DRN-4365790

The complaint

Mr and Mrs M's complaint is about a mortgage they have with Preferred Mortgages Limited. They are unhappy with the recent increases in the interest rate they have been paying and have questioned why it has gone up in line with Bank of England Base Rate (BEBR) increases, when it didn't go down in line with them in the past. They suspect the lender of 'profiteering' at their expense.

In addition, they don't consider that they have been treated appropriately as Mr M falls under the Regulator's definition of a vulnerable customer. They have said they feel trapped because Preferred is a closed book lender and so can't offer them a new interest rate product. As they believe Preferred is a member of a large banking group, they question why they cannot be provided with a new product to help make the mortgage more affordable.

In settlement of the complaint Mr and Mrs M would like Preferred to do something with their mortgage that would make it more affordable, such as reducing the interest rate, or extending the term. Alternatively, they would accept some 'breathing space' on the condition it didn't adversely affect their credit files. Mr and Mrs M would also like an apology for the stress it has put them through by placing them in a position where they have had to raise a complaint.

Mr and Mrs M's mortgage is administered by a third-party administrator, however, as it does so on behalf of Preferred, I have referred to Preferred throughout as it is the business responsible for the matters complained about.

What happened

Mr and Mrs M took out their mortgage with Preferred in 2007 following advice from an independent mortgage broker. It was for £85,000 over a term of 25 years, and on an interest-only basis. A fixed interest rate product was attached to the mortgage until 1 June 2009. The mortgage offer set out:

'*After 1st June 2009, the interest rate that will apply for the remaining term of the mortgage is a variable rate which is 3.70% p.a. above LIBOR (currently 5.53% p.a.), giving a current rate payable of 9.23% p.a.*'

Mr and Mrs M's mortgage reverted to the variable interest rate detailed above in 2009.

On 21 November 2022 Preferred responded to a complaint about the interest rate being applied to the mortgage as it hadn't changed in line with BEBR. Mr and Mrs M had also expressed concern about the recent increases in the interest rate and their ability to cope with the higher payments, especially in light of Mr M's medical situation. The complaint was not upheld.

Preferred responded to a further complaint in a letter of 3 July 2023. This related to the interest rate and it not having reduced in line with BEBR. It also raised the issue of the lack of availability of new interest rate products and the support available due to rising payments and the fact that Mr M was a vulnerable customer. The complaint was not upheld.

Mr and Mrs M weren't happy with the response they received and referred the complaint to this service on 30 June 2023.

When we informed Preferred, it said that the aspects of the complaint relating to the interest rate not changing in line with changes to BEBR and the support provided had been addressed in its letter of 21 November 2022. As these complaints hadn't been referred to us within six months of that letter, Preferred believed we could only consider those issues from 22 November 2022.

Mr and Mrs M explained that they had not pursued the interest rate and support elements of their complaint following the November 2022 final response letter because of a temporary deterioration in Mr M's medical situation. As such, he hadn't been in a position to contact us or pursue the complaint further.

One of our Investigators looked into our jurisdiction to consider the complaint. He concluded that we were only able to look at the issues relating to the interest rate being charged and the support available to them from 22 November 2022. The investigator went on to consider the merits of the parts of the complaint that fell within our jurisdiction. He explained that Preferred was a closed book lender and not a part of the banking group Mr and Mrs M thought it was. As such, Preferred was unable to provide new interest rate products or a transfer to a lender that could. In relation to the interest rate, he explained why the rate had not followed BEBR and concluded Preferred had done nothing wrong in it not doing so. As for the matter of Preferred providing Mr and Mrs M support, the Investigator explained what would be expected in relation to potential financial difficulties and Mr M being a vulnerable customer. The Investigator didn't think Preferred had done anything wrong in this regard. He didn't recommend the complaint be upheld.

Mr and Mrs M didn't accept the Investigator's conclusions. They reiterated that Mr M wasn't able to refer the complaint following the November 2022 final response letter due to his medical situation. In relation to the merits of the complaint, they asked how the Investigator could conclude the lender was still active, as in their mind an active lender would be able to help, support and not put blocks in place to receiving help. They said they believed that Preferred asking to go through their finances with them was so that it could use the data to take advantage of them, and raise the interest rate further. Mr and Mrs M said that their mortgage payment had tripled since February 2022 and asked how this could be considered as treating them fairly. They questioned the impartiality of the Financial Ombudsman Service and asked that the complaint be referred to an Ombudsman if the Investigator couldn't change his conclusions.

I issued a decision setting out our jurisdiction on 13 October 2023 in which I confirmed we could only consider:

- Whether Preferred managed and applied the interest rate fairly since 22 November 2022.
- The support available to Mr and Mrs M since 22 November 2022 due to their monthly payments increasing and in light of Mr M's vulnerability.
- The assistance Preferred ought to have provided to Mr and Mrs M due to it being a closed book lender.

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 will address each complaint point in turn.

Whether Preferred has managed and applied the interest rate fairly since 22 November 2022

It is not unusual for the interest rate on a mortgage to track what is called a 'benchmark' rate, such as BEBR. When tracking the benchmark, there will be what is called a margin. This is the amount above the benchmark rate that is applied to the mortgage, for example BEBR plus 2%. In the case of Mr and Mrs M's mortgage, it tracked LIBOR and the margin was 3.7%. Preferred has provided information to us about LIBOR rates and the interest rate it then charged Mr and Mrs M. It appears that Preferred applied interest rates to their mortgage as it said it would and in line with the terms and conditions of the mortgage.

Since LIBOR information has ceased to be available, the interest rate has been determined by a synthetic LIBOR rate, calculated in line with the Regulator's guidance. Our Investigator highlighted the mortgage condition that allowed Preferred's to change the benchmark rate, so I won't repeat it here. Having considered Preferred actions, I am satisfied that when it altered the benchmark rate being used, this was in line with what the mortgage contract allowed, and it was a reasonable decision to use the benchmark it did. In addition, Preferred did what it should have in keeping Mr and Mrs M informed about the change.

Mr and Mrs M seem to think that had Preferred applied the changes in BEBR to their mortgage, the interest rate applied to their mortgage would have been lower. While the LIBOR rates were not identical to BEBR, they started to reduce around the same time and at times were actually lower than BEBR. The reason the interest rate being applied to their mortgage didn't go below 3.75% at its lowest, was because of the 3.7% margin, which Mr and Mrs M accepted at the time they took the mortgage out.

The support available since 22 November 2022

The Regulator has recently issued guidance to lenders for supporting borrowers who are struggling to make their monthly payments due to recent interest rate rises. This provides for relaxed affordability requirements for interest rate product switches, temporary changes to an interest-only basis for borrowers with a repayment mortgage and extensions to the mortgage term. As has been confirmed, Preferred doesn't have any interest rate products to offer Mr and Mrs M. The other two options wouldn't affect their monthly payments as their mortgage is already on an interest-only basis and so a term extension wouldn't alter the amount they needed to pay.

As such, the options available to Preferred to assist Mr and Mrs M would be its normal forbearance measures, that it would offer to any borrower who was, or would soon be, in financial difficulties. The first step to Preferred being able to offer assistance would be for it to establish what Mr and Mrs M's situation was, so that it could explore what it could do to assist them. This would involve them telling Preferred about their financial and, if appropriate, wider circumstances. While Mr and Mrs M are uncomfortable to have such a conversation, it is necessary to ensure their lender understands their situation fully so that it can establish what the problem is, how long it is likely to last and what, if anything, it can do to assist. Preferred has offered to complete such an assessment and I can't find it at fault for wanting to do so.

Mr and Mrs M have highlighted that Mr M would be considered a vulnerable customer due to his health. Preferred would need to take that into account when dealing with Mr M and for it to make reasonable adjustments in line with the Equality Act 2010. This would require Preferred to ensure Mr and Mrs M had equal access to the services it provides. What it doesn't require Preferred to do is to change its lending policy (or apply it differently) or provide them with interest rate concessions that would not be available to other customers. In other words, the requirement to make reasonable adjustments does not mean that a person with a protected characteristic receives a more favourable outcome than someone without that characteristic.

As I have said, Mr and Mrs M have asked that the interest rate charged on their mortgage be adjusted. This may be something that could be considered as a forbearance measure if they are in financial difficulties, but their circumstances would need to be assessed to establish if it was the most appropriate option.

The assistance Preferred ought to have provided to Mr and Mrs M due to it being a closed book lender.

Initially I would confirm that the business that administers the mortgage on behalf of Preferred is part of a large banking group, but Preferred is not part of that group. As such, that large banking group cannot change the terms and conditions associated with the mortgage, provide new interest rate products to Preferred customers or provide for a switch of mortgage to an active lender within its group.

Preferred stopped actively lending in 2008. This means that it no longer lends money or borrows money in order to provide preferential interest rate products. It was a commercial decision on the part of Preferred to close its book of lending and it is not something the Financial Ombudsman Service would, or could, interfere with.

Mr and Mrs M believe the mortgage contract entitles them to new interest rate products. Having reviewed the terms and conditions of their mortgage I can confirm that is not the case. However, what Preferred did have to do is explain to eligible customers that there had been changes made to the affordability requirements placed on lenders when assessing applications for new borrowing. In other words, to make them aware that even if it had not been possible for them to move to a new lender in the past, the changes might mean that they could then do so. While I haven’t seen any evidence Preferred provided this explanation to Mr and Mrs M, it is clear that it recommended they seek independent financial advice about the options available to them. In addition, Mr and Mrs M have confirmed they have recently looked into re-mortgaging, so if they didn’t receive a full explanation, it does not appear they have been disadvantaged.

My final decision

My final decision is that I do not uphold this complaint. Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs M to accept or reject my decision before 21 November 2023.

Derry Baxter
Ombudsman