

The complaint

This complaint is about a mortgage Mr M holds with Pepper (UK) Ltd trading as Engage Credit. The complaint embraces several individual points (which I'll list in due course) relating to Engage's handling of arrears on Mr M's account, charges applied to the mortgage in connection with litigation action and buildings insurance, and how Engage responded to a data subject access request (DSAR) made under the General Data Protection Regulation.

Mr M is represented here by Ms B. During the narrative of this decision, where I refer to things Mr M said or did, there may be occasions where it was Ms B acting on Mr M's behalf. For ease of reference, I'll simply refer to Mr M throughout.

What happened

The broad circumstances of this complaint are known to Mr M and Engage. 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 Mr M being identified.

Instead I'll give a brief summary in my own words 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 was originally with a lender I'll call L but was later transferred to Engage. Mr M has been in long-term arrears, and Engage has instructed solicitors in legal action from time to time. The costs incurred by the solicitors have been debited to the mortgage account. Also, Engage has periodically arranged what is known as Lender Insurance Only (LIO) when it didn't receive evidence that Mr M had insured the mortgaged property himself. On these occasions, Engage debited the LIO premiums to the mortgage account.

In the spring of 2022, Mr M entered into the government-backed breathing space scheme, which is designed to help consumers with mental health issues by giving them a period in which they can get advice and negotiate arrangements and creditors should not pursue any enforcement activity.

The main thrust of this complaint arises from two events:

- a DSAR made on 10 May 2022; and
- a phone call Mr M (supported by Ms B) made on 14 June 2022, with the intention of making the first payment under an arrangement negotiated by their breathing space representative (which I shall refer to here as P).

I'll summarise the individual heads of complaint below, using the same headings as our investigator uses in his informal view on the complaint. These were:

- Engage's initial response to the DSAR was incomplete.

- Amongst other omissions, the DSAR response didn't provide a breakdown of costs added to the mortgage, or notifications sent to Mr M when these costs were added.
- During the 14 June 2022 phone call, Engage refused to take the payment and failed to set up a direct debit for future payments, and threatened Mr M with possession. Although Mr M asked for a complaint to be set up and a complaint reference number issued, he didn't then receive one.
- Engage misled P by wrongly telling it he had breached the terms of the breathing space arrangement by not making his first payment.
- Engage disclosed information about him to a third party who called him purporting to be a cash buyer for his home.
- Engage applied to the court for a warrant to evict Mr M knowing that a complaint had been raised with this service.

The investigator issued his view of the complaint on 17 August 2023. For the most part, he didn't think Engage had treated Mr M unfairly. But he did identify a number of shortcomings, which I detail below, along with his recommended remedy.

- Engage had omitted to set up a reminder to send Mr M a transcript of a call recording. However, he considered its offer of £50 compensation for this to be fair.
- The call handler didn't threaten eviction during the 14 June 2022 phone call, but did mention the subject which should not have happened during the breathing space period. However, he considered Engage's offer of £125 compensation for this to be fair.
- Engage had wrongly treated the payment made on 14 June 2022 under the breathing space arrangement as that for May 2022. As a result it had then told P the arrangement had been breached when it hadn't. Engage had offered £125 compensation for this, which the investigator considered insufficient for the worry and distress this caused Mr M. He recommended an additional £200, taking the cumulative compensation from the £300 already offered to a total of £500.

Engage accepted the investigator's recommendation; Mr M did not. He asked for the case to be reviewed by an ombudsman. He said he'd give his reasons. but not until after we had first supplied him with copies of all the documentation the investigator had relied on to reach his view. We have sent that material to Mr M on a number of occasions; twice by post and also by providing access to an on-line portal where the documents were hosted.

Mr M says he hasn't received the printed documents or been able to access them on-line. He says a disk that Engage sent him directly with recordings of phone calls was corrupted and wouldn't play. More recently, Mr M has told us that he has reported Engage to the police to investigate potential mortgage fraud, and that we should hold our consideration of the case in abeyance pending the outcome of the police investigation.

More than eight months have passed since the investigator gave his view, and the case is now with me.

What I've decided – and why

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.

I've thought about what Mr M has said since first asking for the case to be reviewed by an ombudsman. First of all, I'm satisfied we have taken all reasonable steps to ensure Mr M was furnished with the material we have on the case, and that he has ample time to consider it. As for the request that we suspend our consideration pending a police investigation, being impartial means I have to give equal consideration to both parties. It's not just Mr M who seeks an outcome to the complaint; Engage does too and it's not appropriate to leave it waiting indefinitely.

Ours is a statutory scheme intended to provide swift outcomes to disputes between business and the customers. We're not a part of the criminal justice scheme, and I don't consider that anything I say here will in any way interfere with a police investigation into alleged fraud. What I'm looking at here relates to claims of maladministration and/or unfair treatment.

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, what follow are my findings and the reasons for them.

Engage's initial response to the DSAR was incomplete.

The initial DSAR was general rather than specific, and the response reasonably reflected that. When Mr M expressed his dissatisfaction with that, and specified items he considered missing, Engage sent a second response with much of the additional information that it held. That's reasonable, and in line what I'd expect it to do.

As far as legibility of historic documents is concerned, Engage can only reproduce what it was given when the mortgage was transferred from the original lender. Whilst it would have been helpful, Engage wasn't obliged to collate the material in date order. Likewise, it can only reproduce what it has, and overall, with one caveat which I'll come to, I don't think Engage has, either wittingly or unwittingly, withheld material to Mr M's detriment. If he still thinks otherwise, Mr M has the option of raising his dissatisfaction with the Information Commissioner's Officer using the information provided by the investigator.

I mentioned a caveat; that is the omission to set up a reminder to create a transcript of a call recording. For that, I consider £50 to be fair compensation.

Amongst other omissions, the DSAR response didn't provide a breakdown of costs added to the mortgage, or notifications sent to Mr M when these costs were added.

I've looked at the costs Engage debited during the six-year period prior to the complaint starting. The investigator explained why our rules prevented us from looking at any before then, and Mr M hasn't contested that.

The LIO premiums correspond to periods when Mr M had not provided Engage with evidence of insurance he had arranged; in my view, that's fair. It's a condition of the mortgage that the property be insured, and if Engage isn't satisfied Mr M has met that condition, it can reasonably arrange insurance itself and debit the cost of doing so to the mortgage.

The litigation costs correspond with invoices received from solicitors acting for Engage, and from studying the invoices, the work done and the amount charged, they don't seem to me to be unreasonable or unnecessary.

All of the disputed items whether they were litigation costs or LIO premiums, were listed on the annual statements covering the relevant periods, so I'm satisfied Engage made Mr M aware of them. For this reason, I wouldn't expect a separate breakdown to be provided as part of the DSAR response. Also, Engage wasn't required to send Mr M copies of invoices at the time they were submitted and paid.

Additionally on the subject of amounts charged and notification thereof, I'm satisfied Engage provided a reasonable explanation for an increase in Mr M contractual monthly payment that occurred during 2022. Like the investigator, I think it could have so a little sooner than it did, but I don't think the delay caused detriment that would warrant a separate award of compensation.

During the 14 June 2022 phone call, Engage refused to take the payment and failed to set up a direct debit for future payments, and threatened Mr M with possession. Although Mr M asked for a complaint to be set up and a complaint reference number issued, he didn't then receive one.

Having listened to the call recording, my findings are:

- The call handler didn't refuse to accept the payment that day or deny the existence of an arrangement. He simply paused the call to check the records before proceeding. In my view, that was the right thing to do.
- Nor did he refuse to set up a direct debit when it was first mentioned. But he did omit to come back to the subject of the direct debit later in the call.
- The call handler didn't threaten Mr M with possession, but he did mention the subject when he should not have done, given the breathing space arrangement. For that, I consider £125 to be fair compensation

Engage misled P by wrongly telling it he had breached the terms of the breathing space arrangement by not making his first payment.

Engage did do this, and accepted it was wrong to do so. Where a business has made a mistake, it should apologise and offer redress. Engage has done so, but like the investigator, I don't think £125 to be enough compensation for the worry Mr M will have felt. In my view, a further £200, so £325 in all for this error, is justified.

Engage disclosed information about him to a third party who called him purporting to be a cash buyer for his home.

I imagine it would be a horrible shock for Mr M to have received a phone call such as the one he has described, and he has my sympathies for the distress it caused him. However, simply because the caller claimed to have got his details from Engage isn't enough for me to find on the balance of probabilities that Engage breached its data protection obligations. In my view, it's more likely that the caller obtained Mr M's contact details elsewhere and cited Engage as the source to make mischief.

Engage applied to the court for a warrant to evict Mr M knowing that a complaint had been raised with this service.

As a starting point, it's important to explain here that lenders will generally agree to put recovery action on hold whilst we look at a complaint, but they don't have to and we can't force them to. If the Financial Ombudsman Service had that power it would undermine our impartiality between the parties to a complaint.

It would also create the potential for consumers to use our service to bring complaints with the intention of having any legal action put on hold, thereby obstructing businesses that were trying to take action through the courts to recover money legitimately owed by the consumers.

By the time Engage took this action, which resulted in Mr M borrowing elsewhere and clearing the arrears in full, he was no longer under the protection of the breathing space arrangement, which had by then run its course. In the circumstances, where Engage held a valid court order for long-standing arrears, I don't think it was inherently wrong of it to at least consider the option of enforcement. I've no doubt Mr M found that an unwelcome development, but I don't consider it was unfair, which is the test I have to apply.

I said at the outset that I wouldn't be commenting on every single point, and I haven't. I have, as I said I would, confined myself to those matters that I consider have a material effect on the outcome. I can see how strongly Mr M feels. That's a natural reaction, and entirely understandable when you're as close to a situation as he is here. The prospect of losing one's home, which Mr M will have had on his mind until the arrears were cleared, must have been deeply distressing, and I am not unsympathetic towards Mr M's circumstances.

But my remit requires me to be objective, impartial, and to decide what is fair, reasonable and pragmatic in all the overall circumstances of the case. It also means that I'm not required to provide answers to every specific question that comes up if I don't consider doing so will affect the overall outcome.

My final decision

My final decision is that I uphold this complaint in part. In full and final settlement, I direct Pepper (UK) Ltd trading as Engage Credit to pay Mr M a total of £500 compensation. I make no other order or award.

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 Mr M to accept or reject my decision before 5 June 2024.

Jeff Parrington

Ombudsman