

The complaint

Mrs K complains about costs applied by UBS AG to her mortgage. Mrs K is represented by a firm of solicitors that I'll refer to as "M".

What happened

Mrs K took out a mortgage with UBS in 2014. The mortgage was on an interest only basis and the funds were drawn in US dollars. The term expired in September 2019. The following day, UBS converted the loan balance into sterling. The debt owed by Mrs K was about £7.5 million.

Mrs K's representatives disputed the amount owed and the debt remained outstanding. In May 2021 UBS appointed Law of Property Act receivers. Mrs K's attempts to refinance were unsuccessful and her representatives continued to dispute the amount owed. UBS started action for possession in early 2023. The loan was repaid in March 2023.

A final decision has been issued regarding Mrs K's previous complaint about UBS converting the loan balance to sterling – something M said UBS wasn't entitled to do. I won't be considering or making findings about the subject matter of that complaint.

I'll only consider here Mrs K's complaint regarding the costs and expenses applied by UBS to her mortgage account. M says the costs are "eye-wateringly high" and unreasonable. M set out its position in great detail. In summary:

- it was unreasonable to ask Mrs K to pay legal costs incurred by UBS in defending its own actions regarding the first complaint issue (the currency conversion issue), including its costs related to her complaint to this service.
- it was unreasonable to ask Mrs K to pay UBS's legal costs recorded by its solicitors as relating to its communication with UBS and for strategy and planning.
- it was unreasonable for UBS to instruct a leading law firm for a mortgage dispute when it could have instructed a firm with cheaper rates.
- there was no reason for UBS to start possession action when it had provided updates about a potential refinancing.
- UBS breached MCOB 12 and 13 as the costs were excessive and it didn't provide information about the costs that would be imposed.
- it was inappropriate for the receiver to charge a fixed fee in addition to hourly fees, which meant Mrs K was paying twice for the same work. There was no need to appoint the receiver. And the costs were too high given the receiver had undertaken little work.
- UBS didn't provide a detailed breakdown of the costs, as would be required by a court.
- Mrs K was pressured into paying these costs in order to refinance and UBS hadn't

considered Mrs K's interests or her health problems.

UBS's representative (who I'll refer to as S) said UBS was contractually entitled to add costs and expenses incurred in connection with the mortgage and the property to the mortgage balance. It said these costs would have been avoided if Mrs K had repaid the debt when it was due. It said the value of the property and the debt were significant. It said Mrs K and her representatives had taken an adversarial approach, sent voluminous correspondence, raised multiple issues, failed to provide information, challenged the appointment of the receivers and failed to give vacant possession to the receiver and failed to engage with reasonable proposals to settle the matter.

S said UBS provided significant forbearance but was left with no option other than to incur the costs involved in enforcing its rights.

I sent a provisional decision to the parties explaining why I intended to uphold some parts of this complaint. In brief, I said it wasn't reasonable for UBS to appoint a receiver in May 2021 and it should refund costs related to this. However, I said it would have been reasonable for UBS to continue with action to recover the debt. UBS would have incurred costs in doing so and it might have taken possession of the property, at which point it might have been reasonable for it to appoint a receiver. On this basis, I said UBS should refund 50% of the costs related to the appointment of the receiver (about £62,000).

I said in my provisional decision that UBS should also refund legal fees which related to S corresponding with us on behalf of UBS about Mrs K's previous complaint. I said applying this cost to Mrs K's mortgage account wasn't consistent with her being able to bring a complaint to us free of charge.

Both parties disagreed.

M said (in summary) that UBS should refund all costs related to the appointment of the receiver. It said it was unfair to reduce the refund on the basis of fees and costs that were not actually incurred by UBS. It said the amounts were uncertain, the mortgage terms and conditions didn't allow for costs to be applied to the account that hadn't actually been incurred, and a reduction was unfair when UBS had acted unfairly and unreasonably and in breach of UK Finance guidance. M said a 50% reduction was too much.

M said UBS had applied costs of about £10,000 for possession action, which Mrs K has paid. It said court proceedings would not have cost £60,000. M also said that the terms of the pre-action protocol would have meant that UBS would have delayed possession action while this service looked into Mrs K's previous complaint.

S said (in summary) that UBS shouldn't be required to refund any costs. While it didn't agree that it was wrong to apply fees related to correspondence with us regarding Mrs K's previous complaint to this service to the mortgage account, it agreed to refund them in the interests of compromise. It said if UBS had proceeded with possession action instead of appointing a receiver in May 2021 its legal costs would have been in excess of £600,000 and possibly more than £1 million and Mrs K would have lost her home. It said the strategy it followed was the fairest and most cost effective.

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.

We've received a significant volume of correspondence and evidence related to Mrs K's

complaint and further comments and evidence since my provisional decisions. While I've read all of this, I won't refer or respond to each point made. Our rules don't require me to do so. What I have to do is decide what's fair and reasonable in the circumstances and explain why I reach my decision.

I can only uphold this complaint and order UBS to put matters right if I find that it did something wrong. I can't ask it to refund costs and expenses simply because they amount to a large sum.

The starting point here is the mortgage terms and conditions which say:

"You agree to pay any expenses. Expenses will be added to the mortgage account, in the manner detailed in condition 25.6 and will thus form part of the mortgage debt to be repaid by you in accordance with the terms of the mortgage documents."

Examples are provided of the sort of expenses that might be added, which include:

- The costs or expenses we incur as a result of any legal proceedings concerning either the property or the mortgage documents.
- Any costs or expenses we incur in instructing solicitors in relation to the mortgage facilities or mortgage documents.
- Any costs or expenses we incur in protecting, preserving or enforcing the mortgage deed.

The terms and conditions give UBS the right to appoint a receiver and add the expenses to the mortgage account.

This is a regulated mortgage, so rules on mortgage regulation set out in the Mortgages and Home Finance: Conduct of Business Sourcebook ("MCOB") apply. When considering complaints, we take into account relevant law, regulation and good industry practice.

It seems M accepts that UBS is entitled to add costs and expenses to the mortgage account. It disputes that the costs applied by UBS to Mrs K's mortgage account, which amount to about £260,000, were reasonable. The bulk of these costs relate to legal fees and the receiver's fees.

I appreciate that costs, in particular legal fees, might have been dealt with differently if the disputes between Mrs K and UBS had been determined by a court. This service isn't a court and we don't have the same rules and procedures as a court.

Having considered the points made by both parties, I've set out the matters I consider most relevant to the outcome of this complaint.

- There's no suggestion the costs added to the mortgage account weren't incurred by UBS. I haven't undertaken a forensic examination of the work undertaken by its legal advisers or the receivers. There's no evidence to suggest they didn't undertake the work they charged for.
- The mortgage balance remained unpaid for about three and a half years after the term of the mortgage expired. Mrs K raised various issues and disputes during this time, including as to the amount owed. The issues raised by Mrs K and her representatives included contractual, regulatory and criminal issues. These were different to the issues that a lender might expect to have to deal with in relation to a standard regulated

mortgage, and which UBS might have felt comfortable dealing with itself.

- I think it was reasonable for UBS to instruct solicitors to assist with its response to the issues raised by Mrs K and her representatives, to protect its position and to recover the debt. The mortgage terms and conditions allow UBS to add expenses incurred in instructing solicitors in relation to the mortgage facilities or mortgage documents to the mortgage account. There's nothing in the mortgage terms and conditions to restrict UBS's choice of solicitors.
- I can't see that the mortgage terms and conditions restrict UBS from adding legal costs incurred in defending its position regarding the currency conversion issue, or legal costs related to communication between UBS and S and for strategy and planning.
- If Mrs K's complaint to this service regarding the currency conversion had been upheld it would have been within the ombudsman's powers to require UBS to refund costs if they considered this fair and reasonable. The complaint was not upheld. I don't think the fact that Mrs K brought complaints to this service makes it unfair for UBS to apply legal expenses generally incurred in relation to the matters complained about.
- Consumers are entitled to bring complaints to our service free of charge. That principle is undermined if respondents incur legal fees when dealing with us which they then require the consumer to pay. Our service is informal and neither party should need legal representation when dealing with us. UBS had taken advice and established its position on the matters complained about before the complaint came to us. I don't think it was reasonably necessary for UBS to ask its solicitors to correspond with us on its behalf. While it could of course choose to do so, I don't think it was fair for it to apply the costs for doing so to the mortgage account. Having considered comments from the representatives of both parties, I still think UBS should refund these costs.
- I don't think it's fair to require UBS to refund further costs related to the currency conversion issue. Mrs K contested the currency conversion and the amount of the debt owed in April 2021. UBS was entitled to take legal advice and apply the cost to the mortgage account. I don't think this became unfair because Mrs K brought a complaint (which wasn't upheld) to this service almost a year later. Mrs K continued to raise this issue and contest the amount owed after her complaint had been resolved and I think UBS was entitled to take legal advice to respond to this.
- The value of a property or mortgage doesn't necessarily dictate the amount of work that the lender's solicitors would need to undertake. But it's not irrelevant. The high amount of the debt outstanding meant UBS had more at stake. UBS was also responding to issues that were different from a more standard mortgage. Taking into account the issues raised and the value of the debt, I can't fairly say it was unreasonable for UBS to take advice from its preferred solicitors.
- I don't think it's fair and reasonable to say that UBS should have used one firm of solicitors for issues that M considers complex and another (cheaper) firm for the issues that M considers straightforward, such as the redemption process. This might have been impractical given that M continued to raise issues about the amount owed up to redemption.
- I don't think the fact that UBS made offers to settle the matter means costs applied by it to the mortgage account are unreasonable. Had a settlement been agreed, the costs might have been significantly lower.
- UBS was entitled under the mortgage terms and conditions to appoint a LPA receiver

and apply the related expenses to the mortgage balance. By the time of the appointment the debt had been outstanding for more than 18 months and no clear repayment proposal had been put forward. I think it was reasonable for UBS to take steps to recover the debt. I don't think it was reasonable for UBS to appoint a receiver when there were other less expensive steps it could have taken.

- UBS is a member of UK Finance, which has issued guidance and examples of good practice regarding the appointment of receivers. This says a receiver would not normally be appointed in relation to a residential mortgage where the property is owner occupied. Its guidance refers to a statement by a predecessor association that lenders should not appoint a receiver to sell a residential property without obtaining a possession order or the borrower's consent.
- S says the requirement in the guidance for a possession order or the borrower's consent relates to the sale of the property, not to the appointment of the receiver. So, in S's view, UBS acted within the terms of the guidance when it appointed the receiver. I don't agree with that, given other statements in the guidance, that this was a regulated residential mortgage, and the property was owner occupied.
- This was a regulated residential mortgage. This wasn't a commercial property where rent needed to be collected. There's been no suggestion that the property was abandoned or otherwise at risk. UBS wasn't in possession of the property, so it didn't need a receiver or agent to manage and look after the property. While S says there was a possibility that a receiver would be in a better position to help the parties reach agreement, I don't think that possibility was sufficiently likely to justify the costs of appointing a receiver at that time.
- S said UBS held possession action as it wanted to work towards an agreed resolution and the appointment of the receiver was part of this strategy. S said this approach allowed Mrs K to refinance and stay in the family home and was the fairest and least costly option. I think if UBS wanted to hold action while Mrs K refinanced it could have done so without appointing a receiver. S's recent comment is inconsistent with what it said previously: that had Mrs K met her contractual obligation to give the receiver vacant possession, the receiver would have marketed and sold the property and further legal costs would have been avoided.
- I can't see that it was reasonably necessary for UBS to appoint a receiver in May 2021 or that this helped to resolve matters. I understand why the receiver put insurance in place. But this wouldn't have been necessary if the receivers had not been appointed. Mrs K's representative provided evidence that she had insurance in place for the property.
- S said the costs of contested court proceedings would have exceeded the costs and expenses of the receivers. It said once possession was granted UBS would then have appointed receivers, incurring the costs of this in addition to the cost of the court proceedings. I think that's a fair point.
- If UBS hadn't appointed the receiver in May 2021, it's likely it would have taken possession action to recover the debt. M says Mrs K would have contested possession action on the basis of the currency conversion issue and Mrs K showing progress towards refinancing. There's no certainty that a court would have agreed that UBS was wrong to convert the debt into sterling. But even if it did, Mrs K would still have owed a significant debt secured on her property. I'm not persuaded a court would have required UBS to wait until March 2023 to recover its debt – three and a half years after it became due. If Mrs K was in a position to repay or re-finance the debt before March 2023, I'd have expected her to have done so.

- M said the pre-action protocol would have meant UBS delaying possession action while Mrs K's previous complaint to this service was resolved. Mrs K brought that complaint to us in late March 2022. Given this was two and a half years after the mortgage term expired, UBS could have progressed possession proceedings before this. M said the legal costs related to taking possession would have been less than £60,000 (50% of the costs related to the receiver).
- S said if UBS had proceeded with possession action in May 2021 its costs might have exceeded £1 million. It provided its own fee estimate dated late 2022 to support this. The fee estimate is for a large amount. But I don't think it's fair and reasonable to find that fees would have actually been incurred in those amounts if UBS had proceeded with possession action rather than appointing a receiver in 2021. The legal fees that were applied to the account include fees incurred in dealing with the currency conversion issue and possession action – which had progressed to a date set for a hearing. The legal fees were well below the amounts estimated by S.
- I don't think I can fairly and reasonably find that UBS's costs would have been greater overall if it hadn't appointed the receiver in May 2021. So I think it's fair to require it to refund some or all of the costs of appointing the receiver.
- M says it's unfair to reduce any refund on the basis of costs that were not actually incurred by UBS and the mortgage terms don't allow for costs to be applied to the mortgage account that were not actually incurred. I should explain to M that I'm not suggesting costs that were not incurred should now be applied to the mortgage account. I'm considering how much of the costs that were applied should be refunded. It's not enough for me to say that UBS shouldn't have appointed the receiver. In order to reach a fair outcome, I need to consider what would likely have happened if UBS had not appointed the receiver.
- I think if UBS had continued possession action in 2021 there's a reasonable possibility that it would have taken possession of the property. Once UBS had taken the property into possession, it would have been responsible for looking after the property and marketing it for sale. It would be usual for a lender to appoint agents to assist it with this, and UBS would have incurred costs after taking possession. It's difficult to be certain about what would have happened, but given the value of the property I think it might well have been reasonable for UBS to appoint a receiver at that point.
- I can't be certain that the overall costs applied to the mortgage account would have been higher or lower if a receiver hadn't been appointed in 2021. I can only consider what I think would most likely have happened and reach an outcome that is, as far as possible in the circumstances, fair to both parties.
- Having considered this carefully, I think it's fair and reasonable in the circumstances to require UBS to refund 50% of the costs related to the appointment of the receiver, including S's legal costs related to the appointment and the cost of the insurance put in place by the receiver. That reflects the likelihood that UBS would have incurred some additional costs related to recovery action if it hadn't appointed the receiver. And the possibility – which is not certain – that it would have taken possession and that it might have been fair and reasonable for it to appoint a receiver after taking possession.
- I don't think it's fair and reasonable to require UBS to refund further legal costs on the basis these might have related to strategy, planning, correspondence and advice related to the receivership. The debt had been outstanding since late 2019 and Mrs K hadn't put forward a credible repayment proposal. I think it was reasonable for UBS to take advice about its options to recover the debt. While S might have spent time liaising with the

receiver, I think any related costs would likely be offset by a reduction in the time spent by S due to the work undertaken by the receivers.

- UBS didn't have to release its charge on the property until the debt secured by the charge was repaid in full. Under the mortgage terms and conditions this includes any expenses added to the mortgage account.
- Rules on mortgage regulation require UBS to treat Mrs K fairly. That doesn't mean it can't apply charges to the mortgage balance or take steps to recover the debt. M says UBS breached rules set out in MCOB 12 and MCOB 13. Having considered this, I don't think these rules apply here in the way that M suggests.
- M said it was unfair for UBS to proceed with recovery action when it had told S that Mrs K was in the process of re-financing. UBS had held action previously when Mrs K told it she was in the process of refinancing. Previous efforts to re-finance had fallen through. I've read the correspondence between M and S. I think it was reasonable for UBS to ask for evidence of the refinancing and to proceed with recovery action when this wasn't provided. It was entitled to add the related costs to the mortgage account.
- M told S that Mrs K would struggle with the stress of this process and it could cause her health to deteriorate. M provided evidence to us about Mrs K's health conditions, as well as her husband's. I'm sorry to hear they are in poor health. But I don't think it was unfair for UBS to take recovery action or respond to the issues raised by or on behalf of Mrs K. UBS held recovery action for some time to allow Mrs K to refinance or look into other ways to repay the debt. I don't think it needed to take additional steps due to Mrs K's health. Mrs K had appointed M to represent her. It was reasonable for UBS to expect this to provide some protection to Mrs K from the inevitable stress of this situation.

Interest applied at redemption

M says UBS overcharged interest when Mrs K's mortgage was redeemed. UBS provided a redemption statement for 23 March 2023, a copy of which was provided to us. In accordance with the redemption statement, Mrs K paid a redemption amount that included interest calculated to 23 March 2023.

First, M says as the mortgage was redeemed on 23 March 2023 interest should have only been charged to 22 March 2023. I can't agree with that. Mrs K repaid the mortgage on 23 March 2023 and I think it's right that interest was applied until then.

Second, M says while the redemption funds were sent to S on 23 March 2023, the mortgage statement shows the funds received into the mortgage account on 24 March 2023. On this basis it says Mrs K was charged an extra day's interest. This isn't evidence that an additional day's interest was applied. It doesn't necessarily follow that UBS applied additional interest just because the administration of the redemption was completed on 24 March 2023. There's no evidence UBS asked Mrs K to pay an additional day's interest after it applied the redemption funds.

We asked M to provide evidence Mrs K paid additional interest due to the funds being received into the mortgage account on 24 March 2023. It didn't provide this. I don't think it's reasonable to require UBS to take any further steps related to this part of Mrs K's complaint.

M says Mrs K was asked for this evidence at short notice. It's been more than a month since we asked specifically for this evidence to be provided and I think this is a fair amount of time. Mrs K is represented by M – a solicitor – who raised this issue on her behalf. I think, when Mrs K raised this issue, it was reasonable for her to expect to provide evidence to support

her claim of having actually paid an additional day's interest.

M also says Mrs K overpaid at redemption and the overpayment wasn't refunded. The mortgage statement shows a sum of about £175 was transferred to S on 29 March 2023. S hasn't explained what became of this. In the circumstances, I think this should fairly be repaid to Mrs K.

The requirement to pay interest on the compensation

S says it's not fair to require UBS to pay interest at 8% simple on the compensation I require it to pay. S says it would penalise S unfairly to apply a rate higher than the Bank of England base rate.

By the time UBS makes the compensation payment Mrs K will have been deprived of a significant amount of money for nearly a year. I think it's fair that she's compensated for this. Our rules give me power to award interest on top of a money award at a rate I consider fair and reasonable.

Our usual approach is to require respondents to pay interest at 8% simple. This reflects the statutory rate on judgement debts. It can be fair in the circumstances of a complaint to apply a different interest rate, which more fairly reflects the effect on the consumer of being deprived of the money. I don't think that's the case here and I've explained why below.

I considered whether to award interest at the interest rate applied to Mrs K's new mortgage. That might be fair if I found that Mrs K had to borrow more to repay the amounts wrongly applied to the mortgage account by UBS.

The available evidence suggests the mortgage has a variable rate of 2.5% above the base rate. It's likely that for most of the time since March 2023 the interest rate applied to Mrs K's mortgage has been below and close to 8%. However, if Mrs K can't immediately reduce the loan amount without a charge, the overall cost of her having to borrow more to cover the amounts wrongly applied to her mortgage could be higher than 8%.

For me to require interest to be paid at this rate I'd need evidence that Mrs K had to borrow more to cover the costs wrongly applied to the mortgage by UBS. And for UBS to calculate and pay interest at the interest rate applied to Mrs K's current mortgage, Mrs K would have to provide information about what rates have been applied and when they changed.

I'd also note that it's possible that Mrs K might say she'd have used the money for other purposes – such as an investment with a higher return, or to repay more expensive debt.

M has told us that Mrs K has been in poor health. It would be inconvenient (at best) for Mrs K to provide evidence of what she'd have used the money for and her actual financial loss, she might not want to share information about her financial situation with UBS, and there would be scope for further dispute after my final decision. If Mrs K's financial circumstances are not straightforward – as seems likely – it might not be possible to establish fairly and with sufficient certainty her actual financial loss.

What I'm considering here is how Mrs K was affected by being deprived of the money. I think she will have suffered financial loss. And she was deprived of the flexibility and choice as to how to use the money.

Having taken all of this into account, I don't think it's fair and reasonable in the circumstances of this complaint to vary from our usual approach, which is to require UBS to pay interest at 8% simple on the compensation.

Putting things right

I think UBS should refund costs applied to Mrs K's mortgage account as follows.

1. It should refund legal fees applied to the mortgage account in relation to S dealing with Mrs K's currency conversion complaint to this service on behalf of UBS. S's letter dated 14 December 2023 say these costs were £8,495* (including VAT).
2. It should refund 50% of all costs applied to the mortgage account in relation to the appointment of the receiver (this amounts to about £124,000*). That includes the receiver's fees and costs (including the cost of the insurance taken out by the receiver) and M's legal fees for appointing the receiver.
3. In my provisional decision, I said UBS should remove the costs that are to be refunded from the mortgage account as if they'd never been applied and adjust the balance accordingly. UBS said interest wasn't applied to these costs. On that basis, UBS does not need to adjust the mortgage account.
4. It should refund the £175* sum shown on the mortgage cash statement as transferred to S on 29 March 2023, if it has not already done so.
5. Because of the costs which were unfairly applied to Mrs K's account, she paid more than she should have to redeem her mortgage. She's been out of pocket since then. UBS should pay interest of 8% simple on the total amount of the refunds from the date that the mortgage was redeemed (23 March 2023) to the date of settlement**.

*As my decision will be published, all numbers are rounded. Compensation should be paid on the basis of the actual amounts as set out in appendix 1 of S's letter to M dated 7 March 2023 (for item 1 above), the redemption statement calculated to 23 March 2023 and appendix 1 of S's letter to M dated 7 March 2023 (for item 2 above), and the mortgage cash statement (for item 4 above).

**If UBS considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs K how much it's taken off and give her a tax deduction certificate if she asks for one.

My final decision

My decision is that I uphold this complaint and order UBS AG to pay the amounts set out above to Mrs K.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 24 February 2025.

Ruth Stevenson
Ombudsman