

The complaint

This complaint is about a mortgage Mrs and Mr F hold with Charter Mortgages Limited. The origin of the complaint is the switching of the mortgage from capital repayment to interest-only in 2010. Mrs and Mr F believe this was wrong, and that subsequent events and actions have left them unfairly trapped with a mortgage they can't repay (because they have no repayment vehicle) on a property they can't sell (because it's worth less than the mortgage balance).

What happened

The broad circumstances of this complaint are known to Mrs and Mr F and Charter. I'm also aware that the Investigator issued a detailed response to the complaint, a copy of which has been sent to all parties, and so I don't need to repeat all the details here. Our decisions are published, and it's important that I don't include any information that might result in Mrs and Mr F being identified.

Instead I'll give a brief summary in my own words, rounding the figures, 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.

The mortgage began in 2007, on a capital repayment basis, with a lender I'll call M; it was taken out on the advice and recommendation of a third party intermediary. The mortgage has been the subject of several transfers between lenders. The most recent was to Charter in 2018. Charter has confirmed it takes responsibility for complaints about acts or omissions on the part of the predecessor lenders. For simplicity's sake, I'll refer to the business as Charter throughout, even where describing events that happened before it took on the mortgage.

In 2010, Mrs and Mr F were offered the opportunity to repay the mortgage at a substantial discount, but didn't take it up by the offer's expiry date. Still in 2010, when Mrs and Mr F were experiencing a period of financial difficulty in the wake of the financial crisis, Charter agreed to switch the mortgage to interest-only. The mortgage has remained on interest-only ever since, despite Mrs and Mr F contacting the business at various points, notably in 2011, 2013 and 2015, about the possibility of reverting to capital repayment.

In 2015, Mrs and Mr F bought another property to accommodate their family, with a mortgage from an entirely unconnected lender. They still own the mortgaged property but don't have a means of repaying the balance, other than by selling the property. However, it's worth less than the outstanding mortgage. When they complained in January 2023, Charter said the complaint had been made too late and referred them to this service.

When the case came to us, Charter didn't consent to us considering it on the basis of the time limits in our rules; however, a fellow Ombudsman issued a decision in November 2023 confirming that Mrs and Mr F weren't time-barred from bringing the complaint to us. An Investigator then looked into the merits of the case but wasn't persuaded it should be upheld. Mrs and Mr F asked for the case to be reviewed by an Ombudsman.

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'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.

We revisit jurisdiction at every stage of purchase-handling process, so I've looked at what my Ombudsman colleague about why she decided the complaint was one that we could consider. Having done so, I agree with her entirely. I'm satisfied the contact in 2015, so less than six years after the switch to interest-only in 2010, constituted an expression of dissatisfaction, thus meeting the FCA's definition of a complaint. Meanwhile, Charter's response written at the time didn't give Mrs and Mr F six months' referral rights to this service.

Where the evidence is incomplete and/or contradictory, I'm required to reach my decision on the basis of what I consider is most likely to have happened, on the balance of probabilities. That's broadly the same test used by the courts in civil cases.

Much of Charter's case relies on contemporaneous records of its contact with Mrs and Mr F over the years. Given how much time that's elapsed, that's quite normal. The value of such documents is that they're contemporaneous; so they should reflect what was said and agreed at the relevant time.

They're not fool-proof, of course; there's always the possibility of information being recorded incorrectly. But they're typically more reliable than people's individual recollections at a distance of time which, although given in good faith, can sometimes be degraded by the passage of time or more generally influenced by hindsight.

So unless there's a compelling reason to believe the information is inaccurate, or incapable of being relied on for some other reason, we'll generally attach some weight to it. I'm satisfied I can do that here.

Having done so, I set out my conclusions below, using similar headings to those the investigator used in his informal view of the complaint.

Changing to interest only in 2010 and not reverting back to capital repayment in subsequent years

The switch to interest-only in 2010 was intended to help Mrs and Mr F through a period of financial hardship; in that context, I think that was a reasonable course of action. As far as 2011 is concerned, the contact notes suggest that Mrs and Mr F were updating Charter about the gradual recovery in their finances, but not, as they have said, about reverting to capital repayment.

The notes of the contact in March 2013 point to a possible reversion to capital repayment being discussed, but concluded with Mrs F saying they'd think about it and contact the business again in May. But the next contact after that about this topic was the complaint in

2015, which was primarily about the switch to interest-only in the first place rather than about not being allowed to switch back.

Overall, I'm not persuaded Charter wrongly advised Mrs and Mr F either to go onto interest-only in the first place or actively told them to stay on interest-only instead of reverting to capital repayment subsequently.

There's something else; the available evidence does seem to indicate that Mrs and Mr F found the interest-only payments difficult to keep up in full over the years. Maintaining capital repayments as well would only have been harder still. I've noted what they've said about being able to get a repayment mortgage for the property that later became their home, but that in itself isn't an indicator that they could have afforded to make capital and interest payments on the Charter mortgage as well, without putting themselves under considerable financial pressure.

The lack of a repayment vehicle

This goes to Mrs and Mr F's belief that Charter should have made sure they'd be able to repay the mortgage at term end before agreeing to switch to interest-only. When assessing this aspect of the complaint, I can't consider what Charter did or didn't do in the context of the regulatory requirements that apply today. I can only consider what was expected of a lender in 2010, and at that time, there was no regulatory requirement on a lender to ensure a borrower had a suitable repayment vehicle in place.

All that lenders needed to do was tell borrowers they needed to have a repayment vehicle, and I'm satisfied Charter did that by virtue of narratives in the annual mortgage statements. The earliest example of this that I have seen is the statement for the year ending 31 December 2011.

Offer of a balance reduction

I've covered this in the introductory summary of events, but for completeness, this was something that was offered in 2010, but not taken up before the expiry date. In any event, it wasn't something Charter was obliged to offer in the first place.

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 discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs and Mr F to accept or reject my decision before 11 March 2024.

Jeff Parrington

Ombudsman