

The complaint

Mrs and Mr G have complained about a secured loan they have with Mars Capital Finance Limited.

What happened

Mrs and Mr G took out the loan in July 2005. They borrowed £96,000 (plus PPI) over 25 years.

The account went into arrears in 2005 and has remained so since then, with the situation worsening over the years. From the transaction history it appears the last month a full contractual monthly payment (or more) was made was in June 2007.

The loan was originally taken out with a different lender and has then been transferred. Mars took on the loan in May 2019 and since that date no interest has been charged on the account.

Since Mars took over the loan in May 2019 (up until June 2023 which is the last update we hold) Mrs and Mr G have made eight payments totalling £950, against 49 payments that should have been made totalling over £50,000.

The complaint I'm considering here was responded to by Mars on 8 March 2023 and was referred to us a few days later. In a call with our Investigator in April 2023 Mrs G confirmed the final response letter from Mars was an accurate representation of what she had complained about.

The final response letter dealt with the following complaint points:

- *'You believe your loan was mis-sold.'*
- *'You are unhappy with having to provide the same information to different account managers when this should be recorded on your account. This is causing you stress.'*
- *'You are unhappy you have not received call backs when agreed.'*
- *'You are unhappy with being sent threatening letters when you are trying to sort this matter out. This is causing you upset.'*
- *'You are unhappy with the monthly arrears fee of £40.00 being applied to your account.'*
- *'You previously discussed re-mortgaging with Mars Capital but received no response.'*

Mars only upheld the point about the call backs, and emails not always being responded to appropriately. It apologised for those issues and offered £250 compensation.

Our Investigator didn't uphold the main thrust of the complaint and said he felt the £250 compensation offer was fair and reasonable.

Mrs and Mr G didn't agree and so it has been passed to me to decide.

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.

Although I've read and considered the whole file, I'll keep my comments to what I think is relevant. If I don't comment on any specific point, it's not because I've not considered it but because I don't think I need to comment on it in order to reach the right outcome.

I won't be considering anything that has happened outside of the points I've listed above, such as issues that happened once the complaint was with us. Anything that has happened since the complaint has been with us would need to be treated as a separate matter, subject to Mrs and Mr G formally complaining and referring those matters to us, of course.

For ease of reading, I will break the points down into sections.

The sale of the loan

This complaint is about Mars, and it only has responsibility for things that have happened whilst it has owned the loan; that is, since 13 May 2019.

For that reason, I can't consider whether the loan was mis-sold as part of this complaint.

Repetition of information to different account managers

I can understand why Mrs and Mr G didn't want to have to repeat themselves, nonetheless I don't find that it was unreasonable for Mars to want to have those conversations with them.

The account had been in arrears for a long time, and there was no arrangement to pay in place. Payments were sporadic and, when made, were for much less than the contractual monthly payment. Mrs and Mr G had said at various times that they would make payments of a certain amount, but generally those offers didn't bear out into actual payments being made to the account.

Against this background, I think it's understandable that Mars asked for updates on the situation rather than simply relying on what Mrs and Mr G had said previously.

I don't uphold this part of the complaint.

Call backs

It isn't in dispute that Mars didn't call Mrs and Mr G back when it should. Mars apologised and offered £250 compensation for that and other issues with its correspondence.

In my view, that is fair and proportionate to the likely effect of the error. If no offer had been made, I would not have awarded more for that issue.

I make no additional order or award for this part of the complaint.

Tone of the letters

I can see that Mars has sent Mrs and Mr G letters relating to the status of the account and I understand why these letters may be unwelcome.

It is good industry practice for Mars to keep customers updated of arrears and potential next steps, and it is what I would expect to see.

Having considered the wording of the letters I don't think the tone was threatening, or that they contained anything I wouldn't normally expect to see in such correspondence. I can understand that receiving such letters could be distressing, but that doesn't mean Mars was wrong to send them or that the language used was inappropriate.

I don't uphold this part of the complaint

The monthly arrears fee

The charges Mars makes when a loan is in arrears are set out in its tariff of charges. I'm satisfied that they are clear and the charges Mars has added to Mrs and Mr G's loan account are in line with the tariff.

However, I also have to consider whether the charges were applied fairly. I think they were. The account was in arrears, no payment arrangement was in place, payments were very sporadic and, when made, were for much less than the contractual monthly payment, and I can see from the contact notes that Mars was actively in contact with Mrs and Mr G.

Mars carried out some arrears administration, and I consider it was fair for it to have applied the relevant charges to the loan account for that.

Whilst I acknowledge Mrs and Mr G's difficulties, the arrears fees are an integral part of the account and can be charged in these circumstances. Having considered everything there are no grounds for me to order these be reversed.

I don't uphold this part of the complaint.

No response to a discussion about remortgaging

From Mrs and Mr G's submissions and the contact notes it seems the main reference to this point relates to something that happened before the loan was with Mars so we're unable to consider that issue here against Mars.

That said, from the emails it seems the issue may have been raised again with Mars. Mars isn't an active lender nor is it regulated to give advice, so it wouldn't be able to help Mrs and Mr G in that way. All Mars could do is discuss a settlement figure with Mrs and Mr G if they're able to arrange financing elsewhere.

I can see this was dealt with by email in May 2021 with Mars saying *"For us to consider a discounted payment offer, we would require a completed Income and Expenditure form with 3 month's of bank statements, 2 independent property valuations and your proposals to settle the account."*

If Mrs and Mr G can arrange a remortgage elsewhere then I would encourage them to go back to Mars with their proposal and the information Mars asked for.

I don't uphold this part of the complaint.

In summary

In relation to financial difficulties, the starting point is that lenders have a duty to treat all customers, but particularly those facing financial hardship, fairly. Balanced against that, one

of the fundamental principles underpinning the mortgage contract is that a lender has the right to receive payment of the money owed to it.

A lender is required to explore ways to resolve an arrears situation, especially if the problem that created the arrears to begin with is one that looks to be short-term and capable of being resolved. Mrs and Mr G have, however, had long-term difficulties over many years.

For long-term difficulties, a lender must also look at other ways to help but balanced against that is the lender's obligation to ensure that any arrangement is affordable and sustainable.

In the period I'm considering here (that is between May 2019 and March 2023) Mars has gone through Mrs and Mr G's income and expenditure with them on a number of occasions and, whilst the figures Mrs and Mr G have provided have varied due to their circumstances changing, they haven't been able to demonstrate ongoing affordability to repay this loan over a reasonable time frame.

I know my decision will come as a disappointment to Mrs and Mr G, but I can't say that Mars has acted unfairly here.

My final decision

Mars Capital Finance Limited has already made an offer to pay £250 to settle the complaint and I think this offer is fair in all the circumstances.

So my decision is that Mars Capital Finance Limited should pay £250. I make no further order or award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs and Mr G to accept or reject my decision before 19 October 2023.

Julia Meadows
Ombudsman