to extend her existing mortgage offer, at the same rate.

That will require Progressive to work out how much of the interest that Miss L is paying now, is a result of rate rises on its mortgage lending between 14 February and 8 March. So Progressive should take the offer it made to Miss L in early February, and work out any changes to the interest rate which would have been applied to that same application, if it had been made on 14 February, and then again on 8 March.

If the interest rates on the lowest two year fixed rate available to Miss L (based on the same application and closest possible offer, so a mortgage without fee, for the same lending amount, loan to value etc) rose between 14 February and 8 March, then Progressive should then rework Miss L's mortgage to remove an amount of interest equal to any increase in interest rates between these periods. But if Progressive can show that the interest rates it would have offered to Miss L didn't change in this time, then it doesn't need to rework her mortgage.

Regardless of whether Progressive needs to rework Miss L's mortgage as a result of the above, I still think this has been a difficult time for Miss L, which has made the already stressful process of buying a property, even more so. And I think that's at least partly Progressive's fault. So I also think that Progressive should pay Miss L £200 in compensation.

I think that provides a fair and reasonable outcome to this complaint. I would ask Progressive to set out its calculation of any reduction in Miss L's mortgage that this decision would produce, in reply to this provisional decision.

I invited the parties to make any final points, if they wanted, before issuing my final decision. Miss L's representative replied, but Progressive didn't.

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.

Miss L's broker thanked me for my provisional decision, but said he and Miss L wanted to comment on it. He referred to specific parts of my provisional decision.

Miss L's broker referred to where I'd said that Progressive only had to make up for any rise in interest rates between 14 February and 8 March 2022. He wanted to query both of the dates I'd used here.

Miss L's broker first said that the interest rate featured in the mortgage offer may not have been available with Progressive on 14 February, noting that Miss L's application was made on 13 January. So he said he and Miss L were concerned Progressive might only think it had to refund the difference between rates available on 14 February and those available on 8 March, instead of the difference between the interest rate in the offer and the best likewise rate available on 8th March.

I think my provisional decision was clear that all Progressive has to do is to refund the difference, if any, between rates available on 14 February and those available on 8 March.

That's because I think that the mistake which Progressive made here, happened on 14 February, when it set out for Miss L's broker the conditions under which Miss L would be able to extend her mortgage offer in future.

If Progressive hadn't given these reassurances, then Miss L's broker said he would have sourced a different offer for her at that time. So, if things hadn't gone wrong here, then Miss L would have accessed the rates available on 14 February.

I understand that Miss L's broker wouldn't necessarily have sourced any revised offer from Progressive at that time. It's possible that some better rates may have been available in the market then. But it would be difficult now to be sure whether an application from Miss L would have been accepted by a different lender at the time. So I think that the rate available from Progressive on 14 February is likely to provide a reasonable guide to what was available to Miss L then, and it's fair to use this to provide a resolution in this case.

Miss L's broker then referred to the email Progressive sent on 8 March. I'd said I thought it was reasonable for Progressive to say it had then set out a policy which didn't appear to be compatible with the previous email. And I also said that if Miss L or her broker didn't either contact Progressive then to check if it would still be able to extend Miss L's offer, or alternatively didn't obtain a new mortgage offer then, that wouldn't be Progressive's fault.

Miss L's broker said he would have agreed, if the email sent on 8 March had been correctly titled. He wanted me to consider the Financial Conduct Authority's requirement for treating customers fairly – "*Consumers are provided with clear information and are kept appropriately informed before, during and after the point of sale.*" He provided evidence that the email had been titled '*Expired Offers*', and confirmed that, because he did not have any expired offers with Progressive, he had ignored this email.

Miss L's broker said I hadn't addressed this in my provisional decision, and he hoped this would change my mind, so I would extend the time period in my award to the difference between the interest rate Miss L was initially offered, and the rate she obtained on 6 May.

In my provisional decision above, I said that on 8 March, Progressive had set out that a policy which was clearly incompatible with what it had previously said. Miss L's broker doesn't argue that the content of this email was unclear, or that the email's content has breached FCA's principles. Rather, his argument is that it was reasonable for him to simply ignore this email, because he considers the title was so unclear that he wasn't, and ought not to have been, aware that it was relevant to him.

I have considered the arguments raised about the title of this email, but I'm afraid I don't agree. I'm sorry to have to tell Miss L that I think the argument her broker makes here just stretches this principle too far. I don't think it would be fair and reasonable for me to accept that Miss L's broker didn't read this communication from her prospective lender at all, but that our service ought to hold Progressive responsible for not providing the broker with information which was sent directly to him, in this email.

For those reasons, I haven't changed my mind. I'll now make the decision I originally proposed.

My final decision

My final decision is that Progressive Building Society must work out any changes to the interest rate (based on the same application and the closest possible offer, as set out above) if it had been made on 14 February, and then again on 8 March. If the interest rates rise between those two dates, then Progressive Building Society should then rework Miss L's

mortgage to remove an amount of interest equal to any increase in interest rates between these periods.

Progressive Building Society should also pay Miss L £200 in compensation. Under the rules of the Financial Ombudsman Service, I'm required to ask Miss L to accept or reject my decision before 15 February 2023.

Esther Absalom-Gough
Ombudsman