

The complaint

This complaint is about a mortgage which until recently was held with Pepper (UK) Limited trading as Engage Credit by a limited company I'll call P. P's sole director is Mrs S, who has brought the complaint on the company's behalf. The essence of the complaint is that Mrs S believes Engage unduly delayed providing her with a redemption statement, resulting in P incurring more interest until the mortgage was eventually repaid.

What happened

By way of a provisional decision dated 14 August 2024, I set out my provisional conclusions on this complaint. The following is an extract from the provisional decision.

"The broad circumstances of this complaint are known to Mrs S 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 Mrs S being identified.

Instead I'll give a brief summary of the key events 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.

P originally took the BTL mortgage out with a lender I'll call C; the mortgaged property was a flat I'll call 218L. In July 2020, C took a phone call from Mrs S' daughter (whom I'll refer to as Miss T) during which an address I'll call 24C was recorded as the contact address on the BTL mortgage.

In April 2021, C transferred a tranche of mortgages to Engage; P's mortgage was part of that transfer. Engage sent P a welcome letter, addressed not to 24C but to Mrs S' personal address, which I'll call 1D. In February 2022, Engage spoke to Mrs S after mail sent to P had been returned and asking for confirmation of the correct contact address for P's BTL mortgage. Mrs S preferred to deal in writing, so Engage wrote to Mrs S at 1D enclosing a form for completion to confirm the correct contact address. It didn't receive the form back.

In February 2023, Mrs S asked Engage for a redemption statement for P's BTL mortgage. Engage sent one out by post on 28 February 2023, to 24C. Having not received the statement, Mrs S asked for it again, and Engage sent a second one to 24C on 12 March 2023. The same thing happened a third time on 11 April 2023. Eventually, on 28 April 2023, Mrs S spoke to Engage, during which call it was revealed that 24C was in Engage's records as P's contact address.

Engage sent a redemption statement to 1D by registered post. In a further conversation on 5 May 2023, Mrs S complained that she should be allowed to redeem based on the February 2023 figure; Engage refused to accept the lower

amount on the basis that it had made no mistake and Mrs S had not taken earlier opportunities to ensure the correspondence address was correct.

On 2 May 2023, Mrs S redeemed the mortgage in part only, albeit for an unrelated reason. The outstanding balance included a sum of arrears and charges which she initially disputed, but later paid in full. She then referred her complaint, which included an additional issue about how long she had to wait when attempting to call Engage, to this service.

Our investigator recommended the complaint be upheld in part. She said the call waiting times were a nuisance but in the absence of evidence of call delays causing financial loss to P, she didn't recommend redress for this. But for the issue over the redemption statements, the investigator found in P's favour and recommended Engage refund, with interest, the difference between the amount P paid off the mortgage on 2 May 2023 and the amount it would have paid if the original redemption statement of 28 February 2023 had been sent to Mrs S at 1D.

Mrs S was broadly accepting of the investigator's recommendation, albeit she had reservations about the interest that had continued to accrue on the residual balance whilst we had been looking at the complaint. Engage rejected the investigator's view altogether, and so the case has been referred to me for review.

What I've provisionally 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 work within the rules of the ombudsman service and the remit those rules give us. 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.

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The first point I need to make here is the eligible complainant here isn't Mrs S; it's her company P. Mrs S presents the complaint on the company's behalf. That means that when deciding how the complaint should fairly be settled, I can only take account of how Engage's acts and/or omissions (or those of its predecessor, C) have impacted on the company. I've no doubt Mrs S found it very irksome that she had to spend long periods of time trying, and often failing, to get through to Engage on the phone. But I can't order Engage to compensate her for her time, trouble and upset in this regard.

That said, having read and considered everything that both parties have said and provided, it's my view that the events surrounding this complaint primarily arise from a lack of clarity and understanding over the identity of the borrower in the mortgage contract (and by extension Engage's customer) and who Engage should be dealing with.

I've seen various references that suggest Engage believes there are three borrowers on the mortgage, Mrs S, Miss T (who made the call in July 2020 that led to 24C being wrongly recorded as P's address) and Mrs S' second daughter, whom I'll refer to as

Miss P. As recently as July 2024, Mrs S told us that in a conversation aimed at repaying the residual balance, Engage told her that it needed confirmation of the correct contact address from Miss T and Miss P, as well as Mrs S herself, if it was to accept 1D as P's address. Meanwhile, Engage told us on 30 July 2024 that it considers there to be three parties (not including itself, I presume) to the mortgage.

All of that is wrong; none of the three afore-mentioned individuals are parties to the BTL mortgage, and none of them are Engage's customer in relation to the BTL mortgage (albeit I accept some of them may hold or have previously held customer relationships of their own). The original mortgage offer from October 2004 clearly shows the borrowing party in the contract to be P, which is an entirely separate entity from the individuals who own and/or control it.

I make the latter distinction because ownership and control of a company don't always lie in the same hands, and I think that's where some confusion may have arisen here. I mentioned earlier the mortgage offer from October 2004; it is, as I said, clearly in P's name but it was addressed jointly to Mrs S, Miss T and Miss P. I can't be certain but I think that may have been because Mrs S, Miss T and Miss P might all be shareholders in P. However, that's speculation on my part, and in any event nothing turns on it.

That's because whilst shareholding conveys ownership of a business, it doesn't convey control. Control of a business lies solely with its directors, and in the case of P, Companies House records show that Mrs S is sole director. Miss P is recorded as the Company Secretary, but that doesn't give her the same powers as a director. Meanwhile, the records indicate that Miss T holds no office in P and never has.

That means only Mrs S, or someone else expressly authorised by her, can control P. It therefore follows that Engage (or C before it) could only accept instructions to change P's contact address from Mrs S, or from someone else expressly authorised by Mrs S to act as her proxy. Mrs S has told us that she has never instructed Miss T to act as her proxy in controlling P. Meanwhile, there's nothing in the business' contact history to indicate it was ever authorised by Mrs S to accept instructions from Miss T with regard to P.

Put all of the above together and the only conclusion I can reach is that the change of contact address on the BTL mortgage in July 2020 was not authorised by P and should never have happened. I appreciate the change happened whilst C was the lender, but whilst I'm not privy to any provision there may be in the transfer document for Engage to take liability for acts/or omissions on C's part, I consider it fair and reasonable in the circumstances for Engage to accept responsibility in this instance.

Engage has made much of the argument that it is P's responsibility to make sure its contact details are accurate and up to date, and I'll address that in a moment. However, I think it's fair to conclude that it is a lender's responsibility to know who its customer is and who is authorised to act for that customer.

I said I'd deal next with whose responsibility it is to ensure P's contact details with Engage are correct. The answer to the question is simple; responsibility lies with Mrs S. So I've next considered whether and to what extent Mrs S failed in her duty to do that. First off, the change of address to 24C in July 2020 appears to have happened without her knowledge or involvement. So I've then thought about when Mrs S might reasonably have become aware that P's contact address was wrong in Engage's records.

Other than the redemption statements from February, March and April 2023 that brought everything out into the open, every communication I have seen issued to P that post-dates the July 2020 change of contact address was sent to Mrs S at 1D. That includes annual statements, the transfer of mortgage letter from C, the welcome letter from Engage, the February 2022 letter asking for confirmation of the correct contact address, even the final response to the complaint. All of these were sent to 1D.

Of course, it's possible, likely even, that some of these items were sent to 24C as well. But Mrs S wouldn't have been aware of this if Miss T had disposed of 24C, especially if the letters were being returned to Engage. The fact that the letter Engage sent her following the conversation in February 2022 was sent to 1D might explain why Mrs S didn't consider it necessary to complete and return the form. As far as Mrs S could reasonably have known until the problem with the redemption statement, the contact address for P's mortgage was 1D.

Taking all of the above into account, I have concluded that Engage should compensate P for the delay in the part-redemption of the mortgage. I have deliberately specified part-redemption because this decision doesn't address the dispute over the arrears and charges. That would in all likelihood still have arisen, and Mrs S could have raised a separate complaint about that if she'd wanted to. She could also have mitigated the financial impact on P by redeeming the mortgage in full and raised a dispute over the arrears and charges subsequently.

The redress I am proposing to award is with the intention of putting P into the position it would have been if the first redemption statement dated 28 February 2023 had been sent to Mrs S at 1D, and she had acted on it in the same time frame as she did on the redemption statement dated 28 April 2023 she eventually did receive.

On receipt of the 28 April 2023 statement, Mrs S made a payment on 2 May 2023 (four days later) for the quoted balance due on 5 May 2023, less £2,629.59 for the arrears and charges she was disputing. On the basis that she would have acted in similar vein if she'd received the 28 February 2023 redemption statement. Mrs S would have made a payment on 4 March 2003 for the quoted balance on 7 March 2003, less £2,629.59.

I gave the parties two weeks to add anything further before I finalised my decision; both have done so already.

Mrs S accepted the provisional decision on P's behalf without further comment. Engage didn't accept it, pointing out that prior to the change in 2020, the contact address for P had been a property I'll call 91E, which Mrs S had lived in before moving to 1D. Engage said this meant Mrs S had omitted to change the contact address when she moved, so even without the incorrect intervention in 2020, the redemption statement would have gone to the wrong address.

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.

Having done so, I'm not persuaded to depart from my provisional decision. I'll explain why.

When we asked Mrs S about 91E, she told us it was her belief that when she sold it and moved to 1D, she had informed the business of the move. Clearly she must have, because

1D went on record as *her* contact address. Also the sending of numerous letters about P's mortgage to 1D indicates that 1D was to all intents and purposes *used* as the contact address for P's mortgage, even if it wasn't officially recorded as such in Engage's system.

From its response to the provisional decision, Engage apparently believes that the sole reason for upholding the complaint is the change of contact address in 2020 to Miss T's property. But I also found a significant contributory factor to be the routine sending of all account correspondence, other than the redemption statement itself, to 1D. As I observed, even the letter of 7 February 2022 requiring Mrs S to clear up any uncertainty about the contact address was sent to 1D, which probably explains why she didn't respond to it.

I'd already identified the act of changing the contact address to 24C on Miss T's instruction in 2020 to be a mistake. Engage's reference to 91E in its response to the provisional decision doesn't change that. But what it does do, if anything, is additionally introduce the possibility of an omission on the business' part to change the formal contact address for P from 91E to 1D when Mrs S moved.

My final decision

My final decision is that I uphold this complaint, by ordering Pepper (UK) Limited trading as Engage Credit to pay P the sum of A+B, where:

- A. equals the difference between the amount due on 5 May 2003 less £2,629.59 and the amount due on 7 March 2023 less £2,629.59; and
- B. equals interest on A at 8% simple per annum between 2 May 2023 and the eventual date of settlement of the 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 P to accept or reject my decision before 17 September 2024.

Jeff Parrington

Ombudsman