DRN-4163400

The complaint

This complaint is about an interest-only mortgage Mr and Mrs M hold with Progressive Building Society (PBS). Their complaint comprises two broad elements:

- The mortgage was unsuitable and therefore mis-sold at the outset; and
- Mr and Mrs M are in negative equity and have no means of repaying or even reducing the capital balance; they don't believe PBS has done enough to help them address this situation.

What happened

The broad circumstances of this complaint are known to Mr and Mrs M and PBS I'm also aware that the investigator issued a response to the complaint, which has been shared with all parties, and so I don't need to repeat all of the details here. Our investigator thought PBS had dealt with the complaint fairly so didn't recommend it be upheld.

Our decisions are published, and it's important that I don't include any information that might result in Mr and Mrs M being identified. Instead I'll give a brief summary of the complaint, rounding the figures where appropriate, and then focus on giving the reasons for my decision. If I don't mention something, it won't be because I've ignored it. It'll be because I didn't think it was material to the outcome of the complaint.

Mr and Mrs M took the mortgage out in 2007, on the advice and recommendation of a third party mortgage broker. They were first-time buyers, and borrowed £161,550 to buy a property for £170,000. The mortgage was interest-only, and initially was on a two-year fixed rate of 5.99%. When that initial rate expired, Mr and Mr M took a new fixed rate, and continued to do periodically during the life of the mortgage.

Soon after the mortgage started in 2007, the global financial crisis occurred, and property values generally fell. In Mr and Mrs M's specific case, the fall left them in substantial negative equity and, because values haven't recovered to any degree in their location, the value of their home remains well below the amount they owe PBS on the mortgage. They've maintained their monthly interest payments throughout the time they've had the mortgage, but they have no repayment strategy for the capital debt and little in the way of surplus income.

Mr and Mrs M asked PBS for help in 2021, when their most recent fixed rate ended and they went onto PBS's standard variable rate (SVR). They say they were offered – on the phone but not in writing – a discounted variable rate for three years, which they didn't think would help them. They'd still be in negative equity and have no means to repay the shortfall.

Mr and Mrs M asked for help again in 2022; they said they thought the mortgage had been mis-sold in 2007, and asked PBS to write off a portion of the negative equity and offer a long-term fixed rate. This time, PBS's replied in a final response. It said the mis-selling element of the complaint should be addressed to the broker that had sold the mortgage. It then offered Mr and Mrs M four options aimed at addressing their current situation. These were:

1. pay a lump sum off the mortgage to reduce the balance;
2. convert the mortgage to capital repayment;
3. consider letting the property out; and
4. arrange an appointment for another discussion with a mortgage advisor to see if a better rate could be offered that would reduce their monthly interest and free up money to pay of the capital balance.

Mr and Mrs M took up option four in PBS's final response; they switched from SVR to a fixed rate of 3.99%, which runs until July 2024. They also referred their complaint to us.

Notwithstanding that PBS hadn't sold the mortgage to them, Mr and Mrs M still thought it should take some responsibility for it. Our investigator told them he thought the first part of the complaint, about the origination of the mortgage in 2007, had been raised too late, and so fell outside our jurisdiction. As far as the second part of the complaint was concerned, he thought PBS had done all it could reasonably do to help Mr and Mrs M.

Mr and Mrs M disagreed on both counts; the case was referred to an ombudsman colleague, firstly to make a decision on our remit to consider the complaint. Her decision, issued in March 2023, was that the complaint about the origination of the mortgage in 2007 was time-barred under our rules, and we could only consider whether PBS was doing enough to help Mr and Mrs M deal with their current situation.

The cases reverted to the investigator who reviewed his initial findings on the second element of the complaint. However, he remained of the view that PBS had done as much as could reasonably be expected of it in the circumstances. Mr and Mrs M still disagreed so the case has come to me for a review and a decision on the merits of the case.

What I've decided – and why

I'll start with some general observations. We're not the regulator of financial businesses, and we don't "police" their internal processes or how they operate generally. That's the job of the Financial Conduct Authority (FCA). We deal with individual disputes between businesses and their customers. In doing that, we don't replicate the work of the courts.

We're impartial, and we don't take either side's instructions on how we investigate a complaint. We conduct our investigations and reach our conclusions without interference from anyone else. But in doing so, we have to work within the rules of the ombudsman service, and the remit those rules give us.

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, what follows are my conclusions and the reasons for them.
We revisit jurisdiction at every stage of our consideration of a complaint. Having looked at the decision my ombudsman colleague issued in March 2023, I agree that we are time-barred by our rules from considering PBS's involvement in the origination of the mortgage in the form Mr and Mrs M took it out. Accordingly my final decision here is confined to the fairness or otherwise of PBS's response to Mr and Mrs M asking it for help in their current situation.

Lenders have a duty to treat their customers fairly and act in their best interests. That's particularly the case for borrowers in financial difficulties. Mr and Mrs M have gone to great pains to point out that they're not in arrears, and question if they'd be offered more help if they were. Financial hardship isn't just about being in arrears on loan repayments; it can take different forms, as does the help lenders might reasonably be expected to provide.

In Mr and Mrs M's case, their problems are quite specific; their family is growing, they want to move to a bigger house, and the negative equity in their current home is the primary stumbling block to them doing so. I appreciate this will not be a welcome message to Mr and Mrs M, but the stark reality is that for borrowers in their situation, the scope for the lender to help is very limited.

In practical terms, the only ways negative equity can be eliminated are by the outstanding balance being paid down, the property value rising, or a combination of both. PBS's final response from 2022 reflected that conundrum, and the limitations on its capacity to help. I wouldn't say that a lender should reasonably be required to write off negative equity debt, as Mr and Mrs M have suggested PBS should have done for them.

The four alternative courses of action PBS suggested are all reasonable proposals that I'd generally expect a lender to offer up for borrowers to consider. However, such were Mr and Mrs M's particular circumstances that only the last one – a discussion possibly leading to a new interest rate deal being agreed had any realistic chance of working for them. But that doesn't mean PBS was wrong to suggest the other three; as I've said, they are all possibilities I'd expect to be offered up for consideration.

I appreciate Mr and Mrs M being reluctant to pursue the discounted variable rate that was put up for discussion in 2021. But even if that didn't protect against rates rising generally, it still amounted to a lower variable rate than SVR, so there would have been some benefit to them pressing PBS to make a written offer, which I think it would most likely have provided if asked to.

As it is, PBS has confirmed to us that Mr and Mrs M did take it up on the fourth option offered in the 2022 final response. They are now on a fixed rate of 3.99%, which will run until July 2024. If they'd remained on SVR, Mr and Mrs M would currently be being charged interest at 7.84%, with a further increase to 7.99% due to take place on 1 July 2023.

That means Mr and Mrs M have been saving money on their monthly interest instalment for about a year now, and as of next month, their monthly interest payment will be roughly half what it would have been if PBS hadn't helped them. I can't know if the extra money that releases each month is allowing them to make extra payments to bring down the mortgage balance; it's possibly being needed for other things. But PBS has at least given them some breathing space to work with, which is what I would expect of it.

Mr and Mrs M will need to be mindful of any restrictions on the amount they can overpay whilst on the fixed rate, without incurring an early repayment charge. If Mr and Mrs M are at all unsure about that, then I'd encourage them to keep up a dialogue with PBS. They will, of course, also need to prepare for discussions about the options that might be available in the summer of 2024, when the current deal expires.

My final decision

I don't uphold this complaint. My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further consideration or discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs M to accept or reject my decision before 31 July 2023.
Jeff Parrington

Ombudsman