

The complaint

Mr and Mrs K complain that UK Mortgage Lending Limited trading as Pepper Money, the lender of their second charge mortgage (secured loan), wouldn't agree to a deed of postponement allowing them to re-finance their first charge mortgage.

What happened

In 2021, Mr and Mrs K took out a secured loan. They borrowed £117,590 including fees over a term of 25 years. The interest rate was fixed for the first five years, and an early repayment charge (ERC) applied for the length of the fixed rate – being 5% of the balance in the first two years, reducing by 1% a year thereafter down to 2% in the final year. The purpose of the borrowing was for debt consolidation and around £116,600 was paid direct to Mr and Mrs K's creditors.

In 2023, Mr and Mrs K applied for further borrowing on their first charge mortgage. They wanted to move lender and borrow an extra £91,000. They say they wanted to consolidate more debts, carry out some home improvements, and deal with the costs of a sudden family bereavement.

In order to take a new first charge mortgage, Mr and Mrs K would need Pepper Money's consent, and for Pepper Money to agree a deed of postponement – allowing the new first charge lender's charge to take priority over Pepper Money's charge.

Pepper Money refused to agree to a deed of postponement. In order to obtain the further borrowing they wanted, Mr and Mrs K therefore had to re-mortgage this loan too – which resulted in them paying an ERC to Pepper Money of just under £6,000.

Mr and Mrs K complained. They said it wasn't fair that Pepper Money refused their request. They said that if they'd known further borrowing on their first charge mortgage wouldn't be allowed they wouldn't have taken the loan out in the first place. They said Pepper Money should refund the ERC.

Pepper Money didn't agree it had acted unfairly. It said the loan was sold by a broker, so it was up to the broker to have explained its terms and checked it was suitable for them. It said it had acted reasonably in refusing the deed of postponement and the ERC was properly chargeable, so wouldn't be refunded.

Our investigator didn't think Pepper Money had acted unfairly, so Mr and Mrs K asked for an ombudsman to review their complaint.

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.

Mr and Mrs K say that their loan has changed hands – Pepper Money is not the original lender, and the terms and conditions were changed when it took over.

But that isn't correct. The original lender was Optimum Credit. Pepper Money is the same firm – it just changed its name in early 2022. So Mr and Mrs K's loan is with the same lender it always was with (albeit under a different name), and the terms and conditions are also the same.

Where a borrower wants to re-mortgage their first charge mortgage, but they also have a second charge mortgage, the second charge lender needs to agree. That's because charges at the Land Registry rank in date order, unless there is agreement otherwise. So when the earlier first charge mortgage is paid off and is replaced by a later one, the new one will rank behind the second charge mortgage (meaning the second charge mortgage will now be first charge, and the new mortgage will be second charge not first). A new first charge lender will not accept their charge sitting behind that of another lender. The only way this can be avoided is if the second charge lender agrees that their charge can be postponed – that is, moved to rank behind the new first charge lender.

In other words, unless Pepper Money agreed to the deed of postponement, Mr and Mrs K's new first charge mortgage couldn't go ahead. The only way it could happen would be if they paid off the Pepper Money loan at the same time.

Pepper Money does consider applications for deeds of postponement. But it will only generally agree where the new first charge lending doesn't make its own position worse – so where there is no extra borrowing, or where the extra borrowing is to be used either to repay Pepper Money, or to fund essential repairs to the property.

I don't think this is unreasonable. A substantial increase in the borrowing on the first charge mortgage increases the loan to value on that loan – which leaves less equity in the property to cover the second charge loan. This means that the second charge loan becomes more risky. It's not unreasonable that Pepper Money doesn't want to take that risk, unless the funds are to be used for essential repairs (without which the property value might not be enough to cover the lending).

Mr and Mrs K say that their property had increased in value since the loan was taken out, and so their application would just restore the loan to value to what it was at the start – it wouldn't increase it beyond what Pepper Money had been prepared to accept in 2021.

This is correct. In 2021, the loan to value of both mortgages combined was around 83%. It had fallen to 71% by 2023, and the further borrowing on the first charge would restore it to around 83%.

But I don't think this means Pepper Money had to agree to the deed of postponement, or was acting unreasonably in not doing so. It's true that it agreed to lend at 83% in 2021 – but did so in the expectation that the loan to value would reduce over time. Increasing it back to 83% worsens Pepper Money's position compared to where it would be if it didn't agree to the deed of postponement.

I appreciate Mr and Mrs K were in a difficult situation, and wanted to reduce their outgoings by taking further borrowing on their main mortgage. I'm sorry to hear about their circumstances. But, difficult as they were, I don't think they mean that Pepper Money was obliged to agree to an increase in loan to value – and the risk it was exposed to – that it wouldn't otherwise face.

There's nothing in the mortgage offer or terms and conditions that says Pepper Money has to agree to a deed of postponement in this situation. Pepper Money didn't advise them about whether the loan was suitable for their needs – it was sold by a broker – so even if Mr and Mrs K had planned to do this when they took this loan out in 2021, it would have been for the

broker, not Pepper Money, to take that into account when deciding whether to recommend the loan.

The mortgage offer does set out when an ERC becomes chargeable – including when the loan is redeemed during a fixed rate period. As I say, Pepper Money was under no obligation to agree to the deed of postponement where it involved substantial extra borrowing. Once it refused, it was up to Mr and Mrs K to decide whether they still wanted to go ahead. They chose to do so, repaying the Pepper Money loan. Charging the ERC in those circumstances wasn't unfair.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K and Mr K to accept or reject my decision before 7 January 2025.

Simon Pugh
Ombudsman