

## **The complaint**

Miss R's complaint is linked to a mortgage she has with Preferred Mortgages Limited. She says that when the mortgage was sold to her an Accident, Sickness and Unemployment (ASU) policy was sold to her to protect the mortgage, but when she wanted to claim on the policy around 2013 she was told it didn't exist. Miss R believes that information was wrong and led to her losing her job, a deterioration in her mental health and financial difficulties.

In addition, Miss R is unhappy about how the mortgage has been administered while she has been in financial difficulties. She is unhappy that Preferred pursued repossession of her home on several occasions. Miss R has also said she has been 'bombarded' with text messages and calls on a daily basis for weeks at a time. Miss R considers this 'persistent and intrusive behaviour' to be unacceptable.

Miss R is represented in her complaint, but for ease, I will refer to all comments as hers.

## **What happened**

In 2006 Miss R took advice from a firm of independent mortgage brokers to arrange a specialist shared-ownership re-mortgage with Preferred. She was repaying her existing mortgage and what appears to be a second charge loan. She borrowed £35,000 over a term of 18 years. The mortgage was advanced on 23 November 2006.

The application form that was sent to Preferred by Miss R's broker detailed the costs that the mortgage was to cover: broker fee, arrangement fee, legal fees, buildings insurance, telegraphic transfer fee and an ASU premium. These details were recorded on Preferred's records and the ASU policy, along with its cost, was detailed as an optional insurance on the mortgage offer Miss R was sent. It said the policy would only go ahead if Miss R chose to take it.

Preferred's record of the advance release on 23 November 2006 showed the following:

Total Loan Requested	£35,000.00
Total Loan (including Capitalised Fees, less Retention)	£35,000.00
Retention Amount	£0.00
Release amount	£34,420.00

Fee	Amount Charged	Fee Action
Completion Fee	£495.00	Deducted
Legal Fee	£140.00	Deducted
Conveyancing Fee	£280.00	Deducted
ASU Insurance Premium	£2,638.00	Deducted
New-Block Building Ins Fee	£50.00	Deducted
Telegraphic Transfer Fee	£35.00	Deducted

Miss R has provided confirmation from the solicitors involved in the re-mortgage confirming that Preferred paid it £34,420. This detailed what the money was then used for. It included the solicitor paying a 'Mortgage Protection Premium' of £2,638.00, which is the sum detailed in earlier documentation for the ASU policy.

In 2008 Preferred closed its book of mortgages and transferred administration of the mortgages to a third-party specialist administrator.

In the autumn of 2013 Miss R started experiencing financial difficulties. Payments were missed for periods and arrangements were made for Miss R to pay extra toward the arrears at various points, but payments were not maintained for long. No payments have been made since September 2021.

Miss R has told us that she contacted the administrator in 2013 following experiencing health issues to make a claim on the ASU policy as she was unable to continue to work. She was told that there was no ASU policy.

Miss R initially complained in early 2021 about the ASU policy not having been set up. Preferred responded in a letter of 31 March 2021 in which it confirmed that it had no evidence that the cost of such a policy was deducted from the loan advance, as it would have been had a policy existed linked to the mortgage. It suggested that a policy might have been arranged by Miss R's broker separately, which the Financial Services Compensation Scheme (FSCS) might be able to assist her with.

Miss R reverted to Preferred on numerous occasions over the following years and Preferred responded each time, but its conclusions remained the same. It had no evidence that an

ASU policy had been arranged by it but suggested one may have been arranged by her broker direct. Preferred confirmed that any concerns about the actions of the broker should be referred to the Financial Services Compensation Scheme (FSCS).

Miss R remained dissatisfied with Preferred's response and referred her complaint to this Service. After she did, she said that she considered the mortgage had been mis-sold because she would not have taken it without an ASU policy to protect her.

While Miss R's complaint had been referred to us outside of the time limits contained within our rules, Preferred consented to us considering the complaint.

One of our Investigators considered Miss R's complaint. She concluded that Miss R had wanted an ASU policy and that it was Preferred's fault that one did not exist. However, the Investigator said that we could not know what benefits Miss R could have claimed, or even if any claim would have been accepted by the insurer. As such, the Investigator didn't recommend Preferred step into the shoes of the insurer and pay a claim, as it could not be established if Miss R would have received any benefit from a policy had it been set up.

Miss R didn't accept the Investigator's conclusion that no redress should be paid. She set out her reasons for why she considered the Investigator was wrong.

The Investigator considered what Miss R said, but she was not persuaded to change her conclusions. As such, it was decided that the complaint should be referred to an Ombudsman for consideration.

I issued a provisional decision on 30 October 2024, in which I set out my conclusions and reasons for reaching them. Below is an excerpt.

*'Firstly, I would confirm that if Miss R has concerns about Preferred's handling of a data subject access request she made in January 2020, the most appropriate body to consider those concerns is the Information Commissioners Office (ICO). As such, I won't be commenting on this issue.*

*I would also explain that we are only able to consider complaints that have first been referred to the financial business that is responsible for the matters complained about. So while Miss R has mentioned that she is unhappy about the legal action the administrators have taken on behalf of Preferred, as it does not appear that this complaint has been raised with the administrator or Preferred, it is not something that I can comment on in this decision.*

*Having carefully considered the information Miss R has provided to us, I think she and our Investigator have misunderstood the arrangements relating to the ASU policy. Miss R approached an independent mortgage broker in 2006, presumably because she needed a specialist mortgage due to her home being shared ownership. The broker recommended a mortgage with Preferred and an ASU policy.*

*An independent broker's income comes from two sources. The first is a fee that a customer pays them direct – a broker fee – and the second is in the form of commission from lenders and insurers that is paid because the broker has sold one of their products. In relation to the ASU policy, if the broker had not arranged this directly with the insurer, it would not have received any commission from the insurer for selling the policy. As such, it is unlikely that the broker would have asked Preferred to arrange an ASU policy for Miss R and having looked at the documentation from the time, I don't think it did.*

*I say this as if Preferred had set up the ASU policy, it would have deducted the premium for the policy before it paid the mortgage advance to Miss R's solicitors. While I note that some*

*of Preferred's documentation shows that it would be deducting the ASU premium before advancing money to Miss R's solicitors, it clearly didn't do so. Nor does it appear that it was intended that it would do so, as the numbers produced by it at the time the advance was paid, only deducted the costs linked to its own processes – the arrangement fee, buildings insurance and telegraphic transfer fee. The other costs that were payable to third parties – the broker fee, legal fees and the ASU premium - were not deducted as these were things that Miss R's solicitors would pay once it received the money from Preferred.*

*The completion statement from Miss R's solicitors confirms that this is what happened. The solicitors received an amount equivalent to the £35,000 less the arrangement fee, buildings insurance and telegraphic transfer. The solicitors then went on to pay the broker fee and the ASU premium on Miss R's behalf, and it also deducted its own fees. Following paying off the existing borrowing secured against the property, the solicitors then sent Miss R the remainder of the advance.*

*As such, I am satisfied that an ASU policy was arranged for Miss R, but that it was arranged by her broker and the premium was paid by her solicitors. Miss R would have been sent information and documentation about the policy directly from the insurance company that issued the policy. I have seen no evidence that Preferred was involved in the sale or arrangement of the ASU policy, other than having been made aware that Miss R had been recommended such a policy by her broker and intended to set it up.*

*In light of this, Preferred wouldn't have known if a policy had actually been taken out, and it would have had no information about the ASU policy if it had been arranged. That would only have been the case had it arranged the policy for Miss R. So when Miss R called Preferred around 2013 to ask about the policy, it was not wrong to tell her that it had no record of a policy in her name, as it didn't.*

*I know that this is not the answer that Miss M wants, as it doesn't help her current situation. I am aware that Miss R's broker is no longer trading and that she has already contacted FSCS. I am unaware of what she was told by FSCS, but it is possible that the solicitors involved in the re-mortgage in 2006 might have some records confirming where it paid the ASU premium, which might allow Miss R to trace the policy.'*

Miss R didn't accept my provisional decision. She introduced the fact that Preferred had commissioned the solicitors she had appointed to complete the legal charge and certificate of title on Preferred's behalf. Miss R raised concerns about this having happened and at not having been told about the arrangement at the time. In addition, Miss R said that inclusion of the ASU policy in the mortgage offer indicates that it was an integral part of the mortgage. As such, she believes that if the policy was not sold by Preferred, then the mortgage offer was not legally binding. She went on to comment that inclusion of the ASU policy in the mortgage offer bound Preferred to provide such a policy and it was required to fulfil that obligation and rectify the situation, even if the mortgage had been transferred to another lender, as she believes it has been.

Further documentation was provided, some of which I have mentioned above, but also documentation showing that fees were to be deducted, but at the same time showing sums being paid out not having deducted them. Miss R also provided a document that set out the services Preferred could offer. This included it being able to arrange ASU policies to run alongside its mortgages. Miss R went on to explain how she believed Preferred had failed to meet its obligations under various regulatory requirements. In summary, Miss R said that Preferred had a responsibility to supply her with an ASU policy as part of her mortgage agreement and in failing to do so it had breached the mortgage contract and had a responsibility to put her back in the position she would have been in if she had been able to claim under the ASU policy in 2013.

## **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.

Initially, I would confirm that Miss R's lender was and still is Preferred Mortgages Limited. While the other financial business Miss R has mentioned is involved with her mortgage it is not her lender. That business administers the mortgage at the present time, but does so on behalf of Preferred.

I have considered the information Miss R has provided about her solicitor acting on behalf of Preferred as well as her in relation to the re-mortgage. While Miss R believes this may have led to a conflict of interest, I have seen no evidence of that and I would confirm that it is quite normal for there to be just one solicitor involved when a property is re-mortgaged. I have also considered the content of the letter Miss R has provided and this makes it clear that the solicitor is being instructed to undertake very specific tasks for the lender. There is no mention of an ASU policy in the instructions given to the solicitor, which I would have expected if the solicitor was doing something for the lender in that regard. Furthermore, if Preferred had arranged the ASU policy for Miss R, it would have paid the premium direct to the insurer, and would not have used a third party to do so.

As for the document that says Preferred could offer the service of setting up an ASU policy, it could, as could most mortgage lenders at the time. However, the fact that it could offer that service does not mean that it provided that service to Miss R. By the time Preferred became aware of Miss R, when the mortgage application form was submitted to it, her broker had already recommended an ASU policy to her. This is confirmed on the mortgage application form. So Preferred did not sell Miss R an ASU policy and it did not provide the service that is detailed in the page of the document she has given us, because her broker had already provided that service.

Miss R has said that mention of the ASU policy in the mortgage offer would mean that the offer was not legally binding, if the policy had been arranged by the mortgage broker. She has also said that its inclusion means that Preferred had to provide such a policy. I can understand why she would like either of those options to be the case, but it is not. I believe that Miss R is referring to mortgage offers now being described as binding. That was not the case at the time she took out her mortgage and when a current mortgage offer is described as binding, it simply means that the lender is bound to provide the mortgage loan detailed in the offer. The legally binding mortgage contract that Miss R signed was the mortgage deed, not the mortgage offer. In addition, as I noted in my provisional decision, the inclusion of the ASU policy in the offer was detailed as an option she could have had and not a requirement under the mortgage. The mention of the policy in the mortgage offer does not mean that Preferred gave Miss R advice to take out an ASU policy or confirm that it was arranging one for her. Nor would it being mentioned mean that the mortgage contract was invalid.

Miss R has provided documents from Preferred's files that say the ASU premium has been deducted. That is the case and I was aware of that fact when I considered the complaint before issuing my provisional decision. Indeed, I highlighted that while the documentation said that the ASU premium along with various other fees had been deducted, the amount paid to the solicitors clearly showed that they had not been. I would also comment that the other items that were not deducted by Preferred were things that a mortgage lender would not pay on behalf of a borrower – the borrower's legal fees and their broker's fee.

I know that this will disappoint Miss R, I remain satisfied that an ASU policy was set up for her in 2006, but that it was arranged by her broker and her solicitor paid the premium to the insurer from the mortgage advance. The evidence doesn't show that Preferred was involved

in the sale and so it has no liability for any losses Miss R has suffered because she couldn't locate the policy in 2013 and was, therefore, unable to make a claim.

### **My final decision**

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Miss R to accept or reject my decision before 12 December 2024.

Derry Baxter  
**Ombudsman**