

The complaint

Mr and Mrs W complain that Elderbridge Limited:

- Set up the mortgage incorrectly on an interest only rather than a repayment basis
- Is claiming a mortgage balance that is too high – it should be paid off by now.
- Has not treated them fairly.

What happened

In 2007, Mr and Mrs W took out a first charge mortgage with London Scottish Finance for £114,917.50. The mortgage is now owned by Elderbridge.

Mr and Mrs W complain that the balance of the mortgage has not reduced as they expected. They now owe over £137,000. They said that when the mortgage was taken out it was a repayment mortgage – so they believed was incorrectly switched to an interest only mortgage. And they do not consider that Elderbridge has treated them fairly.

I issued a jurisdiction decision I said that we could not consider a complaint about the sale of the mortgage as it had been referred to us outside our time limits. I said we could look at the balance of the mortgage from 24 July 2018. I also said that Mr and Mrs W's complaint was not only that the balance of the mortgage was wrong, but they were confused about the overall position. I said there was also a complaint about whether they were treated fairly once they were in arrears.

I then issued a provisional decision, subject to further submissions proposing to uphold the complaint in part. My findings, which form part of this decision, were:

Balance

Mr and Mrs W have not provided any persuasive evidence to support that the balance is incorrect. There is no evidence that any payments they've made have not been allocated to the mortgage or that interest has been applied incorrectly. So I could not uphold that part of the complaint. I am satisfied that the arrears balance is likely to be correct.

Arrears

I asked Elderbridge to explain why it had treated Mr and Mrs W fairly when they were in arrears with reference to the evidence and the relevant rules. It said the contact notes set out that the assistance it had offered Mr and Mrs W. It said it agreed several payment arrangements and took details of Mr and Mrs W's income and expenditure. Elderbridge's response did not refer to specific examples that supported what it said. And it did not explain why it believed it had complied with the relevant rules or showed that it understood the rules that were in place.

Mr and Mrs W are clearly in a very vulnerable situation. They have been in and out of arrears throughout the period I am considering – and indeed before that. They have multiple

serious health problems and are in receipt of benefits, including support for mortgage interest (SMI). Their circumstances indicate that they lack financial resilience. They also only have a short term remaining on their mortgage with no means to repay it. I think all of that would mean that a mortgage lender acting reasonably ought to have identified that Mr and Mrs W's circumstances meant they were likely to be vulnerable and especially susceptible to harm.

I can see that Elderbridge has noted details of Mr and Mrs W's circumstances and recognised they were vulnerable. But it is not clear what practical steps it took in view of that, other than recording details of it on its system.

Elderbridge has agreed a number of payment arrangements. I'm afraid its notes aren't that easy to follow at times. For example there is reference to "PTPs", (presumably "promise to pay"?) but it is not always clear what was agreed and how long for.

Further, under the Mortgages and Home Finance: Conduct of Business sourcebook (MCOB), Elderbridge was required to treat Mr and Mrs W fairly. A payment arrangement is one of the things that MCOB sets out that a lender must consider. There is no evidence that Elderbridge considered any other concessions. There is no evidence that there was any real focus on the potential outcome for Mr and Mrs W in agreeing repeat payment arrangements,

In saying that the concessions available to Elderbridge might be limited due to the fact that the mortgage was interest only. For example, neither a term extension or capitalising the arrears would not help as their payments would either stay the same or go up.

Nevertheless, I can see that in February 2024, Elderbridge told Mr and Mrs W that if Mr and Mrs W sent in bank statements and medical evidence then it would refer them to its "SMT" (presumably senior management team?) "with a view to seeing what help it could offer instead of taking legal action".

It is not clear what concessions that a referral to the SMT might produce. Elderbridge should tell me in response to this decision.

If a referral to the SMT could open other concessions for Mr and Mrs W – and that seems likely bearing in mind my experience of such referrals made by other lenders – then I would question why that referral was not made for them earlier. Their overall position does not appear to be materially different from around mid-2022 when interest rates started going up. It was widely anticipated that rates would go up for some time. But there was no real evidence that Mr and Mrs W's position would improve or that they could cope with any further interest rate increases, without the arrears position deteriorating further.

I would therefore question why Elderbridge waited until February 2024 before proposing that as an option to Mr and Mrs W? In saying that, Elderbridge requested bank statements and medical evidence to support what Mr and Mrs W were saying. That is not necessarily unreasonable. It would allow Elderbridge to consider whether any concession it did offer was appropriate.

I note that Elderbridge said it never received the information it requested from Mr and Mrs W despite them saying it had been sent. There is no evidence that Elderbridge set out in sufficient detail the level of support it could offer if a referral to its SMT was made or what that process would involve – and once Mr and Mrs W provided updated income and expenditure (see below) there is no evidence it mentioned that again.

On 20 March 2024, Elderbridge updated Mr and Mrs W's income and expenditure details. We have not been given details of the information that was provided by Mr and Mrs W at any

point. But Elderbridge's records show that Mr and Mrs W had surplus income and could afford to pay more. An arrangement was agreed based on that. While Elderbridge did query how Mr and Mrs W had gone from a deficit to a surplus in a month, it is not clear to me that it was fair or reasonable to accept the explanation it did. I say that as good practice would require the reason for the change to be documented. It would not be reasonable for a lender to accept a sudden increase in surplus income at face value without properly exploring the reasons for that and assessing the likelihood of it being a sustainable increase – particularly in the individual circumstances of Mr and Mrs W.

Bearing in mind the evidence it requested for a referral to its SMT, it's not clear why it was reasonable to accept Mr and Mrs W's figures at face value. Elderbridge did query that Mr and Mrs W only spent £80 a month on food. But I don't consider it was reasonable to accept the explanation it did. It is not clear that was ever sustainable or realistic.

In any event, the agreed arrangement was for a payment of £767 against a monthly payment of around £730. So while Mr and Mrs W might have been able to afford the monthly payment plus an amount toward the arrears, it made no real impact on the level of arrears – and the additional interest that Mr and Mrs W were therefore charged.

Overall, I don't consider that Elderbridge has always treated Mr and Mrs W fairly. There is little evidence to support that it considered any concessions other than repeated arrangements, where there was a track record of them not being kept. It knew about Mr and Mrs W's vulnerable circumstances. And while there was later evidence that Mr and Mrs W could afford the monthly payment, the mortgage remained in arrears and they would not be cleared by term end even if the higher payments were maintained.

I don't consider it was fair or reasonable for Elderbridge to let things carry on as they were. It should have identified that Mr and Mrs W's position was not sustainable in mid to late 2022 at the latest. I think if it had treated Mr and Mrs W fairly it ought to have set out what a referral to its SMT meant and what concessions it could offer around that time. If it had done so in a clear, fair and not misleading way then it seems likely that Mr and Mrs W would have provided the information that was needed for that referral to take place.

Elderbridge should tell me its response to this provisional decision what concessions its SMT offered and what concession it would likely have offered to Mr and Mrs W bearing in mind what it knew about their circumstances. I intend to say that Elderbridge should backdate any such concession until July 2022.

I would add that in the circumstances it would appear that an interest rate reduction would have been the right thing for Mr and Mrs W. If Elderbridge does not provide a sufficiently detailed response or reasons why a different concession would have been appropriate, then I may tell Elderbridge to backdate an interest reduction.

Mr and Mrs W will have been caused some avoidable distress and inconvenience because Elderbridge did not treat them fairly. That will depend to some extent on the concession that it would have given Mr and Mrs W. But it seems likely that Mr and Mrs W would have still suffered some financial difficulty and would have needed to remain in contact with Elderbridge, although not perhaps to the extent they did.

Overall, Mr and Mrs W have not been treated fairly for around two years. But as I have said, it is likely that even if Elderbridge had treated them fairly there would still have been an element of unavoidable distress and inconvenience because of their circumstances and the level of arrears. I consider payment of £500 would be fair in all the circumstances. I may adjust that amount depending on the concession that Elderbridge would have applied.

I said in response to my provisional decision Elderbridge must tell me and provide evidence to support what it says:

- What concessions its SMT might offer.
- What concessions it was likely to have offered Mr and Mrs W had it referred them to its SMT team in July 2022.

I proposed that Elderbridge Limited should:

- Backdate any concession it would have offered to Mr and Mrs W to July 2022. If it does not provide sufficient detail about the options it would have offered or does not provide a clear rationale why a particular form of forbearance would be appropriate then I am likely to say that it should backdate an interest rate reduction.
- Pay Mr and Mrs W £500 directly.

Mr and Mrs W did not respond. Elderbridge responded to say:

"The issue here is the customers had a Disposable income but due to a lack of questioning it may not have been correct or fully understood.

There were instances of the Customers having a Negative income that then increased to a Positive Disposable Income.

If we had offered a concession, then the arrears would have increased and the Interest on Arrears would have increased also.

Suppression of interest wasn't the best option as the account is Interest Only. Also when we did set a CMI [contractual monthly instalment] + PTP [promise to pay arrangement], due to the IOA [interest only ?] the arrears were not reducing at a reasonable rate.

The Customers circumstances don't look like they will improve and there is no repayment vehicle in place and no real discussion around Exit Strategies.

With this in mind, if we back a concession then the end results is that the account is still due to mature in just over 2 years with no solution in place.

It's not 100% clear on what your service are saying we have or haven't done, but there is a lack of questioning / understanding from our point of view where we haven't had the right conversations with the customer.

Your service seems to be saying, where we identified there was Disposable income, was this correct and was the customers answer reasonable for us to accept. If it wasn't and if this led to a Negative income, then would Forbearance have been an option even if it was temporary.

Again, even with some form of Forbearance there is still no affordability to manage the account well and there is no solution for the account maturing in 29 months.

The account has always sat with Recoveries and AST/VC [assessments team and vulnerable customer team] as overpayments were being made, PTP's have always been agreed and there are a large volume of them that had broken. Had the account been referred to our forbearance team due to lack of affordability we could have reviewed for

concession and possibly interest suppression, mortgage is interest only, therefore we don't offer cap [capitalise] arrears or term extensions.

I asked for some further clarification and Elderbridge said:

"Interest suppression means we would not charge interest while the customer had a concessionary payment in place (paying below their contractual monthly instalment).

If an account is referred to Client Services for a reduced interest rate it is done on a case by case and Client Services do not always approve this – an example would be: If a customer had a solid payment profile and never been in arrears until the interest rate started to increase due to Bank of England rates going up, then we could potentially review this account and refer to Client Services to ask if we could put the interest rate back down to what it was before the rates started to go up providing the customer had the affordability, please note, they do not always approve this."

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.

The main findings I reached in my provisional decision were:

- Elderbridge had not shown what practical steps it had taken to support Mr and Mrs W while they were experiencing vulnerable circumstances and were susceptible to harm.
- Elderbridge had not shown that it had considered any concessions other than repeated payment arrangements.
- In February 2024, Elderbridge said it would refer Mr and Mrs W to its "SMT". But their circumstances were not materially different than they were in mid to late 2022 – so it was not clear why Elderbridge had not referred them to that team at an earlier point.
- It was unreasonable for Elderbridge to accept at face value the figures given by Mr and Mrs W that showed they had a surplus income. Elderbridge had not given us details about the information it had and it was not reasonable for it to accept that Mr and Mrs W only spent £80 a month on food. That is a very low figure and would cast doubt on whether the information Mr and Mrs W provided was realistic and sustainable.

Overall, I did not consider that Elderbridge had treated Mr and Mrs W fairly. I am satisfied that Elderbridge has been given a fair opportunity to respond to the findings I made. But I don't consider that it has addressed why it considered it had treated Mr and Mrs W fairly in the circumstances or why repeat payment arrangements were the right thing for Mr and Mrs W.

In saying that, I agree that, ultimately, the mortgage term is due to end in around two years' time – and Mr and Mrs W will need to have an exit strategy to repay the mortgage. Elderbridge hasn't provided a persuasive or clear explanation why that meant the assistance it has offered Mr and Mrs W was appropriate in their circumstances – and I consider their lack of financial literacy and resilience has played a significant part in the situation they have found themselves in and why the information about their circumstances has not always been as clear as it might have been.

Elderbridge's response to my provisional decision is not as detailed as I might have expected. But it appears to say that interest suppression was the only concession that it

would likely have offered Mr and Mrs W in their circumstances. In the absence of any clear reasons why there was any other concession that was appropriate for Mr and Mrs W in their individual circumstances, I consider that Elderbridge should re-work their account as if it had suppressed interest from 1 July 2022 until date of settlement. The payments should be allocated to clear the arrears balance and if that is cleared then used to reduce the principal balance of the mortgage.

It is not clear what Mr and Mrs W's circumstances are now, what the current position of the mortgage is or whether there is any current arrangement or concession in place. My decision only requires Elderbridge to apply the interest suppression to Mr and Mrs W's mortgage until date of settlement. What is the right thing for Elderbridge to do from that point will depend very much on the current position of the mortgage, whether it remains in arrears and what Mr and Mrs W's overall circumstances are.

If the mortgage remains in arrears, Elderbridge should contact Mr and Mrs W in writing and set out clearly what information it needs from them, how it should provide that information and what options it might be able to offer to help. It should then reconsider what, if any, concessions are the right thing for Mr and Mrs W.

If Mr and Mrs W do provide the necessary information to Elderbridge, it might be the right thing to allow the interest suppression to continue or to offer a different concession – that will depend on their overall circumstances. But Elderbridge should also pay due regard to the fact that Mr and Mrs W are experiencing vulnerable circumstances and take that into account in how it communicates with them and the support it offers.

I consider my proposed award of £500 for any distress and inconvenience is the right amount in the circumstances. It reflects that Mr and Mrs W would have had some additional inconvenience in keeping in touch with Elderbridge that could have been avoided had an appropriate concession been agreed. They also had some additional stress because of that and the resulting position of the mortgage – although I accept there was likely to be some worry in any event because of their overall circumstances.

My final decision

My final decision is that Elderbridge Limited should:

- Backdate an “interest suppression” concession to Mr and Mrs W’s mortgage to July 2022 – and re-work their mortgage accordingly as if that concession had been in place since then to date of settlement.
- If the mortgage remains in arrears, write to Mr and Mrs W – explaining the information it needs about their income, expenditure and circumstances and how they should supply that information. If Mr and Mrs W reply, then consider whether there is any forbearance it should offer – and write to Mr and Mrs W setting out the outcome of its consideration.
- Pay Mr and Mrs W £500 directly.

Ken Rose
Ombudsman