

## **The complaint**

Ms W complains that Pepper (UK) Limited trading as Engage Credit, and its predecessor lender, didn't make clear the outstanding balance of her second charge mortgage (secured loan) or what she would need to pay to ensure it was repaid in full by the end of the term.

## **What happened**

Ms W took out a loan with another lender in 2006. The loan was transferred to Engage in 2022, and Engage is therefore responsible for answering this complaint.

Ms W had experienced some arrears in the past. In December 2020 she spoke to the previous lender and agreed a payment arrangement. She agreed to pay an additional £35.11 per month over the remaining term of the loan (then just over five years) to clear the arrears. Ms W maintained that arrangement.

The loan was transferred to Engage in 2022. Following the transfer, Engage changed the way that information about the loan balance was given to Ms W. It separated out the borrowing and arrears from what it called a "fees balance". It told Ms W that the fees balance – then around £1,700 – was not being paid off and that as a result Ms W would be left with an outstanding balance at the end of the term.

Ms W complained. She said that she had agreed with the previous lender to pay an additional £35.11 per month on the basis that this would ensure the loan would be paid off by the end of the term. She said that she could have afforded to pay more, but was told this was all she needed to pay. She said that she was now left with less time to pay the outstanding fees, and was being charged more interest as a result. She paid off the loan balance in full earlier this year to avoid further interest and charges.

I issued a provisional decision setting out my thoughts on the complaint.

## **My provisional decision**

I said:

"Although this complaint largely concerns the actions of the previous lender in setting the payment arrangement, I'm satisfied that Engage is the appropriate respondent to this complaint. As the lender which owned the loan when Ms W repaid it, it's responsible for any unfairness in the lending relationship, and for putting right that unfairness – even where the unfairness originally arose where the loan was owned by a previous lender.

The crucial discussion was in a phone call of 21 December 2020. We've asked both the previous lender and Engage for a copy of the call recording but neither has a copy. So in deciding what did happen (and what ought to have happened), the only evidence I have is Ms W's recollection and the contemporaneous notes made by the previous lender. I've therefore considered both these sources – and the wider context and other evidence – to decide what, on balance, I think is most likely to have

happened.

Ms W's recollection is clear and strongly held. She says that she discussed her financial situation and the position with the loan. She knew the loan was in arrears and wanted to get it back on track so that she could pay the loan off by the end of the term. The lender told her that to do so she would need to pay £35.11 per month, which she agreed to do. The lender said that by paying more each month she would clear the arrears more quickly, but she was happy to pay them off over the remaining term.

The lender's notes are relatively brief. They say:

"A\* [arrangement] agreed for CMI [contractual monthly instalment] + £35.11 WEF [with effect from] 31.12.2020 via online payment for TOB [term of borrowing] for 64 months. I&E [income and expenditure assessment] completed showing a disposable income of £91.38. Mrs proposed CMI + £35.11. Adv[ised] Mrs to seek IFA [independent financial advice] and advised her of the full consequences. Conf[irmed] A\* letter will be sent. Telephone numbers updated. Payment arrears: 2105.66 Total arrears / TOB: 2246.66 Arrears Multi:5.54"

£35.11 over 64 months is £2,247.04 – which matches the arrears balance of £2,246.66 recorded in the notes.

On balance, I accept Ms W's recollection of the call. I think it's consistent with the notes. Ms W had the capacity to pay up to £91.38 per month but proposed to pay £35.11 – I don't think this means she spontaneously suggested this amount, I think it means that she proposed paying what she was told was the minimum needed to clear the balance over the term rather than agreeing to a larger amount to clear the arrears more quickly.

The problem is that – as became clear on transfer to Engage – this wasn't the minimum needed to clear the balance over the term. It didn't take into account the fact that, in addition to the arrears, the main balance was off track and the contractual monthly payment wasn't enough to clear it by the end of the term. Engage said in its final response to Ms W's complaint that what it called a "fees" balance was mostly not charges, but additional interest incurred because the balance didn't reduce as expected during periods of arrears, but I don't think that makes any difference.

I accept what Ms W says. She could clearly afford to pay more if needed. Although she wanted to pay the minimum necessary to ensure the loan was paid off by the end of the term, I don't think that means she was unable or unwilling to pay more than £35.11 if that was the minimum necessary.

I think what happened is that the previous lender simply overlooked the fact that because of fees and additional interest the balance was higher than it ought to have been, and that the contractual monthly payment was as a result no longer enough to have paid that balance off by the end of the term. For Ms W to clear the balance she not only needed to pay £35.11 per month to clear the arrears, she also needed to deal with the off-schedule balance – either by amending the contractual monthly payment, or by paying a further amount on top. Doing so would, at the time of the December call, have required her to pay somewhere around £70 per month rather than £35 per month – which was clearly affordable to her based on the information the lender took at the time.

I'm therefore satisfied that if the previous lender had given Ms W the correct figures for what she needed to pay over the remaining 64 months to clear the balance in full by the end of the term, that amount would have been affordable to her and she would in fact have agreed to pay it. That means that because the lender didn't make the position clear to her, her loan ended up being underfunded. The Financial Ombudsman Service's longstanding approach to underfunding in mortgage cases is set out on our website – in short, where as a result of a lender's mistake a borrower does not pay enough to their loan (but could have done so if asked), we expect the lender to put the borrower back in the position they would have been in but for the mistake, by returning the loan balance to what it would have been had the borrower been asked to pay the right amount.

The fact that the effect of the increased balance as well as the arrears wasn't made clear to her meant that Ms W was not in fact on track to repay the balance. And it meant that she paid additional interest in the subsequent months because she was paying less than she needed to and therefore not reducing the balance enough.

In my view, the resulting underfunding, and its ongoing impact, made Ms W's relationship with the lender unfair. Engage is the lender which took over following the transfer in 2022, and continued to be the lender until Ms W paid the loan off in full, ending the relationship, more recently. As such Engage has a responsibility to ensure that any lingering unfairness was put right by the end of the relationship. But that didn't happen. Even though the December 2020 conversation was with the previous lender, I'm therefore satisfied that it's fair and reasonable to require Engage to put things right by remedying the unfairness.

To do so, Engage should re-work the loan account – first to identify the full amount Ms W would have needed to pay each month from 31 December 2020 to have cleared the loan balance as well as the arrears, in full, over the remaining 64 month term. And, secondly, to calculate what the redemption balance would have been had Ms W actually paid that amount each month between 31 December 2020 and the redemption date. It should then pay to Ms W the difference between the actual and revised redemption amounts, adding simple annual interest of 8% running from the date of payment to the date of redemption. It may deduct income tax from the 8% interest element of the award, as required by HMRC, but should tell Ms W what it has deduced so she can reclaim the tax if eligible to do so."

### **The responses to my provisional decision**

Ms W welcomed my provisional decision. She said that she had paid extra amounts in the months leading up to the redemption and that should be taken into account too.

Engage didn't agree. It said it wasn't fair to base a decision on a customer's recollection of a conversation four years previously. It said that the arrangement had been confirmed in writing at the time, and Ms W had been sent regular statements showing that additional interest would be applied. It said it wouldn't be possible to calculate the amount that would need to be paid to clear the additional interest as it was a variable amount. It said it was standard practice to set an arrangement to clear arrears only and then discuss any outstanding sums once that had happened.

### **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've reviewed what I said in my provisional decision in light of the responses to it. But I haven't changed my mind. I don't think it's unfair to take into account Ms W's recollection of the crucial conversation. Ideally I would want to listen to the call recording, but as I said in my provisional decision that's not available. In its absence, I have to do the best I can with the evidence that's available. Ms W's recollection is evidence – the passage of time and the fallibility of memory are relevant factors in deciding what weight to give to that evidence, but they don't mean it can't be taken into account at all.

As I said, Ms W's recollection is consistent with the notes the previous lender made at the time. It's also been consistent over time. I see no reason to doubt that her two priorities were to pay what she needed to pay to clear the outstanding balance over the remaining term – but not to pay any more than that.

It's not in dispute that in fact the previous lender set an arrangement to clear the arrears, but not the fees and additional interest balance, over the remaining term. I think if that had been made clear to Ms W she would have been willing, and could have afforded, to pay more. That's consistent with the notes showing she could afford to pay up to £91.38 but agreed to pay £35.11 – enough, as she thought, to clear the balance by the end of the term.

I don't agree that it's not fair to have expected the previous lender to have discussed not just the arrears balance but also the fees and additional interest. They all formed part of the total amount Ms W owed and needed to pay back. If she couldn't afford to pay more it might be reasonable to focus only on the arrears – but that's not the case here. I think, acting fairly, the lender ought to have made clear that Ms W wasn't on track to repay the loan at the end of the term, made clear what she would need to pay to repay it, and given her the opportunity to do so if affordable – as it was. It's the lender's responsibility to give Ms W the information she needs to manage her loan effectively – which includes paying it off by the end of the term, minimising the additional interest.

I'm not persuaded that the letters and statements sent since then corrected this mistake. At most they say that Ms W might have an additional balance left to pay at the end of the term – they don't say she will, let alone how much that would be.

I also don't agree that it wasn't practical to give her a figure. It's a relatively straightforward calculation I would expect any mortgage lender to be able to do to work from the current balance, interest rate and remaining term to the amount needed to repay each month to clear that balance. The interest rate might be variable, but that doesn't change my conclusions – many mortgages have variable interest rates, but that doesn't prevent an amortisation calculation being done based on the current interest rate and then updated later if the rate changes.

I'm therefore satisfied that the lender could – and, acting fairly, should – have worked out what Ms W needed to pay to clear the then full outstanding balance over the remaining term and told Ms W what that amount was. I'm further satisfied that if it had done so Ms W would have been willing and able to pay enough not just to clear the arrears but also clear the fees and additional interest balance by the end of the term. It follows that in not giving her that information, Ms W was deprived of the chance to pay more to reduce the balance – meaning that the balance was higher from time to time, and more interest was charged – than would otherwise have been the case. I'm therefore satisfied that it's fair and reasonable to uphold this complaint.

I note the point Ms W has made, about higher additional payments she made in the months leading up to the redemption. I don't think this will mean that no redress is due, though – during the period Ms W was only paying £35.11 in addition to her contractual monthly payment, Engage will need to re-work the balance as if she had paid the higher amount that

would have been needed to have the loan on track to be repaid in full. This means that the balance would have been lower, with less interest charged, by the time she started making higher payments – and that difference should be reflected in the redress due now.

### **Putting things right**

To put things right, Engage should calculate the amount Ms W would have needed to pay, in addition to the contractual monthly payment, from 31 December 2020, to clear the loan balance in full – including the fees and additional interest – over the 64 months remaining at that time.

It should then calculate what the redemption balance would have been had Ms W paid that amount in addition to the contractual monthly payment instead of £35.11 each month until she started making larger overpayments in the months leading up to redemption. This reflects the period during which Ms W could have paid – but didn't pay – more had she been advised what she needed to pay. But it also reflects that Ms W later elected to pay more than would have been necessary, from which point her loan was no longer underfunded.

This will result in a reduced redemption balance compared to the amount Ms W actually paid to redeem. Engage should calculate the difference between those two amounts and pay it to Ms W, adding simple annual interest of 8% running from the date of redemption to the date of refund. It may deduct income tax from the 8% interest element of the redress, as required by HMRC, but should tell Ms W what it has deducted so she can reclaim the tax if she's entitled to do so.

### **My final decision**

My final decision is that I uphold this complaint and direct Pepper (UK) Limited trading as Engage Credit to pay redress as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms W to accept or reject my decision before 7 November 2024.

Simon Pugh  
**Ombudsman**