

The complaint

Mr H complains that Preferred Mortgages Limited has not accurately recorded details of his vulnerability.

What happened

Mr H has a mortgage with Preferred. The mortgage is administered by Acenden – but Preferred is the lender and responsible for what Acenden did or did not do as part of this complaint.

In 2023, Mr H made a data subject access request (DSAR) to Preferred. He said that it showed that Preferred had recorded that he was vulnerable because of a gambling addiction and medical condition, but it had not made an accurate record of that for a number of reasons, including:

- It had recorded that it did not affect his ability to pay the mortgage.
- The “harm indicators” had all been recorded as “no”, when Preferred had not asked Mr H any questions relevant to that.
- He’d told Preferred about his gambling addiction in 2015, 2017, 2021 and 2022, but Preferred’s earliest record of it was in 2022.

Mr H said the failure to record his vulnerability properly and to protect his personal data was partly responsible for the level of arrears on the mortgage. It meant that Preferred was not equipped to deal with vulnerable customers and had allowed things to spiral out of control – to the extent that it has not begun legal action. The fact Preferred had agreed a payment arrangement did not demonstrate that it had treated him fairly, Mr H said that Preferred had breached the Data Protection Act 2018.

I issued a provisional decision. Subject to any further submissions I proposed to uphold the complaint in part. My provisional findings, which form part of this decision, were:

Jurisdiction

Preferred has given us a copy of a final response that it sent on 1 September 2021. The final response includes complaints from Mr H about the options available to him when the term of the mortgage ends and that he’d told Preferred about his health and that he was addicted to gambling, but no safeguards were put in place for him.

Mr H referred his complaint to us on 21 April 2024. That is more than six months after the date of the final response. Therefore, any complaint about the support (or lack of support) offered by Preferred in respect of Mr H’s vulnerability has been referred to us outside our time limits. But Preferred has now consented to us looking at those matters, so I can consider them as part of this complaint.

Usually we’d only be able to look back six years from the date a complaint was made. That

would mean we could only look back to October 2017. But Preferred has now also consented to us considering a complaint going back to 8 July 2015 – that is six years before the 2021 final response.

When did Preferred know Mr H was vulnerable?

Mr H said he'd told Preferred about his gambling addiction and medical condition from 2015. Preferred has accepted that its final response was potentially misleading. It has clarified that it did record details about its customers' vulnerabilities before 2022 – but that it did so in the account notes. It said from 2022 it introduced a new system that allowed vulnerabilities to be viewed in a different way.

I've looked at Preferred's "borrower notes" from 2015. I can see that it did record information about Mr H's vulnerable circumstances at that time – but only on some of the individual notes it made following contact from Mr H. It's not clear that was done in a way that supported delivery of appropriate service to Mr H or how other staff would be able to easily identify and understand Mr H's vulnerable circumstances. And it is not clear from the information Preferred has given us that Mr H's status was clear before 2021/2.

I say that as the evidence it has provided does not show that the information about Mr H's vulnerability, which was recorded on some notes, was accessed by its staff that dealt with Mr H – it appears they would need to look through the notes to find that information. The evidence Preferred has given us does not support that Mr H's vulnerability status was always sufficiently recorded on its system. And looking at the notes of some of the conversations, it's not clear that the staff members understood or took into account Mr H's vulnerable circumstances.

While Preferred did record Mr H's vulnerability from 2015, it has not shown that this was done in a way that any member of staff that dealt with Mr H would know about his vulnerable circumstances, at least until the account was passed to its vulnerable team in 2021. That meant that it is not clear that Preferred always took Mr H's circumstances into account when dealing with him until then. I will address that further below.

Did Preferred treat Mr H fairly when he was experiencing vulnerable circumstances

I've found that Preferred has not shown that it always adequately recorded detail of Mr H's vulnerability from 2015 until 2021. But looking at everything that happened, it is not clear that there were any practical steps that it could have offered Mr H that would have improved his overall position or meant that it would have offered Mr H any other concessions.

When Mr H has been in contact and has shared details about his circumstances, Preferred has agreed appropriate payments arrangements – but those arrangements failed and Mr H has not always responded to Preferred's attempts to contact him. I don't see what else Preferred could reasonably have done in the circumstances.

At times there has been little meaningful contact from Mr H that would have allowed Preferred to explore whether there were any concessions it could offer him. So in the circumstances there was little else Preferred could do. Looking at all of the information we have, I am not persuaded that Mr H would have avoided the legal action had Preferred recorded his vulnerability in a reasonable way. That was a reasonable step for it to take in view of the level of arrears on the mortgage.

There has been some disadvantage to Mr H in that he has had to provide details of his vulnerability more often than perhaps he otherwise would have. But in saying that, bearing in mind we are looking at a period of around nine years, it would have been reasonable for

Preferred to look for an update from time to time. I agree with Mr H that in the circumstances it was unreasonable for it to require evidence of vulnerability – Preferred has now told us that it has removed that requirement. And there were also long periods where Mr H was not in contact with Preferred.

Overall, I consider that the way Preferred has recorded Mr H's vulnerability has caused him some additional distress and inconvenience. He feels that he has been disadvantaged by that – and that was avoidable if Preferred had recorded information about him in a reasonable way. But ultimately, I don't see that the position of the account would have been different overall had Preferred acted fairly.

Preferred has explained that its "harm indicators" are an administrative process that can be used by its vulnerability team to record information – but it makes no practical difference to how it treats its customers. That is a reasonable explanation. And looking at how Preferred has dealt with Mr H since it introduced its new system in 2022, I can't see that it has treated him unfairly – but there was no contact from Mr H from October 2022 until February 2024.

Putting things right

I've found that from July 2015 until 2021 Preferred has not shown that it always adequately recorded details of Mr H's vulnerable circumstances – or if it did then it has not shown how the way it recorded information was readily accessible to staff who were dealing with Mr H. Preferred has already accepted its final response created the false impression that it no longer had access to the system it used to record information about Mr H's vulnerabilities and that information was not included in Mr H's DSAR.

The contact between Mr H and Preferred was limited during the period in question. I've found that it was unlikely the overall position of the mortgage would have been different had Preferred treated Mr H fairly. But there has been some additional worry to Mr H that things might have turned out differently if it had done so – along with some distress and inconvenience in having to repeat details of his vulnerability. Although some of that would always have been necessary bearing in mind the passage of time.

Overall, I consider that Preferred should pay Mr H £350 to reflect the distress and inconvenience this matter has caused to him overall, including the issues with the final response.

Preferred accepted my provisional decision. Mr H responded to say that while he did not agree with the outcome, he had no choice but to accept it. He said he still has grounds to pursue a claim for breach of data protection. He said in a final opportunity for Preferred to resolve this matter he would accept £2,000 in full and final settlement.

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.

Neither side has put forward any new evidence or arguments. So I see no reason to reach a different outcome than I did in my provisional decision. The amount of compensation I proposed is fair and in line with our approach. I have no basis on which to say that Preferred should pay Mr H £2,000.

Usually, if Mr H accepts a final decision it would be in full and final settlement of all parts of his complaint. It is not clear from what Mr H has said that the claim he intends to make for damages is a separate matter from this complaint that he could pursue if he accepted this

decision. Mr H should seek advice about that if he is unsure.

My final decision

My final decision is that Preferred Mortgages Limited should pay Mr H £350.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 21 April 2025.

Ken Rose
Ombudsman