DRN-4604057

The complaint

Mr H complains Pepper (UK) Limited trading as Engage Credit stopped him getting a lifetime mortgage with another lender which would have paid his mortgage off. He also complains about the interest he's been charged.

What happened

Mr H has an interest only mortgage. Although it's a regulated mortgage, the firm that owns it is unregulated so has appointed Engage to administer the mortgage on its behalf.

As Mr H was coming to the end of the term, he applied for a lifetime mortgage to repay this mortgage. The lifetime mortgage lender offered to lend around £950,000. This wasn't enough to repay the mortgage with Engage – it was about £50,000 short. So Mr H asked Engage to consider a reduced settlement offer, allowing him to clear his mortgage in full with the money he could borrow on the lifetime mortgage. In this decision I have rounded all figures for ease.

Engage wouldn't agree to accept a reduced amount in full and final settlement. But it did agree to a shortfall redemption – meaning it would accept payment from the lifetime mortgage to release its own charge over the property, but would still expect Mr H to pay the remaining shortfall balance as an unsecured debt. It said it would reserve the right to apply for a charging order over his property in future if the shortfall wasn't repaid within an agreed time.

Engage issued a redemption statement to Mr H's solicitors. The redemption statement showed the full outstanding mortgage balance, and showed that the payment from the lifetime mortgage wouldn't be enough to clear the balance and that an unsecured shortfall would result. It also sent a letter confirming that it would accept the lifetime mortgage amount as sufficient to remove its charge, but would require Mr H to repay the shortfall and reserved the right to apply for a charging order if he didn't do so.

Mr H's solicitors provided a copy of the redemption statement and letter to the lifetime mortgage lender. The lifetime mortgage lender then withdrew its offer, saying that it didn't accept shortfall redemptions.

As a result, Mr H was unable to repay his mortgage with Engage. He complained that it hadn't accepted the lifetime mortgage amount in full and final settlement, and that it had caused the lifetime mortgage lender to withdraw the offer. He said that now he couldn't pay this mortgage back. He also complained that the mortgage was getting more expensive because of rising interest rates and Engage didn't offer new interest rate deals. This meant that he was paying more now, and also that any future lifetime mortgage offer he could get would likely be for less, meaning he wouldn't be able to repay. He says that Engage's delays in considering his requests only made things worse.

Engage agreed that it had caused some delay and offered Mr H £200 compensation. But it didn't agree that it should have waived the shortfall altogether, and said it wasn't responsible for the lifetime mortgage provider's decision not to agree to it.

Our investigator thought that the compensation should be increased to £650 because of the impact the delays had on Mr H. But she didn't think that it had done anything wrong in requiring an agreement to repay the shortfall.

Mr H didn't agree and asked for an ombudsman to review his complaint. He said that Engage should also have stopped charging interest on his mortgage while his complaint was under investigation.

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'm sorry to hear of the difficult position Mr H has found himself in. I understand his upset and frustration that his lifetime mortgage offer didn't go through and that he still has this mortgage – with less prospect of paying it off with a lifetime mortgage than before. But having considered things very carefully, and while I do think Engage didn't handle things well, I don't think it would be fair to hold Engage responsible for the lifetime mortgage not going through.

Mr H's mortgage term expired in October 2022, so he applied for a lifetime mortgage. Mr H says he first discussed a lifetime mortgage in 2021, but was advised that he would be able to borrow more if he waited. He applied again in 2022, receiving an offer in October 2022.

The offer wasn't for enough to clear the Engage mortgage, so Mr H tried to discuss the situation with Engage. He says he had great difficulty in getting through and spent hours on the phone.

Around the same time, the mortgage market was moving rapidly. Mr H says his broker advised him that the lifetime mortgage offer of £950,000 was valid until 5 January 2023, but wouldn't be extended after that. And because of rapidly increasing interest rates, if Mr H had to re-apply he might only be able to borrow around £775,000. However, Mr H's broker did in the end manage to secure an extension to the mortgage offer to April 2023.

Eventually Engage agreed to accept £950,000 to redeem the mortgage, but not to write off the shortfall – it agreed that Mr H could pay the remaining £50,000 as an unsecured debt over five years.

In January 2023, therefore, Engage wrote to Mr H's solicitors saying that it would agree to accept £950,000 and in return would release the charge over his property. It said that it would then transfer the outstanding balance to its shortfall team and expect Mr H to repay it over five years at £1,200 per month. It said that it had made Mr H aware that should he not make the shortfall payments it reserved the right to apply for a County Court judgment and a charging order over the property.

Mr H's solicitors shared this letter with the lifetime mortgage lender to confirm whether this would be acceptable. The lifetime mortgage lender said it would not be acceptable, because it did not agree to shortfall redemptions and would not consent to – and wouldn't accept the risk of – any charge over the property other than its own.

This complaint is not about the lifetime mortgage lender. I haven't seen its policies or its detailed reasoning beyond the correspondence with Mr H's solicitor and broker. But this sort of objection isn't unusual, in my experience. Many mortgage lenders reserve the right to consent to other charges over the property, even where those charges rank behind their own. Lifetime mortgage lenders in particular are cautious about this – the mortgage is designed to last for Mr H's lifetime, which wouldn't be the case if Engage obtained a charging order and then an order for sale. As a lifetime mortgage has no fixed end and an increasing balance, a second charge holder might not be content to wait for repayment with the risk that there would be no equity left to cover its debt.

I'm therefore not surprised that the lifetime mortgage lender wouldn't agree to this arrangement, and would only go ahead if Mr H's mortgage would be paid off in full.

Mr H couldn't pay the shortfall balance himself at completion. So the only way this would happen would be if Engage agreed to accept the lifetime mortgage amount in full and final settlement, writing off the shortfall.

Mr H makes the point that, looked at overall, the shortfall was only around 5% of the overall mortgage balance. That's true. But it's still a significant amount of money. There was no obligation on Engage, on the lender's behalf, to agree to any loss on redemption – let alone a loss of £50,000. Mr H's property was valued at around £1.6million, so Engage considered that there was substantial equity in the property and it wasn't prepared to write off such a large sum. This was a reasonable decision Engage was entitled to make.

However, that created a stalemate. Engage would agree a reduced amount to remove the charge and allow the lifetime mortgage to complete – but only if Mr H repaid the shortfall. Mr H couldn't repay the shortfall immediately, but agreed to do so over time. But the lifetime mortgage lender would only go ahead if the full mortgage balance, including any shortfall, was paid off immediately.

The result was that the lifetime mortgage didn't go ahead, and Mr H couldn't pay this mortgage off. It remains outstanding, and remains secured to his property.

As I say, while appreciating the difficult position that left Mr H in, I don't think it was unreasonable that Engage wasn't prepared to write off the shortfall altogether.

Mr H also says that even if Engage wasn't prepared to write off the shortfall, it didn't need to tell the lifetime mortgage lender about it. It could just have issued a reduced redemption statement and kept the shortfall agreement confidential.

I'm afraid I don't agree about that. Engage didn't tell the lifetime mortgage lender, Mr H's solicitors did. They did so because it wouldn't be proper to conceal this or mislead the lifetime mortgage lender by not disclosing facts which were relevant to its decision to lend. Mr H himself was also under an obligation to disclose relevant facts to the lifetime mortgage lender. Even if Engage released the charge over his property, the fact that Mr H would have a separate debt of £50,000 outstanding – with a risk of a charging order if he didn't pay it – is clearly a relevant fact the lifetime mortgage lender was entitled to know.

And so I don't think I can fairly hold Engage responsible for the decision of the lifetime mortgage lender not to go ahead. Unless it wrote off the shortfall – which it didn't have to do – then the lifetime mortgage lender would need to know the true position. And, having learned that, the lender would not be willing to lend to Mr H without the shortfall being cleared – which he couldn't do. Regardless of how well Engage handled the process, the eventual outcome would have been the same.

Putting things right

That said, I am satisfied that Engage did handle the process poorly. It took several weeks even to respond to Mr H's request to discuss a shortfall redemption. Mr H tried many times, via phone and email, to get Engage to consider his proposal, but it wasn't until January 2023 that it really did so. Even then, there were further delays and poor communication.

This was a very difficult and worrying time for Mr H. He was conscious that – given what was happening in the wider markets – this might have been his last chance to get a lifetime mortgage large enough to repay this mortgage. His broker had told him that the lifetime mortgage lender wouldn't consider an extension to its offer, and he was desperately trying to get Engage to respond to him before it expired.

Engage's failure to do so compounded what was already a very stressful time, and meant that Mr H had to spend much more time chasing Engage than he should have done. This caused him substantial distress and inconvenience, and I agree that £650 compensation is fair in all the circumstances.

However, I don't think it would be fair to expect Engage to remove or write off the interest charged to his mortgage while his complaint has been under investigation. The mortgage remains outstanding, and subject to interest in line with the terms and conditions. For the reasons I've explained, even if Engage had handled things better I don't think Mr H would have been able to pay it off and so interest would still have been charged. I don't think it's fair to expect the interest to be written off.

Now I've made my decision, this complaint is at an end. But Mr H still has the mortgage, and still owes the capital amount. It seems he's also having difficulty making the interest payments. Engage will need to work with Mr H, taking into account his individual circumstances and treating him fairly and sympathetically, while it considers any further proposals Mr H may have for repaying the outstanding balance.

My final decision

My final decision is that I uphold this complaint and direct Pepper (UK) Limited trading as Engage Credit to increase its offer of compensation to £650 in total.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 21 March 2024.

Simon Pugh
Ombudsman