

The complaint

Mr M complains that Rooftop Mortgages Limited have treated him unfairly when he's made overpayments to his mortgage.

What happened

Mr M has an interest only mortgage taken out in 2007. When the mortgage was first taken out, it was provided by another lender, Company A. In 2010 the mortgage was transferred from Company A to Company B and in April 2019, the mortgage was transferred to Rooftop Mortgages.

Mr M made an overpayment of £100 to his mortgage and believes this should be applied to the outstanding capital balance of the mortgage. When this hasn't been applied, he feels he's unfairly been charged interest he shouldn't have paid. He also feels previous payments haven't been applied to the capital balance and this has led to him paying more interest too.

Rooftop Mortgages looked at Mr M's complaint and didn't think it had done anything wrong. It said when the mortgage was taken out with Company A, the terms and conditions said a partial repayment could only be made if the payment was at least £5000.00.

When Rooftop Mortgages took over the administration of the mortgage, it explained how overpayments could be made with it. It said overpayments could be made but for an overpayment to be taken of the capital balance, the payment needed to be at least £1000.00. Rooftop Mortgages said when the mortgage was transferred to it, a welcome letter was sent out which explained this.

Our investigator looked at Mr M's complaint and said that she didn't think Rooftop Mortgages had done anything wrong. She said the terms and conditions that were applicable to the mortgage when it was taken out in 2007 applied throughout the lifetime of the mortgage. These said an overpayment could only be made if the amount was £5000.00 or more. This was detailed in section 6 of the Mortgage Rules provided with the mortgage offer.

Our investigator felt because this was more than the amount Rooftop Mortgage said needed to be paid for an overpayment to be applied now, she didn't think it had done anything wrong. She felt this was more favourable than the mortgage contract terms and so Rooftop Mortgages was treating Mr M fairly and because he hadn't made a payment of at least £5000.00 it didn't need to apply this to the mortgage balance. She felt it explained the change to Mr M when the welcome letter was sent and he should have been aware of this requirement based on the information provided.

Mr M responded to say he didn't agree. He highlighted the offer letter provided when the mortgage was first taken out and what this said in reference to the terms and conditions. He didn't think these were being followed or that Rooftop Mortgages was treating him fairly. Our investigator's opinion didn't change so the complaint was passed to me for decision.

I issued a provisional decision on this complaint in January 2023. I said I was planning on upholding it and explained what I thought Rooftop Mortgages needed to do to put things right.

I've copied what I said below:

"I'm planning on upholding this complaint and will explain why.

Having looked at the mortgage offer and the terms and conditions provided within the Mortgage Rules when this was taken out, I don't think Rooftop Mortgages has acted fairly or in line with the mortgage contract.

Mr M has made an overpayment and believes this should be applied to the capital of the mortgage. In doing so this would impact the amount of interest he needs to pay on his interest only mortgage as the debt is reduced.

The relevant section of the mortgage offer is Section 11 titled "What happens if you want to make overpayments". It says the following:

"You can make lump sum payments of up to £5000 during a 12-month period. For any amount over this an early repayment charge will apply on the basis set out in Section 10.

The amount you owe and the interest you pay is not recalculated immediately following any lump sum overpayment, but is recalculated monthly on the 1st of the month."

The early repayment and redemption charges which might be applicable to overpayments are detailed in section 6 of the Mortgage Rules. Rule 6.2 makes reference to overpayments and contradicts section 11 of the mortgage offer terms. This says a partial payment must be of at least £5000.00 and will be subject to fees and charges detailed in 6.1 of the Mortgage Rules. But I don't think this is applicable to the payment Mr M made or follows the intention of Section 11 of the Mortgage offer.

Section 11 only says early repayment or redemption fees need to be paid if the overpayment is more than £5000.00 and it doesn't put a minimum amount on what can be paid in a 12 month period without this being incurred. So it follows, that 6.2 of the Mortgage Rules is only relevant for payments in excess of £5000.00. The Mortgage Rules relating to the early repayment charges are amended by the mortgage offer which says the following.

The terms and conditions as stated in the Mortgage Rules 6.1 and 6.3, which relate to this advance, are amended in accordance with Section 10 of the Key Facts Illustrations that forms part of this offer letter.

So I don't think it is fair to say the original mortgage contract didn't allow Mr M to make payments of less than £5000.00. And if a payment was made for less than this amount, the amount he owed should be recalculated together with the interest he pays the month after the payment was made.

So following the terms of the mortgage offer, Mr M's overpayment of £100.00 should have been deducted from the capital balance owed and the interest adjusted the month after the payment was made.

Rooftop Mortgages can vary the terms of the original mortgage contract, its ability to do this is set out within the Mortgage Rules within section 25, Variations. But I don't think Rooftop Mortgage has attempted to vary the terms and conditions of the mortgage. Although it explained how it will apply overpayments in its welcome letter, it did not explain this was a variation of the terms and conditions, nor did it provide an amended terms and conditions to Mr M to show how these had been varied.

The introduction of a minimum amount for overpayments contradicts section 11 of the mortgage offer and the details of how an overpayment could be made when set out here. I don't think it is fair that Rooftop Mortgages failed to provide notice that this term was being varied and that it was making a change to the contract terms. And in the absence of this, I think it is fair that it applies Mr M's overpayment and any previous overpayments in line with section 11 of the mortgage offer.

I also think it's fair that Rooftop Mortgages compensate Mr M for the inconvenience caused in failing to apply the original mortgage terms correctly.

To put things right, I plan on asking Rooftop Mortgages to apply Mr M's overpayments to his mortgage, in line with section 11 of the mortgage offer. It should back date the payment to the date it should have been applied to the capital balance of the mortgage (so the month after the payment was made), adjusting the interest as applicable. If Mr M has paid more interest than he should have, Rooftop Mortgages should refund him any overpayments with 8% simple interest added.

It should also pay Mr M £200 for the distress and inconvenience caused when it failed to apply the payment in line with the mortgage contract."

Rooftop Mortgages responded to say it accepted the provisional decision. Mr M responded to say he's received the provisional decision but gave no comment on the outcome.

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.

I've considered all the information on this complaint again. As neither side has provided any additional information to the complaint or disputed my planned outcome, I see no reason to depart from what I said previously.

For the reasons I've explained above, I uphold Mr M's complaint.

Putting things right

Rooftop Mortgages should apply Mr M's overpayments to his mortgage, in line with section 11 of the mortgage offer. It should back date the payment to the date it should have been applied to the capital balance of the mortgage (so the month after the payment was made), adjusting the interest as applicable.

If Mr M has paid more interest than he should have, Rooftop Mortgages should refund him any overpayments with 8% simple interest added.

It should also pay Mr M £200 for the distress and inconvenience caused when it failed to apply the payment in line with the mortgage contract.

My final decision

For the reasons explained above, I uphold Mr M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 8 March 2023.

Thomas Brissenden
Ombudsman