

The complaint

Miss B complains that Pepper (UK) Limited, trading as Engage Credit, added legal fees to her mortgage, plus interest on those fees, because she made a complaint.

What happened

Miss B has a mortgage which is administered by Engage. In October 2020, through a law firm, Miss B made a complaint to Engage about the interest rate she had been charged on the mortgage.

Engage issued its final response on 11 January 2021. It didn't uphold the complaint, and the law firm referred it to the Financial Ombudsman Service on Miss B's behalf.

In May 2022, the law firm, again acting for Miss B, made a fresh complaint to Engage. They said that Engage had wrongly applied legal fees and interest on those fees to Miss B's mortgage as a result of Miss B's 2020 interest rate complaint. They said their October 2020 letter was a letter of complaint and should have been treated as such, rather than as a letter of claim. They also said Engage hadn't mentioned these additional fees in its final response letter or provided a breakdown of them.

Engage didn't respond to this complaint, and the law firm referred it to the Financial Ombudsman Service as a separate complaint to Miss B's interest rate complaint.

Engage didn't respond to our requests for information. One of our Investigators looked into the complaint and recommended that Engage refund the fees and associated interest.

Engage asked for a review. It said it hadn't received Miss B's original complaint about the legal fees. It also said it was entitled to defend any legal action and add any resulting legal costs to Miss B's mortgage, and it wouldn't refund them.

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.

Mortgage agreements usually entitle the lender to recover legal costs they incur in bringing or defending legal proceedings, and I think that can include threatened proceedings. However, consumers have a right to complain, either directly or through a representative, and to do so without their lender charging them for responding.

Here, Engage appears to be unclear about what it has charged Miss B for. It initially said the fees in question were for the October 2020 complaint. I've seen a copy of the letter the law firm sent about this. It is clearly headed: "**Letter of Complaint**" and opens by saying: "*This letter constitutes our client's letter of complaint pursuant to the Financial Conduct Authority's Disputes [sic] Resolution Handbook ("DISP") Rules*".

Engage's final response letter of 11 January 2021 in relation to this complaint was issued and signed by a Complaint Manager, with no mention of legal advice having been taken or legal fees arising from such advice which Engage would be passing on to Miss B.

I'm satisfied that this was a complaint and Engage treated it as such.

Engage later told us the legal fees in question had not in fact arisen as a result of the 2020 interest rate complaint, but as a result of another letter it had received, from a different law firm, about payment protection insurance. It then said the 2020 interest rate complaint had included "*a Preliminary Notice (this is intention to take Engage Credit to Court) which also resulted in legal fees being applied*".

So Engage appears to have applied legal fees to Miss B's mortgage in respect of two separate matters. It is, however, unclear what, if any, legal advice or support it received in respect of either matter. We have asked Engage for its file to support its position in this complaint, and it hasn't provided any evidence or indication of legal advice or instructions to or involvement from solicitors, court proceedings, or invoices to reflect the legal fees it has charged Miss B.

As a matter of law and what's fair and reasonable in all the circumstances, Engage could only recover such fees from Miss B where they have been reasonably incurred and where they are reasonable in amount – and Engage hasn't shown either of those things in this case. I can't therefore fairly conclude that Engage was entitled to apply these fees to Miss B's mortgage or to charge interest on them.

Putting things right

Pepper (UK) Limited, trading as Engage Credit, should refund the legal fees it has applied to Miss B's mortgage as a result of the letters it received from the two law firms acting for Miss B between 2020 and 2022, in respect of the interest rate on Miss B's mortgage and payment protection insurance / commission.

In refunding those fees, Engage should re-work Miss B's mortgage in such a way that interest applied to those fees is also refunded.

My final decision

My final decision is that I uphold this complaint and I require Pepper (UK) Limited, trading as Engage Credit, to put things right as set out above. Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 30 August 2023.

Janet Millington

Ombudsman