DRN-5328092

The complaint

Miss P complains about the way Charter Court Financial Services Limited trading as Precise Mortgages has treated her whilst her mortgage has been in arrears.

What happened

Miss P took out a repayment mortgage with Precise in 2019 over a 25 year term. The interest rate was fixed at 3.64% for 24 months, at which point it would revert to a variable rate which was 4.75% above the Bank of England base rate. The monthly payments were £985.94 whilst the fixed rate was in place.

Miss P's mortgage initially fell into arrears in August 2020, and has been in and out of arrears since. Miss P initially had some problems with her direct debits, and then became unwell during the covid pandemic and was only in receipt of statutory sick pay during that time.

In October 2021, Miss P's fixed interest rate ended, and the mortgage reverted to Precise's variable rate which was 4.85% at the time. This meant her monthly payments increased to £1,108.30. Miss P's mortgage broker asked Precise about new interest rate products that were available to Miss P, but Precise said Miss P wasn't eligible for a new product at that time.

In January 2022 Miss P asked Precise to capitalise the arrears on the mortgage. Precise declined and said that wasn't a feature of the mortgage it provided. Instead, it agreed to further arrangements to pay but these weren't always maintained.

In March 2024, as the interest rate had increased significantly and Miss P was struggling to afford her monthly payments as well as make payments towards the arrears, Precise agreed to a temporary switch to interest only payments for six months, and a concessionary interest rate of 6.29%. Miss P asked for the concession to be extended, but Precise declined. It said there were no other forbearance options available. When the arrangement ended, it started legal action.

Miss P complained. She didn't feel Precise had supported her to get the mortgage back on track and felt the arrears had escalated because of a lack of forbearance measures agreed.

Precise said the interest rate charged on the mortgage had been set in line with the terms and conditions of the account. It said that whilst Miss P's broker asked about taking a new interest rate product in October 2021, the account had recently been in arrears, and none were available.

It said following Miss P's request for assistance in March 2024, it agreed to reduce the interest rate and convert the mortgage to interest only for six months to allow Miss P to pay towards the arrears. It was unable to extend that concession. It said it hadn't agreed to a new interest rate product in the meantime because that wouldn't have enabled Miss P to afford the monthly payments and also make payments towards the arrears.

Miss P brought her complaint to our service, and Precise refused to the put the legal action on hold whilst we consider things.

My provisional decision

I issued a provisional decision in which I said the following:

> "I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.
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> Firstly, I want to say that I'm sorry to hear about Miss P's poor health in recent years. I understand she's been through a difficult time and the stress of this matter has caused her a great deal of upset. I want to assure both parties that whilst I've only summarised events above, I have read and considered everything that has been submitted during the course of our service's investigation before reaching this decision.
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> It's clear that Miss P's ability to consistently pay her monthly mortgage payments in recent years has been impacted by her health. This has also happened during a period of increasing interest rates. Both of which I appreciate have been out of her control.
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> Lenders are required to treat borrowers fairly when they are experiencing, or have experienced, financial difficulties. Taking steps to repossess the property, as Precise has now done, should be considered as a last resort when there are no other appropriate forbearance options available. What is considered appropriate forbearance will depend on the circumstances of the individual borrower.
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> <u>Precise's treatment of Miss P before December 2023</u>
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> I understand Miss P's mortgage first fell into arrears due to problems she was having with her direct debit and unexpected costs she'd experienced. Precise agreed a payment arrangement with Miss P based on what she could afford, and the arrears were cleared in October 2021. At that point, Miss P's fixed interest rate product also expired and so both she and her broker enquired about taking out a new rate. Precise declined the request and said Miss P wasn't eligible for a new rate.
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> Precise has told our service that to be eligible for a new interest rate product in October 2021, the mortgage couldn't have been in arrears for the last three months. Miss P had only cleared her arrears that month, and so I'm satisfied she didn't meet Precise's criteria at the time she applied. Miss P feels this is unfair, as she was forced to make higher payments on a higher variable rate and wasn't offered forbearance. But I'm afraid I don't agree.
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> When Miss P agreed to her mortgage, she did so on the basis that she would pay a fixed interest rate for two years and then a variable rate thereafter. There was no guarantee she would be granted access to other products in later years. Lenders are entitled to set their own eligibility criteria for their interest rate products, as Precise has done. And I don't think it's unreasonable that it wanted Miss P to have shown the mortgage could be kept out of arrears for a short period before agreeing to lock her into another product for a fixed period of time. Because if it turned out she couldn't afford it and the mortgage needed to be brought to an end early, an Early Repayment Charge would likely have become payable. So it may have ended up costing Miss P more in the long term. At the time Miss P's broker enquired about a new rate, Precise told it to call back again in a couple of months' time to check if there was anything

available. I think that was reasonable. Considering the circumstances, I don't think it treated Miss P unfairly when she requested a new interest rate product.

It's unfortunate that Miss P then became unwell and couldn't afford her mortgage payments after that. So the mortgage fell back into arrears and she remained ineligible for a new interest rate product. I've thought carefully about the forbearance Precise offered during this period of arrears. Miss P has said that it should have offered her a payment deferral in line with the regulator's guidance for borrowers impacted by coronavirus. That guidance didn't apply during the period Miss P was unwell. However, Precise did still have to treat Miss P fairly and take account of her circumstances. Broadly, I'm satisfied it did that.

When Miss P was back at work in January 2022, she discussed her situation with Precise and asked if the arrears could be added onto the balance of the mortgage. Precise said it was unable to do that but would set up an arrangement to repay the arrears based on what Miss P could now afford.

Whilst I think Precise ought to have considered whether it would have been in Miss P's best interests to capitalise the arrears at that point, I don't think it would have been. When arrears are capitalised, it means they are repaid over the remaining term of the mortgage – which in this case was significant. Whilst that will be appropriate in some cases, overall, it's an expensive way to bring the mortgage back on track. And in Miss P's case, her circumstances at the time meant that she was able to repay the arrears much more quickly through a short-term payment arrangement. Unfortunately, Miss P became unwell again and so the arrears increased rather than decreased. So even if Precise had agreed to capitalise the arrears in January 2022, the mortgage would still have fallen into arrears again the following month.

Miss P engaged openly with Precise throughout about her circumstances and more arrangements were agreed based on what Miss P could afford at the time. Miss P was also behind on other bills and Precise did suggest she explore independent debt advice on several occasions. Precise also agreed to temporary reductions in the interest rate to allow Miss P to pay more towards the arrears and get things back on track whilst her circumstances were still uncertain. It also agreed a two month payment holiday whilst Miss P was still looking for a new job.

Overall, having looked at the forbearance Precise offered during this period, I think it was fair and reasonable at the time and took account of Miss P's individual circumstances and what she could afford to pay, and that she was looking for a new job to increase her salary. When Miss P was unable to afford the monthly payments on the variable rate, it agreed a temporary concession to a lower rate to enable Miss P to afford the monthly payment and reduce the arrears. That concessionary rate was lower than any interest rate products that would have been available at the time. I'm satisfied that was reasonable forbearance.

<u>Precise's treatment of Miss P after December 2023</u>

In December 2023 Miss P secured a new job with a higher salary and was no longer unwell. That meant she could afford to pay more towards her mortgage each month and was in a more stable financial position than she had been previously. When Miss P notified Precise of this, it agreed to a further concessionary interest rate period and temporary switch to interest only whilst Miss P was establishing how much she would be able to afford on a permanent basis. I think that was reasonable. During that period Miss P was paying consistent monthly payments of £1,400.

In July 2024 Miss P called Precise to ask what would happen at the end of the arrangement. She said she wouldn't be able to afford the contractual monthly payment on the variable rate, and was doing all she could to prioritise her mortgage payments and repayment of the arrears. Precise said the arrangement couldn't be extended as it had provided significant forbearance already. As it concluded that Miss P wouldn't be able to afford the mortgage payments without any concessions, and had already offered forbearance for some time already, it started legal action to repossess Miss P's property once the arrangement ended.

I've thought carefully about the steps Precise took during 2024, and I'm not persuaded that it had reached the point of last resort when it decided to take legal action. I say that because Miss P had a new job and was making consistent monthly payments towards the mortgage. She had kept Precise updated throughout and having looked at the account notes, I think it was clear she was doing all she could to reduce the arrears and get the mortgage back on track. Whilst I agree that Precise had offered short term forbearance appropriately for a significant period, there were also longer-term options I think it ought to have considered once Miss P was out of her financial difficulty and in a stable position that could have made this mortgage sustainable for her.

Precise has confirmed that if it had capitalised the mortgage arrears in July 2024 when Miss P asked for further help, and applied an interest rate product that would have been available to Miss P but for the arrears, the monthly payments would have been around £1,411.80. Miss P was consistently paying £1,400 at that point, so I think it's likely she could have afforded those monthly payments. I note Precise has said that from October 2024 Miss P reduced the payments to £1,000. But that was after Precise had refused any further help and had started legal action to recover the arrears. I'm persuaded on balance that as Miss P's financial situation hadn't changed, if Precise had agreed that Miss P could continue to pay around £1,400 per month, she would have done so. Miss P's financial position had stabilised having been in her new job for some time at that point.

Precise has said it would have needed to see that the payments were sustainable for Miss P before agreeing to capitalise the arrears. But by July 2024, Miss P had made four monthly payments. And if it needed to see that for a longer period, by the time the arrangement ended she had paid for six months. So I think Miss P had demonstrated those payments were affordable for her. I understand Precise has said that as a responsible lender, it would need to understand how Miss P would be able to maintain those payments. I agree it wouldn't be acting in Miss P's interests to agree to long term changes to the mortgage that she may not be able to maintain. But Precise didn't explore whether Miss P would be able to afford the monthly payments if a new interest rate product was applied. It only looked at the affordability of the mortgage payments on the variable rate which was considerably higher.

I do appreciate that in 2024, Miss P was not strictly eligible for a new interest rate product as her mortgage was in arrears. As I've said earlier, Precise is entitled to set those criteria. But it must also ensure that it is applying its criteria fairly and reasonably in the individual circumstances of the borrower, and in this case, I'm persuaded it made the difference between Miss P being able to afford her mortgage and stay in her home, or potentially being repossessed. In such a situation, as reflected in the regulator's rules and guidance, I would expect Precise to consider whether applying those criteria so strictly was resulting in fair treatment. For the reasons I've explained already, I'm not persuaded it was.

Putting things right

I don't think it's unreasonable that Precise wanted to see that Miss P could afford her monthly payments sustainably for six months under the arrangement before agreeing to any longer-term solutions. But I think that by the end of September 2024, when the short-term payment arrangement was ending, Miss P had demonstrated that she could afford to sustain a monthly payment of £1,400.

Precise has said that if it had capitalised the arrears onto the mortgage and applied a new interest rate product that it had available at the time, the monthly payments would have been around that amount. And if they would have been only slightly higher than Miss P could have afforded, it had the option of extending the mortgage term slightly to bring the monthly payments to an affordable level.

As such I think that's what it ought to have done in October 2024. Instead, it started legal action to repossess the property. I think that was unfair.

To put things right I'm currently persuaded that Precise should do the following:

- Put a stop to the legal action that is currently ongoing, including cancelling the hearing that is due to take place.
- Re-work Miss P's mortgage account as if the arrears had been capitalised and the lowest available fixed interest rate product was applied in October 2024. It will need to confirm in response to this provisional decision what the interest rate would have been, what the monthly payments would have been at that point, and whether there were any product fees payable. If so, Miss P should be given the option of adding the fee to the mortgage or paying it upfront.
- Update Miss P's credit file to reflect the updated position of the account. This will mean that from October 2024, it should be reflected that there were no arrears on the account.
- Refund all legal fees that have been applied to the mortgage account since it started legal action in 2024. As well as any interest charged on those fees. That includes waiving any fees that have already been incurred but not yet been added to the mortgage.

I'm satisfied that the way Precise handled things towards the end of 2024 has caused Miss P substantial distress and inconvenience. She's been worried about the prospect of having to attend court and potentially losing her home despite her best efforts to repay the mortgage and has been struggling a great deal with her mental health. I'm sorry to hear about the impact this stress has had on Miss P. As a result, I'm currently persuaded Precise should pay Miss P additional compensation for the distress and inconvenience caused. In the circumstances of this case, I think an award of £1,000 is fair and reasonable."

Miss P accepted the provisional decision.

Precise disagreed that my proposed resolution was a fair and reasonable way to put things right. It said it had not acted incorrectly, and had provided forbearance for a significant period of time.

Precise said that it didn't think capitalising the arrears and fixing the interest rate was in Miss P's best interests. It said capitalisation was one of the forbearance options it would consider as a last resort due to the longer-term financial impact of paying interest on the arrears over the term. Miss P would not have met its criteria for capitalising the arrears, which requires borrowers to have demonstrated they could pay the revised monthly payments over the term of the mortgage, both through an affordability assessment, and maintaining a minimum of six months' contractual monthly payments. Whilst Miss P was paying £1,400, that wasn't the contractual monthly payment as it was on a reduced rate.

Precise also raised concerns over the level of equity in the property, which it considers may reduce further if the arrears are capitalised rather than repaid through an arrangement. It said it could not extend Miss P's mortgage as it's already due to run until her planned retirement age (as stated at application stage). It also said that when it started legal action in 2024, it did so to secure the property and it was still looking to agree a payment arrangement. But no arrangement was forthcoming.

Precise didn't think it was reasonable to expect it to update Miss P's credit file to reflect that there were no mortgage arrears after October 2024, as Miss P hadn't maintained the full payments after it started legal action.

Precise said that following my provisional decision it had reviewed other potential solutions and was prepared to consider agreeing to the following:

- An interest rate reduction to 6.29% for six months.
- Stopping the legal action that had been started in relation to the mortgage subject to Miss P maintaining the above arrangement.
- Waiving the legal fees of £875.80 plus its instruction fee of £70.
- Paying Miss P £250 for the distress and inconvenience caused by the legal fees and charges.

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.

Having done so, including the most recent comments provided by Precise, my decision on what a fair and reasonable outcome for this complaint remains unchanged.

Precise has said that it would only consider consolidating arrears on a mortgage as a last resort when deciding appropriate forbearance. As I said in my provisional decision, it needs careful thought about what is best for both the borrower and the mortgage account when deciding if consolidation is appropriate. But Precise presumably did think that it had reached a point of last resort when it decided to take legal action, which – according to the regulator – should only be taken as a last resort when no other forbearance will resolve the situation.

Whilst consolidating Miss P's arrears may not strictly have met Precise's internal criteria, I remain of the view that it was in the interests of all parties to agree to it in the circumstances of this case in order to avoid Miss P's mortgage position getting any worse, and also to avoid legal action. The spirit of Precise's criteria is to avoid putting the borrower in a position where they're unable to maintain the monthly mortgage payments that consolidation would commit them to paying over a long term. But I don't consider it fair or reasonable to conclude that just because Miss P wouldn't be able to afford the new monthly payments on a variable rate, when she could do so on a fixed rate, and she'd demonstrated that, that she shouldn't be allowed to consolidate her arrears and take a new rate to place the mortgage back into a position that was affordable and sustainable for her. Precise had that forbearance option available to it, it would have made the mortgage affordable for Miss P based on her individual circumstances, and so I fail to see how it could be seen as preferable for Precise to take legal action to recover the arrears – adding additional fees and charges to the debt –

to consolidating the arrears and allowing Miss P to pay fixed monthly payments to the mortgage in a way that was sustainable for her.

I appreciate everything Precise has said about Miss P's previous payment history and the forbearance it had already offered since this mortgage was taken out. But by September 2024, Miss P's circumstances had changed considerably, and she was in a much more stable financial position than she had been in previous years. Precise has said it later explored whether a payment arrangement could be agreed to reduce the arrears on the account more quickly. But in September 2024, it had told Miss P it wouldn't be able to agree to any more forbearance options, and it maintained that position when this complaint was brought to our service.

I've thought about what Precise has said about the equity in the property and its lending criteria in relation to a potential term extension. I don't think the fact that Precise feels Miss P's property *may* be in negative equity makes any difference here as to whether consolidation is appropriate. As far as I'm aware, Miss P has no immediate plans to sell her property, and so I don't think consolidating the arrears at this point increases Precise's risk in recovering its security. The money is owed under the mortgage one way or another. Miss P has confirmed she is happy to consolidate the arrears and put a fixed rate in place to put the mortgage back into a position that is affordable and sustainable for her based on her current financial circumstances. I don't think the amount of equity in the property should prevent her from being able to do that.

I've also not seen that a term extension is required to make the mortgage affordable for Miss P if the steps I've recommended are put in place. Precise said the mortgage payments would have been around £1,411. Miss P had consistently paid £1,400, so I think it's unlikely Precise would need to extend the term to ensure Miss P could afford the additional £11 per month she would have to pay after the changes were made.

I've also considered what Precise has said about amending Miss P's credit file. I explained in my provisional decision why I was persuaded that had Precise agreed to consolidate the arrears and apply a fixed interest rate as I said it should have done, Miss P would have maintained those payments she had previously been making. In that event, Miss P's mortgage account would have shown as being up to date with no arrears. What Precise has now said hasn't changed my mind about that.

Putting things right

So whilst I've thought carefully about what Precise has said, I remain satisfied that it should do the following to put things right in the particular circumstances of this case.

- Re-work Miss P's mortgage account as if the arrears had been capitalised and the lowest available fixed interest rate product was applied in October 2024. If there were any product fees payable, Miss P should be given the option of adding the fee to the mortgage or paying it upfront.
- Update Miss P's credit file to reflect the updated position of the account. This will mean that from October 2024, it should be reflected that there were no arrears on the account.
- Refund all legal fees that have been applied to the mortgage account since it started legal action in 2024. As well as any interest charged on those fees. That includes waiving any fees that have already been incurred but not yet been added to the mortgage.
- Pay Miss P £1,000 for the distress and inconvenience its actions have caused her.

If Miss P would prefer to agree to the alternative proposal Precise has put forward in response to my provisional decision, I will leave it open to her to discuss that with Precise directly.

My final decision

I uphold this complaint and instruct Charter Court Financial Services Limited trading as Precise Mortgages to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss P to accept or reject my decision before 13 March 2025.

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Kathryn Billings
Ombudsman