DRN-5255554

The complaint

Mr and Mrs M complain that the mortgage they took out with Progressive Building Society in 2006 was mis-sold. They said Progressive didn't carry out checks to make sure the lending was affordable, or alert them to a clause in the mortgage they wouldn't have accepted.

What happened

Mr and Mrs M said they were unhappy with the residential mortgage that was sold to them in 2006, for their home. They complained that Progressive didn't explain the terms of the mortgage to them, and in particular that it could require them to repay part of this mortgage as a condition of paying off other mortgages they hold with Progressive. They have shown us that Progressive now requires them to pay a lump sum of £50,000 towards this mortgage, as a condition of allowing them to sell a buy to let property they also own, which is also mortgaged with Progressive.

Mr and Mrs M said Progressive didn't complete a fact find with them when it sold them this interest-only mortgage, and it didn't ask for any evidence of a repayment plan for the capital they were borrowing. They said there was no affordability assessment, so they may have overcommitted themselves to a mortgage they couldn't afford. Mr and Mrs M also said they weren't asked to prove their income.

Mr and Mrs M said they hadn't been able to secure a reasonable interest rate for some years, because of what Progressive did.

The facts in question here happened some time ago, but, unusually, Progressive agreed to our service investigating these matters. And Progressive said it could show it hadn't done anything wrong.

Progressive said it had sent Mr and Mrs M its mortgage conditions booklet when they applied for the mortgage, and that showed Progressive has the power of consolidation. That means if Mr and Mrs M wanted to clear one mortgage, it could require them to redeem other mortgage borrowing too.

Progressive said it had carried out a fact find with Mr and Mrs M, and it sent us a copy of that document. It also told us it had carried out an affordability assessment, and obtained payslips and employer references.

Progressive said this was an interest only mortgage, and Mr and Mrs M had taken out a three year product when they first took this lending. It showed us that Mr and Mrs M had told it they intended to sell other properties, using the equity from those investment properties to reduce the mortgage balance on their residential property. Unfortunately, those other properties were badly affected by a fall in property prices in 2007 to 2008, which impacted on Mr and Mrs M's plans.

Mr and Mrs M then took out further mortgage products on this lending on their home, running until the end of 2013. By the end of 2013, Mr and Mrs M were in arrears on this mortgage, which weren't cleared until 2014. So when their last mortgage product ended, they couldn't apply for a new fixed interest rate right away. But Progressive said Mr and Mrs M didn't actually apply for a new interest rate product until 2023, when they made a lump sum payment. They have since taken out a new fixed interest rate deal on their mortgage.

Our investigator didn't think this complaint should be upheld. He said the terms of Mr and Mrs M's mortgage did have the effect of applying a power of consolidation to their borrowing. Mr and Mrs M accepted those terms and conditions when they took out this borrowing.

Our investigator said Progressive had sent us a copy of a fact find it did with Mr and Mrs M, which showed Progressive had documented their income and expenditure. That fact find also showed that Mr and Mrs M intended to sell some investment properties within the next three years, and use this money towards their residential mortgage. So our investigator thought Progressive had considered Mr and Mrs M's income, and how they intended to repay the underlying lending. He also said he'd seen Mr and Mrs M's payslips, so Progressive had checked what they'd said about their income.

Our investigator also said he'd seen a copy of an affordability assessment which was completed for Mr and Mrs M. He set out the income and expenditure noted there, and said Progressive had worked out then that Mr and Mrs M could afford this mortgage based on full repayment of the capital borrowed, over the term. But they then took out an interest only mortgage, so their repayments ended up being much less than those included in Progressive's affordability assessment.

Our investigator didn't think this mortgage was unaffordable when it was taken out. He said that affordability checks are now a lot more stringent but he thought Progressive had met the requirements on it at the time.

Our investigator didn't think that Progressive made any mistake in assessing Mr and Mrs M's application back in 2006.

Our investigator said Mr and Mrs M had secured new rates in 2011 and 2013. They did have arrears in 2014 which prevented them from securing a new rate for six months. But after that period, they could have asked Progressive for a new rate, or remortgaged elsewhere. They were sent annual statements and rate change letters by Progressive which confirmed they were not tied into any deal. But they didn't choose to sign up to a new fixed rate until April 2023. Our investigator didn't think that was Progressive's fault.

Mr M wrote to object. He said Progressive had given us incorrect figures, because the fact find showed their monthly outgoings were £1000, not £800 as Progressive said. Mr M also said there was no deduction for rates, ground rent, building insurance and life insurance, which were on another sheet of the fact find. So Mr M said that would leave their salaries not covering their outgoings at the time.

Mr M also wanted us to look at the last sheet of the fact find, where he'd ticked "no" to indicate that he was not comfortable that other investments would pay off this mortgage.

Mr M said Progressive had never disclosed it had a consolidation policy in place, and if it had disclosed that, they wouldn't have gone ahead with the mortgage. Mr M said he wasn't able to remortgage elsewhere, as he was a mortgage prisoner.

Mr M wanted this complaint to be considered by an ombudsman, so it was passed to me for a final decision.

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 reached the same overall conclusion on this complaint as our investigator.

I can see that a power of consolidation is part of the terms of this mortgage. And Mr and Mrs M did accept those terms when they took this mortgage out. I also note that, whilst Mr and Mrs M have said they wouldn't have accepted a mortgage with a power of consolidation, they told Progressive at the time that they intended to repay this mortgage by selling investment properties. So it's not clear that Mr and Mrs M would have objected to this condition at the time, if they had been aware of it.

I have also seen a copy of a fact find Progressive did with Mr and Mrs M. So I can see that Progressive did look at what income Mr and Mrs M reported, and how they intended to pay off the capital they were borrowing on an interest only basis. I've also seen copies of Mr and Mrs M's payslips, so I don't accept that Progressive took no steps to require evidence of Mr and Mrs M's salaries.

Mr and Mrs M also said that the expenditure figures on the fact find were wrong, because they didn't include "*deduction for rates, ground rent, building insurance and life insurance which were on another sheet of the fact find".*

I have not been able to identify another page in the fact find which lists monthly expenditure on rates, ground rent, building insurance and life insurance, as Mr M suggested. And as the pages are all numbered, up to and including the final signed page of the document, I'm satisfied that our service has a complete copy of this document.

So I think page 3 of the fact find is intended to be a complete record of outgoings. And I note that this single relevant page is headed with the following *"Please list any outstanding debts and regular outgoings."* The final row is clearly marked *"Total expenditure per month"*. So if Mr and Mrs M didn't include in that list some of their regular items of expenditure, I don't think that would be Progressive's fault.

Mr M also said that where he was asked to indicate whether *"You are comfortable if all or part of your mortgage is repaid from the proceeds of an investment policy (e.g. endowment, ISA, pension)"* he had ticked "*no*". I can see that's right, but there's then a handwritten note which reads *"have buy to let properties which will be sold to pay off mtg".* So I think that Progressive had asked Mr and Mrs M for a repayment strategy for this mortgage, and, as is also noted elsewhere on this fact find, it expected repayment to be achieved by the sale of their other properties.

Our investigator said Progressive worked out that Mr and Mrs M could afford this mortgage based on full repayment over the term. Mr and Mrs M said that their monthly outgoings, as shown on their fact find, were £200 higher than the figures our investigator set out, so they thought this affordability assessment must be wrong.

I can see that the figures on the affordability assessment Progressive sent us don't seem to match those on Mr and Mrs M's fact find completed in September 2006. But they do seem to match the total expenditure given on their application form completed in October 2006. That lists the same three separate costs totalling £1,000 which were set out on the earlier fact find, but then gives a total of £800. This would appear to be explained by a note on the application, indicating that childcare costs of £200 per month are not expected to continue.

So I don’t think Progressive made a mistake here, it just appears to have taken Mr and Mrs M’s most recent statement about their monthly expenditure into account. I also note that the affordability assessment Progressive sent us was done on the basis of monthly payments of interest and capital. As Mr and Mrs M opted to make payments of the interest only, their repayments would have been much lower than the figures used here.

I haven’t seen anything to make me think that Progressive made a mistake in deciding in 2006 that this mortgage would be affordable for Mr and Mrs M.

I appreciate that Mr and Mrs M may have found that changes in the housing market meant their original plan to repay this mortgage didn’t work out, and that they may not have easily been able to remortgage elsewhere. But I don’t think it’s Progressive’s fault they chose not to fix their interest rate between around 2014 and 2023. I think Progressive did alert them to the possibility of fixing a new rate during this time, and it isn’t responsible for Mr and Mrs M choosing not to pursue that.

I know that Mr and Mrs M will be disappointed, but I haven’t been able to see that Progressive made the mistakes they’d suggested, when this mortgage was taken out, or since. So I don’t think this complaint should be upheld.

My final decision

I don’t uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs M and Mr M to accept or reject my decision before 3 March 2025.
Esther Absalom-Gough
Ombudsman