

## The complaint

Mrs S has complained that West One Loan Limited charged her a full month's interest when she redeemed her second charge bridging loan because she missed the redemption date. She said she missed the redemption date due to errors by West One as it issued a redemption statement saying the figure was valid until 30 September, only later saying that was wrong and the figure was only valid until 29 September.

Mrs S has been supported in bringing this complaint by her husband. Any reference to Mrs S in this decision should be taken to mean Mr S acting in that capacity where appropriate.

## What happened

Mrs S took out this second charge bridging loan on 30 June 2021 to refinance existing business borrowing relating to Mrs S's son's business. The loan was secured on Mrs S's home.

Mrs S borrowed around £2m over a term of 18 months with the monthly interest rate stated to be 1.6% a month, but if there was no 'subsisting Event of Default' the interest rate would be reduced to 0.8% per month.

The terms of the agreement were that a sum equivalent to 18 months' interest at the reduced rate of interest (a sum of around £300,000) would be deducted from the loan, and each month (on the monthly payment dates) money would be taken from that amount to be applied towards the interest payments. No additional monthly payments were required from Mrs S (except in the event of default).

The facility agreement says:

- *"Interest accrues on a monthly (and not daily basis) and is payable monthly in advance on each monthly payment date. The monthly payment date shall be the date the Loan completes and each subsequent monthly anniversary of completion of the Loan." And,*
- *"For the avoidance of doubt, should you repay the Loan part way through a particular month a full months' interest will still be due to us. Interest will not be levied, credited, rebated or apportioned by us on a daily basis under any circumstances."*

In September 2022 Mrs S wanted to repay the loan as she was arranging refinance elsewhere.

On 15 September Mrs S's solicitor asked West One's solicitor (which I'll refer to as company F) for a redemption statement made out to 27 September.

After some back and forth between the solicitors a redemption statement was issued on 20 September. Mrs S's solicitor asked for an undertaking letter from company F regarding discharge which was provided on 23 September.

Mrs S's solicitor provided the undertaking to the new lender's solicitor the same day, and it replied *"Please provide the updated undertaking up to the 30th Sept..."* Mrs S's solicitor passed that request onto company F.

Company F responded on 27 September saying *"The previous redemption figure provided should have been valid to 29 September 2022, our client had provided us with the updated redemption figure attached."*

On 28 September Mrs S's solicitor asked *"Please can you update your undertaking for this Friday (it is limited to Thursday as currently drafted) as we are aiming for completion for Friday."*

Company F provided a revised redemption statement for completion on 30 September (as by then an additional month's interest would have fallen due).

In the meantime there were emails between Mrs S's solicitor and the new lender's solicitor.

On 30 September the new lender's solicitor said *"We understand the loan terms are being revised but we are still aiming for completion today – I am awaiting these (expected v shortly) and will forward the revised statement and documents as soon as held. We can swap pages / manuscript amend where applicable."*

Later that day Mrs S's solicitor queried the new loan arrangement fee with the new lender's solicitor, which was amended.

The West One loan was redeemed on 3 October 2022.

On 5 October Mrs S sent an email to West One. That said:

*"It is the highlighted comment that the previous redemption statement as of 30 September 2022 was decided as valid only up to 29 September 2022 although you can see in the trail e mails I objected and said 30 September 2022 redemption statement emailed by [company F] to our solicitors on 20 September 2022 was very much valid for redemption on 30 September 2022 also since the anticipated redemption on 29 Sept 2022 did not take place because Lender amended the offer from 2 years to 18 months and LTV from 70 to 67 and kept Broker commission at 2 Percent on the 70 Percent higher loan amount which was rectified on 30 September and I told the solicitor to go ahead on 30 September 2022..."*

West One responded to the complaint, saying that under the loan agreement interest was added monthly in advance on the 30th of each month and interest was charged monthly, not daily. It said the first redemption statement incorrectly said the redemption figure was valid until 30 September, and when the error was noticed on 27 September a revised redemption statement was issued. Whilst it accepted it had made a mistake, it said the new lender wasn't ready to complete on 29 September. It offered £50 for the inconvenience caused by the incorrectly dated redemption figure but said the interest that was added on 30 September (and therefore caused the redemption figure to be higher) was correctly charged and so it wouldn't be refunded.

The complaint was looked at by one of our Investigators. She didn't think West One had given enough time to act on the revised redemption figure date and said it wasn't fair that interest was charged for October. She said if the error had been picked up sooner she thought it was more likely than not that completion would have happened on 29 September.

To put things right she said West One should refund the interest that was charged for October (plus 8% simple interest) and pay £150 compensation.

West One didn't agree and so it was passed to me to decide.

### **What I've decided – and why**

I issued a provisional decision in December 2023, the findings of which said:

*"It isn't in dispute that the original redemption statement was wrong, in that it said the figure was valid until 30 September instead of 29 September. What I need to decide is what would have happened differently if that hadn't been wrong.*

*The original request was for a redemption statement for an anticipated completion date of 27 September, so if that completion date had been met it wouldn't have mattered that the end date was wrong as the loan would have been paid off before then.*

*The new lender's solicitor noticed a discrepancy on 23 September when Mrs S's solicitor sent it the redemption statement and undertaking from company F. That was raised with company F on 23 September, but by then it was 5.30pm on a Friday so outside of normal business hours.*

*Whilst Mrs S has said it took company F four days to respond we need to think about business days, not calendar days. Company F would have received the email on Monday morning (as it was sent after the previous working week had ended) and it responded on Tuesday lunchtime. That isn't an unreasonable timeframe.*

*Mrs S has also said that the email of 27 September doesn't mention the mistake of the previous redemption date, saying her solicitor "...having other matters to handle looked at the undertaking issued on 27 September 2022 without any red flagging the mistake...". But the email enclosing the undertaking does point out the mistake in the date. It said:*

*"The previous redemption figures provided should have been valid to 29 September 2022, our client has provided us with the updated redemption figure attached.*

*Please see attached undertaking."*

*Unfortunately it seems Mrs S's solicitor didn't read that. Instead it asked on 28 September (again after 5.30pm so outside of normal business hours) for the undertaking to be redrafted for 30 September as that was the day they were aiming to complete.*

*Having reviewed the email trails I can't see there was ever any intention to complete on 29 September. The original request was for 27 September and then it jumps to an intended completion date of 30 September. That is supported by Mrs S's email to our Investigator which said:*

- "our solicitor had e mailed to [company F] on 23 September 2022 17.346 requesting for the updated undertaking for [the redemption statement] for [the redemption amount] valid til 30 September 30 2022 and had agreed for redemption with the third party solicitor on 30 September 2022"*
- "...our intention was always to complete on 30 September 2022."*

*Mrs S has said West One was wrong to say the delay was due to the lender amending the terms of its offer, saying completion for 30 September had been set by her solicitor on 23 September, it wasn't a last-minute change due to the offer for the new lending being amended. She said:*

- *“Statement by the BUSINESS that “The delay was due to [the new lender] amending the terms of their offer” is misleading and false. By e mail dated September 30 2022 10:38 [the new lender’s solicitors] confirmed that they were aiming for completion on 30 September 2022 in spite of the change in the terms. In any case had I not been able to complete on 30 September 2022 the Business was entitled to have argued this.” And*
- *“[The new lender] did revise the terms but the revised terms which were accepted by me on 30th September 2022 morning by me visiting my solicitor signing the revised terms and couriered to [the new lender’s solicitor].”*

*But 30 September would always have been too late and completing that day (whether planned on 23 September or a last minute change) would always have meant Mrs S would incur the additional interest on 30 September. If Mrs S wanted to avoid that interest charge then she needed to complete on or before 29 September and I can’t see that would ever have been possible.*

*It is clear from the emails between Mrs S’s solicitor and the new lender’s solicitor that they weren’t in a position to complete on or before 29 September as they were still making amendments to the new loan terms and particulars.*

*I’ve not seen anything that makes me think it is more likely than not (which is the test I must use) that Mrs S could have completed her new loan on or before 29 September even if the correct date had been given sooner. The evidence suggests that the new lender, its solicitor and Mrs S’s solicitor wouldn’t have been ready to complete the new loan by then due to the new lender changing the loan terms.*

*West One accepts that it made a mistake with the original redemption deadline as it stated this was 30 September when the redemption figure was only valid until 29 September. This was a misrepresentation.*

*The usual remedy for misrepresentations isn’t for the complainant to be put in the position they would have been in if the misrepresentation were true. It’s for the complainant to be put in the position they would have been in if things had been explained correctly.*

*That means the remedy isn’t to put Mrs S in the position that she could pay the lower redemption figure even though she redeemed her loan on or after 30 September. Instead, I must consider what Mrs S would have done differently had she been given the right information sooner.*

*For all the reasons I set out above I don’t think Mrs S would have done anything differently as I don’t think it is more likely than not that she would have been able to complete on or before 29 September even if the right information had been given sooner.*

*The terms of the loan contract state interest would be added monthly, in advance, on the day of the month the loan was drawn down. For Mrs S that means interest was added on the 30<sup>th</sup> of each month for the month ahead. This wasn’t a regulated mortgage contract, it was instead an unregulated second charge bridging loan for business purposes (even if that business wasn’t Mrs S’s), and the lender was allowed to decide on what terms it was willing to lend the money to Mrs S. Its terms were that the interest was payable monthly in advance, and that if a loan is repaid part way through a month (even if that was just a day) then the full month’s interest would still be due:*

- *“Interest accrues on a monthly (and not daily basis) and is payable monthly in advance on each monthly payment date. The monthly payment date shall be the date the Loan*

*completes and each subsequent monthly anniversary of completion of the Loan.” And,*

- *“For the avoidance of doubt, should you repay the Loan part way through a particular month a full months’ interest will still be due to us. Interest will not be levied, credited, rebated or apportioned by us on a daily basis under any circumstances.”*

*Those terms were clearly set out in the contract Mrs S entered into and I see no grounds for me to say West One shouldn’t be entitled to rely on them.*

*In summary, if Mrs S didn’t want to pay the interest for October, then she needed to repay her loan on or before 29 September. She didn’t do so, and I’m not satisfied the mistake West One made was the reason why she failed to meet that date. That’s because the information I’ve seen suggests her new loan wasn’t ready to be drawn down by that date.*

*Having considered everything, for all the reasons I’ve explained, I can’t fairly conclude that the additional interest that was added on 30 September was unfair or unreasonable.*

*That said, West One has offered £50 in recognition of the mistake it made. This was a mistake that was corrected within a week and I’m satisfied the mistake didn’t cause Mrs S’s financial loss. Having considered awards of compensation we’ve made for other similar timeframes and mistakes, I’m satisfied that offer of £50 is fair and reasonable.”*

West One didn’t respond to my provisional decision. Mrs S responded over a number of emails saying, in summary:

- She was not supposed to complete on 29 September, completion was planned for 30 September which would have happened if West One hadn’t asked for all of October’s interest on the revised redemption statement.
- The right question for me to have asked was whether she was ready to complete on 30 September.
- The interest clause for payment in the middle of the month can’t be applicable as she was always wanting to pay on the last day mentioned in the 20 September redemption statement.
- She couldn’t change the completion date to 29 September as her solicitor was only notified of the error on 26/27 September and it was too late to get things moved forward a day with the new lender.

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 I’m not persuaded that Mrs S’s response to my provisional decision changes the outcome of this complaint.

Mrs S has said that I’ve not asked the right question, but I don’t agree. I know Mrs S was intending to complete on 30 September, but as I’ve explained in my provisional decision she could never have completed on that day without incurring the interest for October:

*“But 30 September would always have been too late and completing that day (whether planned on 23 September or a last minute change) would always have meant Mrs S would incur the additional interest on 30 September. If Mrs S wanted to avoid that interest charge then she needed to complete on or before 29 September and I can’t see that would ever have been possible.”*

So it is irrelevant to the outcome of this complaint whether or not Mrs S was ready to complete on 30 September. That's because completing on that day would still have meant October's interest was due as per the terms of the facility that Mrs S agreed to in 2021.

As I explained in my provisional decision, it's not in dispute that West One made a mistake when it issued a redemption statement that indicated Mrs S could redeem her loan on 30 September without incurring the interest charge for October. And as I explained, the usual remedy for something like this isn't for the complainant to be put in the position they would have been in if the misrepresentation were true. It's for the complainant to be put in the position they would have been in if things had been explained correctly.

That means the remedy isn't to put Mrs S in the position that she could pay the lower redemption figure even though she redeemed her loan on or after 30 September. Instead, the question I need to ask myself is what would have happened if the redemption statement issued on 20 September correctly said that figure was only valid until 29 September, not 30 September. And for all the reasons I've explained in my provisional decision I don't think it would have made a difference. Mrs S has said it was too late to change things with the new lender, but I don't think that was the only reason why completion couldn't be moved forward to 29 September.

As I explained in my provisional decision, on 5 October Mrs S sent an email to West One which said:

*"... the anticipated redemption on 29 Sept 2022 did not take place because Lender amended the offer from 2 years to 18 months and LTV from 70 to 67 and kept Broker commission at 2 Percent on the 70 Percent higher loan amount which was rectified on 30 September and I told the solicitor to go ahead on 30 September 2022..."*

And in an email to our Investigator Mrs S said:

*"[The new lender] did revise the terms but the revised terms which were accepted by me on 30th September 2022 morning by me visiting my solicitor signing the revised terms and couriered to [the new lender's solicitor]."*

Which ties in with the emails between the solicitors, in that on 30 September the new lender's solicitor said *"We understand the loan terms are being revised but we are still aiming for completion today – I am awaiting these (expected v shortly) and will forward the revised statement and documents as soon as held. We can swap pages / manuscript amend where applicable."* And later that day Mrs S's solicitor queried the new loan arrangement fee with the new lender's solicitor, which was amended.

Bearing in mind how tight things were already to complete on 30 September due to the new lender revising the loan terms and there being a query over the arrangement fee it seems unlikely completion could have taken place on 29 September even if the correct information had been given in the 20 September redemption statement.

As I explained in my provisional decision:

*“I’ve not seen anything that makes me think it is more likely than not (which is the test I must use) that Mrs S could have completed her new loan on or before 29 September even if the correct date had been given sooner. The evidence suggests that the new lender, its solicitor and Mrs S’s solicitor wouldn’t have been ready to complete the new loan by then due to the new lender changing the loan terms.”*

For all the reasons given I’m satisfied that under the terms of the facility agreement she entered into in 2021, Mrs S would always have needed to pay the entire additional month’s interest as she wouldn’t have been in a position to complete on or before 29 September which is what the contract required her to do if she wanted to avoid that additional interest charge.

### **My final decision**

West One Loan Limited has already made an offer to pay £50 to settle the complaint and I think this offer is fair in all the circumstances.

So my decision is that West One Loan Limited should pay £50 to Mrs S.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs S to accept or reject my decision before 23 February 2024.

Julia Meadows  
**Ombudsman**