

The complaint

Mr and Mrs S complain about a second charge mortgage (secured loan) with Blemain Finance Limited trading as Together. They've now redeemed the loan, but their complaint is that they believe the balance was higher than it ought to have been and they've been over-charged as a result.

What happened

Mr and Mrs S took out a secured loan with Together in December 2007. They borrowed £25,000 over 25 years and the loan was regulated by the Consumer Credit Act 1974 (at that time second charge secured lending of £25,000 and below was regulated; the upper limit was removed in 2008).

Shortly after the loan was taken out, Mr and Mrs S missed some payments and so the loan fell into arrears. Together began legal action to repossess their property in 2009, but as the arrears were cleared in full in October 2009 the legal action didn't go ahead. There were some further arrears in 2011 which were cleared in January 2012.

After that, Mr and Mrs S were no longer in arrears (though occasionally payments were made slightly late). They made slight overpayments each month, paying £320 when the contractual monthly payment was around £315.

On 21 February 2019 Mr and Mrs S complained that the balance then outstanding was too high. They said that they had only just been made aware that additional interest and charges had been added to the loan balance during their arrears and that as a result it wasn't on track to be repaid by 2032 as they'd expected because of this. They were surprised to learn they would need to increase their monthly payments to repay the loan by the end of the term.

Together sent Mr and Mrs S a final response to their complaint on 19 March 2019. It said it had notified Mr and Mrs S of charges added to their loan at the times they had been added. And it had sent them annual statements showing their balance every year. It said it had written to Mr and Mrs S in 2014 notifying them that they had an off-schedule balance (meaning that their loan balance was higher than it would have been had nothing gone wrong) and would need to increase their monthly payments, but Mr and Mrs S hadn't taken any action. Together said that by 2019 the off-schedule part of the balance was around £6,000 and it said it would be willing to discuss options for payment with Mr and Mrs S. Mr and Mrs S didn't bring that complaint to the Financial Ombudsman Service.

In 2022 Mr and Mrs S made another complaint to Together. They complained about the level of the balance, and that Together hadn't made them aware that they had an off-schedule balance, or what they would need to do about it, sooner. Together sent another final response, dated 26 July 2022. It said it had answered their concerns about the balance in 2019. It said that it had since revisited its view of the complaint and now believed that while it had made clear that charges had been added to Mr and Mrs S's loan balance, it now didn't think it had made the implications of that on the interest they would have to pay clear enough before January 2018. It offered to refund interest on charges where that interest was

incurred in periods where the loan had been clear of arrears for at least a year. It said this amounted to around £3,000.

Mr and Mrs S didn't accept that and brought their complaint to us. They said that an acquaintance had taken out exactly the same loan at the same time as they had, and his balance was lower. They said that Together had told them that their balance was off track by around £6,000 and so they wanted it to reduce the balance by that amount. They didn't think they'd been treated fairly in having a higher balance even though they'd cleared all the arrears many years ago.

Our investigator said that we could only consider the fairness of how Together had treated Mr and Mrs S since March 2019. He said that anything that happened before that date was out of time because Mr and Mrs S hadn't referred their earlier complaint to us. He noted that Together hadn't applied any charges since March 2019, and that Mr and Mrs S were now paying enough to clear their loan by the end of the term. He didn't think they had been treated unfairly. Mr and Mrs S didn't agree and asked for an ombudsman to review their complaint.

I've already issued a decision setting out my conclusions on what we can consider. In summary, I said that there are two parts to Mr and Mrs S's complaint:

- The factors that led to the balance going off track in the first place – this is the arrears, interest, fees and charges added up to 2012.
- The ongoing failure – as Mr and Mrs S see it – of Together to tell them about this, to explain the implications, and to reduce the balance back down to what it ought to have been at any given moment in time, and the ongoing charging of higher interest than was agreed in the loan agreement because of the historic arrears.

The complaint about actions taken in 2009 to 2012 in their own right is out of time, because it was made more than six years after the events complained of, and more than three years after Mr and Mrs S ought reasonably to have become aware of cause for complaint.

But the second complaint about the ongoing impact of those actions on the relationship between Together and Mr and Mrs S is not out of time. That is a complaint about the alleged unfairness of the continuing credit relationship between the parties. It concerns Together's acts and omissions right up to the end of the loan that allegedly contributed to and perpetuated Together's unfair relationship with Mr and Mrs S.

That complaint is not out of time on the six month rule, because although Mr and Mrs S didn't refer their complaint to us within six months of the 2019 final response, that response was superseded by the 2022 final response, in which Together changed its position on the complaint. Mr and Mrs S did bring their complaint within six months of that response, and so I went on to consider the application of the six year / three year rule to the second complaint.

In doing so I concluded that Mr and Mrs S had, in effect, complained that the relationship between them and Together had become unfair. Section 140A of the Consumer Credit Act 1974 is relevant law to the fairness of the relationship between debtor and creditor, because this is a regulated mortgage contract which was formerly a regulated credit agreement. Article 29(12) of the Mortgage Credit Directive Order 2015 provides that s140A applies to regulated mortgage contracts that were formerly regulated credit agreements. I found that although Mr and Mrs S had not explicitly relied on s140A in making their complaint, there was no requirement for them to do so and I was satisfied that, even if not expressed in those terms, that was what their complaint amounted to.

That being the case, I noted that the Supreme Court has recently said that assessing the fairness of a relationship has to be done having regard to the entirety of the relationship and all matters relevant to it. In this case, as the loan agreement was still in force at the time of Mr and Mrs S's complaint, that means that in considering whether there are matters that may have made the relationship between the parties unfair it is necessary to consider all matters that may be relevant to the fairness of the relationship, whenever they occurred. As the relationship was continuing at the time of the complaint, this part of their complaint was not out of time even though some of the matters underlying the ongoing unfairness may have occurred more than six years before the complaint. That's because the essence of this complaint is that the relationship was unfair on an ongoing basis, that Together was participating in and perpetuating an unfair relationship, and that it was in breach of an ongoing obligation to remedy or mitigate the unfairness as a result.

I therefore concluded that I can consider:

- 1) The fairness of fees, charges and additional interest added to the loan balance, as events in their own right, from 21 February 2013 onwards (being six years before Mr and Mrs S first made this complaint to Together); and
- 2) Whether the relationship between Mr and Mrs S on the one hand, and Blemain Finance Limited trading as Together on the other, was and is fair.

While the complaint was under consideration, Mr and Mrs S repaid their loan. But I didn't think that made any difference to my conclusions.

My provisional view of the merits

I issued a provisional decision on the merits of that complaint. I said:

"History of the loan"

The mortgage first fell into arrears in a substantial way in April 2009 – prior to that, there had been occasional late payments and bounced direct debits, but with the missed payments being made up shortly after they were due.

In June 2009, Mr S told Together that his self-employed income had reduced and Mrs S wasn't working. Together agreed a reduced payment plan – Mr and Mrs S would pay £100 per month, instead of the contractual £315 – for two months. But no payment was made, and in September 2009 Together issued repossession proceedings. In October 2009 Mr and Mrs S paid that month's payment plus around £2,200 to clear the arrears, so the possession proceedings did not go ahead.

Mr and Mrs S then missed further payments in 2010 and 2011, though made other payments – the mortgage was in arrears throughout this period, but never by more than the equivalent of around three monthly payments. In early 2012, the arrears peaked at around £1,300 – the equivalent of four monthly payments – but were cleared in late January.

From then on – apart from payments occasionally being made a few days late – Mr and Mrs S were never in arrears again.

However, because of the period of arrears between 2009 and 2012, Mr and Mrs S had what Together calls an "off-schedule balance". The balance of a repayment loan is expected to reduce over time as payments of interest and capital are made, with a

gradual reduction in the earlier years that increases in later years, ending in the balance being fully repaid by the end of the term.

But where, as here, payments are missed, then the balance doesn't reduce as expected or as quickly as expected. That means that when interest is calculated it's charged on a higher balance – so more interest is incurred than would have been expected had nothing gone wrong. If that extra interest isn't paid off in full it gets added to the balance and so increases further the amount of interest charged the next month – and so on, with a compounding effect. Even if the missed payments are later paid off, as happened here, the delay in paying them off means that extra interest has been added in the meantime, and the balance is now higher than it ought to have been. Unless that extra interest is also paid off, that means that for the rest of the loan term the balance remains higher than it ought to have been and the contractual monthly payment – unless increased – is no longer enough to pay off the loan by the end of the term.

The addition of fees resulting from the arrears and legal action has the same effect, further increasing the balance. Second charge lenders should only charge simple interest, not compound interest, on outstanding fees. But even so, this is a further reason why the monthly payment set at the start of the loan is no longer enough to repay it.

When Mr and Mrs S took out their loan in 2007, the monthly payment was set at £315.71. Had nothing gone wrong, that would have been enough to repay the loan by the end of the term.

However, because of the period of arrears, and the extra interest, fees, and interest on fees, between 2009 and 2012, £315.71 was no longer enough to repay the loan over the remaining term once the arrears had been cleared.

Once Mr and Mrs S were free of arrears, at the end of January 2012, their loan balance was £29,408.99, of which £3,666.50 was "off schedule". In other words, but for the impact of the arrears – including interest and fees added – the loan balance would have been £3,666.50 lower than it was.

And because the loan balance was £3,666.50 higher than was expected it would be by then when the loan was taken out, that meant that more interest was charged the following month too.

In February 2012, therefore, compound interest (on the outstanding capital) of £309.65, and simple interest (on the fees balance) of £25.14 was added to the loan balance. Total interest charged that month was therefore £334.79. But the contractual monthly payment was only £315.71. And although Mr and Mrs S made a card payment of £320, slightly more than the contractual payment, that wasn't therefore enough even to cover the interest charged that month, let alone repay a portion of the capital.

As a result, even though Mr and Mrs S had paid slightly more than the contractual monthly payment due in February 2020, the balance at the end of the month was actually higher than it was at the start. At the end of that month it was £29,421.35, of which £3,696.39 was off schedule. Despite paying more than their contractual monthly payment, Mr and Mrs S owed £12.36 more at the end of the month than they did at the start – and were £2.89 further off schedule.

This pattern continued, month by month and year by year. The balance reduced slightly in 2016 due to some adjustments and fee refunds. It finally began to decrease slightly after 2018, because the payments made were used to pay off the compound interest and capital balance, not the fees balance and simple interest – which coupled with the fact that Mr and Mrs S continued to pay £320 not the requested contractual monthly payment of £315.71, meant that Mr and Mrs S finally reached the tipping point where the amount they were paying exceeded the interest they were being charged.

But even where the main balance reduced, the off-schedule element still increased, because the balance was reducing more slowly than it would have done without the arrears – meaning that Mr and Mrs S were still slipping further and further behind where they needed to be to repay the loan by the end of the term. And in 2020, Together reduced the interest rate from 13.9% to 10.95% - this reduced the interest charged further. When the interest rate reduced, Together simply reduced the contractual monthly payment, though Mr and Mrs S continued to pay £320 per month. The interest rate rose again in 2022 and 2023, reaching 14.7%. Finally, the off schedule and total balances were reduced in 2022 following Together's response to this complaint.

In summary, therefore:

	Total year end balance	Off schedule element
2012	£29,562.44	£4,024.30
2013	£29,713.85	£4,430.23
2014	£29,842.99	£4,851.64
2015	£29,898.53	£5,242.75
2016	£29,752.69	£5,482.20
2017	£29,756.84	£5,928.76
2018	£29,738.90	£6,418.78
2019	£29,164.65	£6,457.78
2020	£28,831.02	£6,799.51
2021	£27,550.25	£6,458.91
2022	£23,231.71	£3,175.64
2023	£22,237.45	£3,178.43

I explained in my jurisdiction decision that I can't consider the fairness of the additional interest, fees and charges added during the period of arrears – because those events happened more than six years before this complaint was first made in 2019, and Mr and Mrs S didn't complain about them in time.

However, I can consider how those matters impacted the fairness of the ongoing relationship between the parties – taking into account, as relevant law, section 140A of the Consumer Credit Act.

I think it's clear that the period of arrears had a lasting impact on the relationship between Mr and Mrs S on the one hand and Together on the other. The period of arrears was the principal reason why the repayment of the loan went off track, and why the balance didn't reduce to the extent Mr and Mrs S thought it would, and to the extent it would have done without the period of arrears.

I therefore need to think about whether the period of arrears created unfairness in the relationship between Mr and Mrs S and Together, such that Together ought to have acted to put right the unfairness – and if so whether it did enough to mitigate that unfairness.

How Together communicated with Mr and Mrs S about the off-schedule balance

I've explained above how the loan worked and the impact of a period of arrears on whether it would be repaid by the end of the expected term. These are relatively complex matters and I don't think it's unreasonable that they were not appreciated by Mr and Mrs S at the time they came out of arrears.

Mr and Mrs S have said, and I have no reason to doubt, that they understood that by repaying the arrears they had dealt with the problems caused by their past financial difficulty and, provided they maintained the contractual monthly payments in future, they would repay the loan on schedule. In fact, that wasn't the case – repaying the arrears simply made up the missed contractual payments, but it didn't address the consequences of them having been missed, or pay off the fees that had been added to the loan (and were now attracting interest) as a result.

Repaying the arrears wasn't enough, therefore, to get things back on track. In order to do that, Mr and Mrs S would either need to have paid off the fees and additional interest – getting the balance back down to its expected level – or would need to have increased the amount they were paying each month to reflect the fact that the balance was now higher than was anticipated when the contractual monthly payment was set at that level.

I'm not persuaded that these are matters that should have been obvious to Mr and Mrs S. I think it was reasonable for them to assume – absent notification to the contrary from Together – that clearing the arrears and then keeping up with the monthly payments would be enough to repay the loan on time.

I think that, acting fairly as a responsible lender, Together ought to have explained these matters to Mr and Mrs S. It ought to have told them that, because of the period of arrears, their loan was no longer on track to be repaid by the end of the term even though they'd cleared the arrears. I've therefore looked at the communication about this issue since the end of the arrears in 2012.

In late 2014, Mr S contacted Together to question why they'd been sent an "arrears notice" when they weren't in arrears. Together wrote to them on 15 December 2014, explaining that their balance wasn't on track and that they would need to increase their monthly payments to £373 to pay the loan off by the end of the term. The "arrears notice" wasn't notification that they were currently in arrears, but that their loan was off course.

This letter says:

“We are writing in response to your recent request for us to calculate how much you would need to pay each month in order to repay the outstanding balance on your loan by the end of the contractual term.

You currently have a default balance on your account of £4,547.58 which has accrued as a result of additional interest due to late or missed repayments and any costs and charges that have been incurred. You need to clear this default balance if you wish to return to the capital balance within the remaining term of the loan.

You can pay your default balance at any time by making a lump sum payment or by increasing your monthly payment amount. Should you wish to pay your default balance monthly and repay your outstanding balance within the remaining term of the loan, you will need to increase your monthly payments to a minimum of £373. The first payment of this amount would be expected on 28 December 2014.

...

Should you wish to increase your monthly payments as described, please contact the Customer Service Department in advance to make us aware of your intention and so that we may amend any direct debit you have in place.”

I've not seen any further evidence of Together drawing this issue to Mr and Mrs S's attention until 2018. The next evidence of contact about it comes from the January 2018 annual statement. The annual statement covering letter says:

“Your monthly repayments won't pay off your mortgage in time

We've looked at your account and based on your contractual monthly repayments, your mortgage won't be paid at the end of the term in your agreement. You'll find some of our frequently asked questions enclosed with this statement which may help; these give more information about why your mortgage may not be repaid in time.

It's essential that you're able to pay off your mortgage when the term has ended, otherwise you may start to incur additional charges. We can help and our team are on hand to discuss your situation and repayment options with you. Please call us on the number provided as soon as you can.”

The frequently asked questions include the following:

“What if the interest charges are greater than my monthly instalment?

This can happen if you are or have been in arrears and / or if charges have been added to your account. It's important to check your statement to make sure that your current monthly instalment is enough to repay your loan at the end of the term. If not you'll need to increase it.

If you need more information about interest charges, or if you would like to speak to our team, contact us on the number provided and we'll be happy to help.

Why won't my monthly payments pay off my loan in time?

This can happen if you are or have been in arrears and / or if charges have been added to your account. To make sure your loan is repaid in time, you can either increase your monthly instalments or you can make a lump sum payment to clear any additional charges or interest."

I haven't been provided with copies of later statements, so I don't know if similar warnings were included from 2019 onwards.

In 2019, Together carried out what it called an "off schedule balance strategy", contacting affected customers to tell them that they had an off schedule balance and what action they would need to take to resolve it. It was this contact that prompted Mr and Mrs S's 2019 complaint.

The 2019 final response didn't uphold the complaint, but it did explain why the off schedule balance had arisen. It told Mr and Mrs S that the then current off schedule balance was £6,077.90, but it didn't tell them what they would need to pay to clear it by the end of the term – though according to Together's notes, it had told them that it was £359 per month in a call in February 2019. It invited them to contact its "customer care team" to discuss their options.

In May 2021, Together carried out a balance adjustment, reducing the balance by around £170, and writing to Mr and Mrs S to inform them of this. Following this, Mr S called Together – he complained that his balance was around £7,000 higher than it should be. According to its notes, Together referred Mr S back to the 2019 final response but didn't investigate a new complaint.

Mr S again questioned the balance in January 2022, and made a complaint in February 2022. Together didn't reply to the complaint until July 2022. It referred back to its 2019 final response. This time, Together accepted that its communication hadn't been sufficiently clear. It said:

"As you've raised concerns about our communication in relation to your loan not being on track to redeem within its contractual term, I've reviewed your account to understand how we've communicated with you throughout the life of your loan and my findings are as follows:

When costs and charges are applied to your account, we're obligated to let you know about this. I can see that we've sent letters to Inform you when charges have been applied. We've also sent statements to you annually to make you aware of your account position. Following my review, I'm satisfied that we fulfilled our obligations to make you aware of charges, however I don't believe we made it clear enough about the interest implications. I'm very sorry for this. In order to put this right, I'm refunding the interest that's been incurred on charges for the periods where your account wasn't in arrears for a period of at least 12 months until January 2018, when you were made aware, along with the compound effect. This totals £2,516.75 and will be applied to your mortgage account within 28 days.

In addition to the above, I also recognise that our communication about interest that would accrue for late payments could have been clearer. In order to put this right, I'm refunding a further £511.17 to your mortgage account."

I think this is referring to the information included with the January 2018 annual statement, which I've quoted above.

My conclusions on what's fair and reasonable in all the circumstances

I've explained that I can't consider the fairness of the fees and charges, and additional interest, added during and as a result of the period of financial difficulty between 2009 and 2012, because those matters are out of time.

However, I can consider the separate question of whether the events of this period gave rise to unfairness in the relationship between Mr and Mrs S and Together, and whether if so Together failed to take steps it ought reasonably to have taken to put that unfairness right.

In doing so, I take into account relevant law – including s140A-C of the Consumer Credit Act 1974.

Section 140A says that a court may make an order under s140B if it determines that the relationship between the creditor (in this case, Together) and the debtors (Mr and Mrs S) arising out of a credit agreement is unfair to the debtor because of one or more of the following, having regard to all matters it thinks relevant:

- Any of the terms of the agreement;
- The way in which the creditor has exercised or enforced any of his rights under the agreement;
- Any other thing done or not done by or on behalf of the creditor.

Section 140B sets out the sorts of orders a court might make – these are wide powers, including to change the terms of the agreement, reduce the amount owed or require a refund, or to do or not do any particular thing.

The courts have said that the assessment of unfairness is to be made at the end of the credit agreement, or (if the agreement is ongoing) at the date of the assessment.

I understand Mr and Mrs S have very recently, while this complaint has been outstanding, repaid the loan agreement. Mr S told our investigator that they'd been able to re-mortgage elsewhere, and the loan was repaid in February 2024. So if a court were considering whether to make an order under s140B, it would only do so if it found that there was unfairness at the end of the agreement in February.

I've taken this into account as relevant law. It's not for me to make a finding that there is (or was in February 2024) an unfair relationship contrary to s140A and s140B – that's a matter for the courts. But in deciding what's fair and reasonable in all the circumstances it's relevant for me to consider what the law says and the approach a court might take to this question, though that's not the only factor for me to consider.

Once Mr and Mrs S were out of arrears, the impact of the period of arrears and the fees and charges added to the loan was that they were no longer on track to repay the loan by the end of the term. Indeed, for the next six years the loan balance continued to increase slightly, even though Mr and Mrs S were paying slightly more than the contractual monthly payment each month, because they were being charged more in interest than they were paying.

I've said that the reasons behind this are complex and not something I would have expected Mr and Mrs S to readily understand. I think it was reasonable for them to have understood that once they'd cleared the arrears and resumed making the monthly payments, things were back on track.

But the reality is that wasn't the case. Mr and Mrs S needed to pay off the fees and additional interest as a lump sum, or they needed to increase their monthly payments, for the loan to be cleared by the end of the term.

As a responsible lender, I'd have expected Together to have drawn this to Mr and Mrs S's attention, and explained what they needed to do to get things back on track. I'd expect it to have a discussion with Mr and Mrs S about their circumstances and what needed to happen. This would involve discussing whether they could afford to make a lump sum payment or increase their monthly payments – either an increase to the contractual monthly payment or an informal arrangement – and potentially considering other options to prevent the balance continuing to increase if not. These might include measures such as extending the term to reduce the payments required, or offering interest rate or other concessions.

I've said that bearing in mind that, between 2012 when the arrears ended and April 2014, this loan was covered by Office of Fair Trading guidance. This issue is not expressly covered in the guidance, but the guidance does require fair treatment of borrowers, and support and forbearance arising from financial difficulty, for example:

- “creditors should ... monitor the borrower's repayment record during the course of the agreement, offering assistance where borrowers appear to be experiencing difficulty” (para 2.2)
- “forbearance and consideration towards borrowers experiencing difficulty ... proportionality in dealings between creditors and borrowers. Actions taken in respect of arrears or default should give proper consideration to available options” (para 2.3)
- “The OFT considers that creditors should take appropriate action, including notifying the borrower of the potential risk of an escalating debt” (para 6.2)

From April 2014, the loan ceased to be subject to OFT guidance, and became subject to Financial Conduct Authority regulation – from 2014 to 2016 as a regulated credit agreement, and from 2016 onwards as a regulated mortgage contract. FCA principles require a lender to act fairly, paying due regard to customers' interests. And FCA rules require lenders to show forbearance and treat borrowers fairly.¹

With all that in mind, I don't think Together did enough following the period of arrears to let Mr and Mrs S know about the situation with their loan. It sent individual notices of arrears and fees, but they didn't explain the situation with the rising off schedule balance and escalating debt. It's relied on the annual statements – but (until 2018) they didn't explain that either. And while they would have shown that the balance wasn't reducing year on year, there was no explanation or context for that, and nothing to draw it to Mr and Mrs S's attention. Given the relatively low value of the loan compared to the length of the term, the balance would not have reduced substantially over this period even if nothing had gone wrong – Together has provided an illustration of how Mr and Mrs S's loan would have behaved without the arrears, and that shows that even if properly on track the balance would only have

¹ CONC 7.3 and MCOB 13.3

reduced from £25,518 at the start of 2013 to £25,260 at the start of 2014. Other than that, Together took no action to address the off schedule balance or try to discuss how to resolve it with Mr and Mrs S apart from one reactive letter in 2014.

I'm therefore satisfied that immediately following the period of arrears, once it was clear Mr and Mrs S were able to maintain their monthly payments regularly and sustainably, Together ought pro-actively to have contacted them, explained the reasons for and consequences of the off-schedule balance that had arisen, and discussed with them ways in which it could be managed or repaid. But it didn't do that.

Mr S did question an "arrears notice" in late 2014, which led to the December 2014 letter I've cited above. That letter did explain the problem that had arisen – but it only offered increasing the monthly payments as an option, and there was no further or pro-active contact with Mr and Mrs S to follow it up and discuss actually making a change. Nothing further was said until the 2018 annual statement and the 2019 "off-schedule balance strategy" exercise.

I don't think that the December 2014 letter, in isolation, did enough to assist Mr and Mrs S in understanding what had gone wrong with their loan and explaining the range of options there might be to put it right. I don't think it was enough to send a single letter, leaving all the responsibility on Mr and Mrs S to take steps to resolve the off-schedule balance; I think Together ought to have been more pro-active in trying to work with them to put things right.

Together's failure to explain the issues with Mr and Mrs S's loan following the period of arrears, and failure to try to work with them to get the balance back on schedule, led in my view to unfairness. It meant that Mr and Mrs S lost the opportunity to begin to tackle the off-schedule balance sooner. If it had been discussed with them in 2012 or 2013, it's likely that only a small increase to the amount they were paying would have been necessary. Even in December 2014, they would only have needed to pay around £373 per month – in mid-2012 it would have been somewhere nearer £350, which is not substantially more than the £320 they were actually paying.

Failing to address this issue sooner didn't just, in my view, create unfairness at the time of the failure to address it. It also created ongoing unfairness – because the longer things continued, the more interest Mr and Mrs S were charged as a result, and the higher the amount they would have to pay once it was addressed. The balance was higher for longer, with Mr and Mrs S paying more overall, than would have otherwise been the case. By the time Together did take further steps, with the pro-active exercise in 2019, it was seven years after the arrears were resolved. Mr and Mrs S were therefore surprised to learn of the ongoing problems that resulted, and complained they'd been treated unfairly – in response to which Together simply said it hadn't done anything wrong.

In thinking about whether the failure to be pro-active in explaining the off-schedule balance issue and seeking to resolve it before 2019 led to an unfair relationship, I've said that the unfairness needs to be assessed at the date the relationship came to an end – which was in February 2024.

Together did start to put matters right by increasing the information included on annual statements from 2018, followed by the pro-active contact strategy in 2019. This repeated the information given in 2014, and involved further attempts at discussing the options open to Mr and Mrs S at that time. But although Together improved its communication of the off-schedule balance issue after 2018, I don't think

that was enough to remove the lasting unfairness. By then, Mr and Mrs S had been out of arrears for six years or more, but the off-schedule balance had still risen to over £6,000. Mr and Mrs S therefore had much more to pay, over a shorter remaining term, than they would have done had things been addressed sooner – and extra interest had been charged in the meantime. Together didn't do anything about that in 2018. The result is that the balance they had to repay in February 2024 was higher than it would have been had this been dealt with sooner.

Together didn't accept that it had done anything wrong in its 2019 complaint response. Although it had now given Mr and Mrs S more information about what had happened, it still hadn't addressed the additional amounts they had paid in the meantime. That wasn't dealt with until the 2022 final response. And it's not clear to me how Together arrived at the sums set out in that response, or why it only refunded interest on fees and only in periods where there had been no missed payments for 12 months. So I'm not persuaded that was enough to put things right either.

I think this is essentially an underfunding case. The Financial Ombudsman Service has a well-understood and longstanding approach to underfunding, set out on our website. I've taken that approach into account in deciding how I think this case should fairly be resolved.

I think Together should have pro-actively monitored Mr and Mrs S's payment history, noting that they had an off-schedule balance and were paying less than they had been charged, and should have contacted Mr and Mrs S to explain why that was and what they needed to do about it – doing so in around 2012, shortly after the period of arrears. At that time, Mr and Mrs S would have needed to increase the amount they were voluntarily over-paying from £320 per month to around £340 or £350 per month. If that had been explained to them at the time, as a problem caused by their recent arrears, I'm not aware of any reason why they wouldn't have agreed to do that. I don't think the fact that they didn't increase their payments when this was explained to them years later means they wouldn't have done so at the time – when there was a clearer and more immediate link between the cause of the off-schedule balance and the remedy, and when the balance hadn't increased further because of the years when nothing was done.

The failure to do so at the time caused ongoing unfairness, because Mr and Mrs S didn't immediately know there was an issue they needed to resolve. By the time they did know, the off-schedule balance and additional interest had increased further, the arrears were long in the past, and Mr and Mrs S didn't think they'd been treated fairly – as I've found they weren't.

I'm therefore satisfied that the failure by Together to address this issue immediately after the arrears situation was resolved caused lingering unfairness which wasn't put right by the improved communication from 2018, or the redress offer in 2022. I think there was still ongoing unfairness arising from that failure at the point the loan was redeemed in February 2024, and I therefore uphold this complaint.

Putting things right

To put matters right, Together should re-work Mr and Mrs S's mortgage as if it had agreed with Mr and Mrs S that they would increase their monthly payments by the amount then required to clear the off-schedule balance by the end of the term as at July 2012 – being six months from when the arrears were cleared. Together should re-calculate the closing balance of Mr and Mrs S's mortgage as if they had made

those payments from 1 August 2012 onwards. This will mean that the redemption balance is lower than the amount Mr and Mrs S actually paid to redeem in February 2024. Together should therefore refund the difference between those two amounts to Mr and Mrs S, adding simple annual interest of 8% running from the date of redemption to the date of refund.

I'm satisfied that this is fair redress. It recognises that Together ought to have pro-actively explored with Mr and Mrs S how to address the off-schedule balance in 2012. If it had done so, I'm satisfied it's more likely than not that a way forward could have been agreed at that time, such as Mr and Mrs S further increasing the amount they were over-paying by to ensure the off-schedule balance would be cleared by the end of the term. I think it's fair and reasonable to put Mr and Mrs S back in the position they would have been had that happened. That addresses the lingering unfairness – including the additional interest charged because the balance remained higher for longer – that resulted.

I recognise that this redress means that Mr and Mrs S's redemption balance will be reduced to benefit from payments they didn't actually make. But I don't think that amounts to a windfall that means this isn't fair redress. I'm satisfied that it's fair and reasonable to put them back in the position they would have been in had Together acted fairly. The relatively small amounts they would have paid – but didn't pay – each month would have been subsumed into regular daily expenditure and don't amount to a significant ongoing benefit that Mr and Mrs S received because they weren't making additional payments to their loan. Nor have they resulted in a lump sum that Mr and Mrs S wouldn't have otherwise had that they could use to reduce the loan balance on redemption. In line with our approach to underfunding, therefore, I'm satisfied that it's fair and reasonable to require Together to reduce the balance as if Mr and Mrs S had made those payments. But I don't also intend to award separate compensation for distress and inconvenience, since any award I would make is offset by the reduction of the balance by those payments."

The responses to my provisional decision

Mr and Mrs S had no further comments to make.

Together initially said that it thought it had already provided sufficient redress in 2019, and that re-working the account in the way I had proposed would have resulted in Mr and Mrs S being worse off – having to pay more to redeem the loan in 2024 than they actually did pay. However, I wasn't persuaded by this, and on reflection Together agreed that it had made an error in its calculations. Having reviewed the loan account again, it said that Mr and Mrs S would have needed to pay an extra £13.70 per month to ensure their loan would be paid off by the end of the term. Had they actually made those payments, the redemption balance would have been £1,155.09 lower than it was – and that is the overpayment to be refunded to Mr and Mrs S.

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 reviewed matters again, I remain of the view that this complaint should be upheld, for all the reasons I gave in my provisional decision (reproduced above). To put matters right, Together should pay Mr and Mrs S £1,155.09, plus interest.

My final decision

My final decision is that I uphold this complaint and direct Blemain Finance Limited trading as Together to pay Mr and Mrs S £1,155.09, plus simple annual interest of 8% running from the date the loan was redeemed to the date the refund is paid. It may deduct income tax from the 8% interest element of my award, as required by HMRC, but should tell Mr and Mrs S what it has deducted so they can reclaim the tax if they're entitled to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs S to accept or reject my decision before 1 November 2024.

Simon Pugh
Ombudsman