

The complaint

Mr S' complaint is about a secured loan he has with Blemain Finance Limited. He is unhappy that the 'off schedule balance' (OSB) associated with the loan exists. This is because he understood the charges associated with missed payments up to 2014, that are included in the OSB, had been paid off when he made lump sum payments that year. He says he was not made aware of the OSB until 2018, when he questioned its existence, at which point it took Blemain over two years to investigate his concerns. Mr S is also unhappy that the OSB was not built into the payments he was making after 2014.

What happened

Mr S took out a secured loan with Blemain in 2009, which was to be repaid over a term of 25 years. In early 2010 Mr S began missing payments or making them late, and charges and additional interest began to be added to the account.

The account remained in arrears until April 2014 when Mr S made two lump sum payments to the account totalling a little over £11,000. The money was used to clear the arrears of just over £2,000 and the remainder reduced the capital balance of the loan and pre-paid the following three month's contractual payments. This resulted in the contractual payment reducing by almost £100 each month. The OSB was not cleared alongside the arrears.

There were further periods of arrears in 2014, 2015, 2016 and 2018, along with payments regularly being made later than the due date. However, despite the periods of arrears, no further fees or charges were applied.

In 2015 Mr S questioned Blemain about the balance of his account, as it was not decreasing as he thought it should. He was told that it was due to the charges that had been applied. He was provided with information about the charges, but doesn't appear to have questioned the matter further at that time.

In 2018 Blemain specifically drew Mr S' attention to the fact the amount he was paying on a monthly basis would not repay the total amount he owed by the end of the term. Following this, Mr S raised concerns about the existence of the OSB and the charges.

Blemain responded in its letter of 4 October 2019. It provided an explanation of how the loan worked and what happened if payments were missed or late – charges and additional interest were added, and these made up the OSB. It said the OSB was the reason the loan would not be repaid by the end of the term. Blemain confirmed that the OSB was around £5,600 and if Mr S wanted to repay the loan within the original term he would need to increase his monthly payment. A list of the charges applied between May 2009 and April 2014 was also provided, which totalled approximately £1,200.

Blemain provided a further response to the complaint on 17 September 2021. It again explained that the balance Mr S was concerned about had come about because of fees and charges applied to the account when payments were being missed, and additional interest on the arrears and those fees and charges. It set out what had happened with the lump sum payments in 2014; that it had been the arrears that had been paid, plus a reduction in the

capital balance, not the OSB. Blemain went on to say that it was not satisfied with its communications around the OSB prior to April 2018, when it first told Mr S that his payments wouldn't pay the total amount owed by the end of the term. As such, Blemain refunded to the OSB the interest that had accrued on the charges and arrears from the dates they were charged up to 3 April 2018, when it was satisfied Mr S was aware of the situation and could have taken action to deal with it. This totalled a just under £1,400 reduction in the OSB balance. In addition, Blemain offered Mr S £150 for the delay in dealing with his complaint. Subsequently Blemain confirmed how much Mr S would need to pay to the loan to clear both balances by the end of the term.

Mr S remained unhappy and further correspondence was exchanged between him and Blemain. In relation to notification of charges, Blemain confirmed that it had written to Mr S every time a charge had been applied to the account. It also again set out what options Mr S had to ensure the entire debt was repaid by the end of the term.

Mr S was unhappy with Blemain's responses and referred the complaint to this service.

One of our investigators considered the complaint. She was satisfied, on balance, that Mr S had believed he'd paid off everything to do with the previous arrears on the account in 2014 and that Blemain didn't tell him otherwise. As such, she could understand Mr S' frustration at having been told to reduce the amount he was paying to the loan at that time, when some of the money he had been paying could have been used to address the OSB. As such, the investigator was in agreement that Blemain could have done more to ensure that Mr S understood the situation, thereby enabling him to deal with the amount owed under the OSB. However, she was satisfied that Blemain waiving the interest on the charges and arrears was sufficient to compensate for the financial loss incurred by the poor communications. In addition to this, the investigator recommended that Blemain pay Mr S a further £400 for the upset and inconvenience he'd experienced.

Blemain accepted the investigator's conclusions and agreed to pay the additional compensation.

Mr S highlighted that it had taken Blemain over two years to deal with the complaint and that he had paid interest on the charges for that period. He said that he failed to understand how Blemain could justify charging this interest. In light of the amount of interest charged during that time, Mr S considered the £400 increase in compensation was not reasonable.

Our investigator considered Mr S' comments, but they didn't change her conclusions. She explained to him that the terms and conditions of the loan mean that interest was payable on any amounts owed, including charges after 28 days, and so Blemain was entitled to charge the interest it had.

Mr S remained unhappy and so it was decided that the complaint should be referred to an ombudsman.

I issued a provisional decision on 21 February 2023, in which I set out my conclusions and reasons for reaching them. Below is an excerpt.

'I would explain that it is quite normal on a mortgage or loan for a lender to have separate balances for the amount owed under the original agreement, the amount of arrears and the fees, charges and additional interest that has accrued because of the arrears. It is unfortunate that Ms S doesn't appear to have known about the OSB being a separate amount in 2014 and that Blemain didn't highlight this balance to him at the time. I can't be certain what Mr S would have done at this time if he had known this, but I think it likely based on the questions he raised subsequently, that he would have used some of the lump sum to

clear the OSB in 2014.

If he had done that, he would have owed Blemain the same overall amount in 2014, but all the amount owed would have been on the main loan balance. Interest would have been charged on that higher main balance going forward and would still be being charged.

That said, if the OSB had been paid off and the main loan balance had been higher, that additional amount would have been included when the monthly payments were recalculated, and so some payments would have been made to the amount of the OSB balance after 2014 and it would have reduced slightly. However, given the amounts involved, and the fact that there was another 20 years on the term, the difference in the monthly payment would not have been a significant amount. This also means that the amount of the OSB that interest would have been charged on wouldn't have decreased much throughout the period I am considering.

I would also highlight that not all of the OSB Mr S is now being asked to pay has accrued because of the original arrears and the charges added before 2014. There were periods after the lump sum payments were made in 2014 when Mr S was making manual payments to the loan, which were often late. The late payments have meant additional interest was charged which also forms part of the OSB now owed.

When considering redress we aim to place a consumer in as close a position as possible to that which they would have been in, but for the mistake by the financial business. In this case, to do that Blemain would need to calculate what the balances on the OSB and main loan would be at the present time, assuming the OSB balance in 2014 had been repaid from the lump sums.

When doing this calculation, given Blemain's acknowledged that its communications about the OSB could have been better before the statement sent in April 2018, I consider it should be responsible for any shortfall in the contractual payments up to that date. However, from that point, when Mr S knew that he wasn't paying enough to clear the loan by the end of the term, and chose not to increase his payments, he would be responsible for the difference. This would, unfortunately, mean that Mr S would have been paying less than the hypothetical contractual payment since 2018 so the loan repayment would be behind schedule at the present time.

I am satisfied from Blemain's records that Mr S was informed that charges were being applied to his account, and that interest would be charged on them. As Mr S didn't pay the charges in the 28 days he had to do so without incurring interest, I don't consider that it was wrong for Blemain to apply the interest it did on those charges. However, as I have said above, I think if Blemain's information had been clearer about the different balances in 2014, the OSB would have been paid off in full at that time.

Mr S has said that he shouldn't have to pay the interest on the OSB for the time it took Blemain to answer his complaint fully. I can understand where he is coming from, but when Mr S became aware that he wasn't paying enough to clear the outstanding debt in 2018, he had the opportunity to mitigate any future loss by increasing his payments. He chose not to and so I am satisfied that he was liable to pay interest on the full amount he owed throughout. That said, the amount of interest will change when the calculations are done.

Putting things right

The starting position for this case is that Mr S would have had:

- *a zero OSB balance in April 2014 and a lower one at the present time.*
- *A higher main loan balance in April 2014 and at the present date.*

- *A higher contractual monthly payment since April 2014, taking account of the higher main loan balance.*

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In order to place Mr S in this position, Blemain would need to calculate what Mr S' balances would be at the present time, and adjust them accordingly. In relation to the matter of the higher contractual payment from April 2014, as I have said above, Blemain should be liable for the difference in the payments until April 2018. However, as I consider that Mr S should be liable from this point onwards, the calculation should take into account the actual payments Mr S made after April 2018, rather than the higher hypothetical contractual payment.

If Mr S accepts redress on this basis, Blemain should, once the account balances are adjusted, inform Mr S how much he needs to pay on a monthly basis to repay the loan over the remaining term.

I would at this stage make Mr S aware that the amount calculated by the method above may be more or less than the amount Blemain's existing offer amounts to.

I have considered the inconvenience and upset this matter caused Mr S, including the poor service he received once it was made clear to him that the OSB existed and needed to be paid alongside the main loan balance. I am satisfied that Blemain should pay Mr S a total of £550, including the £150 it originally offered.'

Mr S responded to the provisional decision. He said that he doesn't believe the explanation given for what the OSB balance consisted of; it had taken too long for Blemain to explain this and that this figure would not have built up in just a matter of months. He also denied having been told about the charges being added to the account when they had, rather he had discovered their existence when he got his annual statements. He said he would have challenged some of the charges if he had. Mr S also reiterated his position about having been asked to pay more to cover repayment of the OSB and why he shouldn't have to pay interest on the amount owed over the period it took Blemain to provide him with a response to his complaint.

Blemain confirmed that it agreed to pay Mr S £550 compensation. It had also completed the redress calculations detailed above, and confirmed the amounts that would be outstanding on the main loan and OSB at the present time – both of which would be higher than they currently are with the redress it had already paid. In light of this, we wrote to both parties confirming that I would not make an award in respect to the error regarding the OSB in 2014, as it would disadvantage Mr S. Neither party made any further comment.

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 have reviewed the complaint again in its entirety and I have revisited my provisional decision in light of the parties' further comments. Having done so, I have not changed my mind about the merits of the complaint – that if Blemain had made it clear in 2014 that the OSB existed, Mr S would have paid it off at that time. However, as the redress Blemain paid Mr S when it considered the complaint has placed Mr S in a better financial position than he would be in if the right thing had happened in 2014, I am not making an award in this respect.

I remain satisfied that Blemain should pay Mr S a total of £550 compensation, including the £150 it offered.

I will, however, respond to some of Mr S' comments. He has said that he doesn't believe the explanation of what the OSB was made up of and that it could not have built up to the amount it did in only a few months. The balance detailed in my provisional decision is that in 2019, and so it was not a balance that had built up over a few months. The charges and additional interest had been accruing since Mr S first started to miss payments in 2010, so it had taken around nine years to build up to the amount it had.

As I said in my provisional decision, I acknowledge that the communications about the OSB weren't what they should have been in 2014, and remained so until Mr S received a clear explanation at a later date. However, once he did, whether he was happy with that explanation or not, as I previously explained, he had a responsibility to mitigate any further losses because of the mistake made by the business. If doing so had required Mr S to increase his payments significantly, I could understand he may have been unable to do so, but the additional payments requested was minimal and still significantly less than the original monthly payment. As such, I remain satisfied that Mr S could have mitigated any further loss from 2018.

My final decision

My decision is that I uphold this complaint in part. In full and final settlement of the complaint I require Blemain Finance Limited to pay Mr S a total of £550, including any amounts already paid.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr S to accept or reject my decision before 18 April 2023.

Derry Baxter
Ombudsman