DRN-5431869

The complaint

This complaint is about a mortgage Mr N holds with Lloyds Bank Plc trading as Cheltenham & Gloucester (C&G) on a property in which he does not reside. The essence of the complaint is that C&G:

- didn't capitalise arrears after a new interest rate product transfer was applied to parts of his mortgage (he thinks a court ordered C&G to apply the rate to all parts); and
- is now blocking his attempts to sell the house (rather than have a possession order enforced) by refusing to correct the redemption statement to apply the interest rate product to all parts of the mortgage and remove litigation charges.

What happened

The above summary is in my own words. The basic background to this complaint is well known to both parties so I won't repeat the details here. Instead I'll focus on giving the reasons for my decision, rounding any figures to avoid the risk of identification by including information that is overly specific. If I don't mention something, it won't be because I've ignored it. It'll be because I didn't think it was material to the outcome of the complaint.

Our investigator wasn't persuaded our rules allowed us to consider every point Mr N had raised in his various complaints to C&G. The investigator explained that his consideration would be confined to the subject matter addressed in two final responses, dated 18 July 2024 and 5 September 2024, which were, in summarised form:

- mortgage arrears weren't capitalised after the product transfer;
- why the new rate wasn't applied to every sub-account;
- the fairness or otherwise of legal fees added to the redemption statement;
- a staff member threatened him during a phone call on 26 July 2024; and
- C&G took too long to transfer a call made in August 2024 between colleagues.

When he considered those points on their merits, the investigator wasn't persuaded C&G had done anything or generally treated Mr N unfairly.

Mr N asked for the case to be reviewed by an ombudsman. Whilst that was waiting to happen, Mr N asked that C&G place a hold on action to evict the tenant and take possession, so that he could complete a sale. We relayed that request to C&G, but it declined to do so, citing the worsening arrears and the absence of evidence that the mortgaged property was being marketed.

Mr H has since asked the court to intervene and stop the eviction. I'm not aware of whether the court has heard that request yet, but it doesn't affect the outcome of the complaint before me.

What I've decided – and why

I'll start with some general observations. We're not the regulator of financial businesses, and we don't "police" their internal processes or how they operate generally. That's the job of the Financial Conduct Authority (FCA). We deal with individual disputes between businesses and their customers. In doing that, we don't replicate the work of the courts, nor in any way interfere with that work.

We're impartial, and we don't take either side's instructions on how we investigate a complaint. We conduct our investigations and reach our conclusions without interference from anyone else. But in doing so, we have to work within the rules of the ombudsman service.

Where the evidence is incomplete and/or contradictory, I'm required to reach my decision on the basis of what I consider is most likely to have happened, on the balance of probabilities. That's broadly the same test used by the courts in civil cases.

It's for us to assess the reliability of evidence, from both sides, and decide how much weight should be attached to it. When doing that, we don't just consider individual pieces of evidence in isolation. We consider everything together to form a broader opinion on the whole picture. It's also for us to decide when we have enough evidence to reach a fair conclusion.

In reaching my decision, I will have regard for the law and good industry practice where relevant, but my overarching responsibility is to decide what is fair and reasonable in the circumstances. That can sometime mean reaching a different outcome from what might prevail in court. But what I won't be doing is second-guessing or otherwise interfering with what a court has already decided, or pre-empting what it might yet decide.

We revisit jurisdiction at every stage of our case-handling process. I've done that here, and am satisfied that my remit here is confined to deciding the issued listed above. Any matters dealt with in final responses C&G issued earlier than 2 May 2024 (six months before Mr N contacted us is time-barred.

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

That includes listening to recordings of phone calls Mr N has held with C&G. Having done so, I've reached the following conclusions.

<u>Mortgage arrears weren't capitalised after the product transfer</u>

Capitalisation of arrears is one of a number of forbearance options that a lender should consider offering a borrower in financial hardship. But it's not something lenders are required to agree to; capitalisation increases the contractual monthly payment (CMP) and lenders should not commit borrowers to higher payment that might not be affordable. Their lending policies typically reflect that. In Mr N's case, C&G had capitalised arrears three times before; in 2006, 2012 and 2015.

In C&G's case, its policy at the time of the request I'm considering here was to require a borrower to have maintained the existing CMP in full and on time for 12 consecutive months in order to be eligible for capitalisation. Mr N did not meet that qualifying criterion at the relevant time, so I can't fairly find that C&G should have been willing to capitalise his arrears again.

why the new rate wasn't applied to every sub-account

There are nine sub accounts to Mr NJ's mortgage; how that came to be is one of the issues I can't consider. But I can consider why the new rate product was not applied to all of the sub accounts. As a general rule, a lender won't apply an interest rate product to a loan (or part thereof) if the remaining term on the loan (or part thereof) is shorter than the term of the product. That's not a restriction that's unique to C&G; it's an industry standard.

In Mr N's case, the interest rate product he took in December 2023 – one that had been introduced specifically for borrowers in financial hardship – has a term that runs until 30 April 2026. However, not all of his sub accounts had a term that expires after that date. Three were due to expire before then. I note that a previous request to extend the term wasn't followed through, but that is not one of the issues that I am able to consider.

Nonetheless, the shortness of the remaining term on three of the sub accounts is why the product was not applied to them. Not only was that quite normal, and not unfair, it should not have come as either a shock or a surprise to Mr N. It was set out in the transfer offer letter dated 21 December 2023.

Mr N argues that in an order from the court, in the possession proceedings C&G initiated because of the arrears, the judge instructed C&G to apply the fixed interest rate product to the other three sub accounts. I don't know what may or may not have been said in the courtroom, and nor do I need to know. What I do know is that the order handed down by the judge on 17 January 2024 said no such thing. All it ordered C&G to do was to provide a witness statement, in effect justifying the interest rates being charged.

I don't know how C&G responded to that, and again nor do I need to know. What I can reasonably infer is that the court must have been satisfied with C&G's statement because the judge issued a new order on 26 April 2024. That order didn't just granted possession of the mortgaged property to C&G; crucially, it was a money judgement ordering Mr N to pay C&G a little under £272,200.

The effect of a money judgement is that it validates the lender's accounting of a mortgage debt up to the date of the judgement. In other words, the money judgement in Mr N's case validated C&G restricting application of the fixed interest rate product to only six out if nine sub accounts. The money judgement did something else; it also validated the decision not to capitalise arrears *and* the legal costs C&G had applied to Mr N's account up to the date of the judgement.

It's not the role of this service to contradict, countermand or in any way second-guess a court judgement. In that context, for me to make any finding that did that, such as telling C&G it should have applied the fixed rate to all nine sub accounts, would be highly inappropriate.

the fairness or otherwise of legal fees added to the redemption statement

The starting point here is that lenders can reasonably and fairly add the cost of recovery action through the courts to a defaulting borrower's outstanding debt. As I alluded to in the preceding section, any costs that C&G added prior to 26 April 2024 have already been validated by the money judgement issued by the court. However, legal action didn't end there; since then, C&G has taken a decision to enforce the order, and Mr N has applied to the court for that to be stayed. The ongoing action brings further costs with it, which in my view C&G can reasonably and fairly add to the outstanding debt. That in turn will feed into any redemption quotation C&G might issue from time to time. If Mr N thinks otherwise, he is free to ask the court to issue an order preventing C&G from adding further costs.

a staff member threatened him during a phone call on 26 July 2024

I've listened to a recording of the call in question; it lasted less than a minute during which the call handler asked to speak to Mr N, he said it wasn't convenient and asked her to call back. She said she couldn't call back and the call was very important. At that point, the call ended. I don't find anything threatening in that.

C&G took too long to transfer a call made in August 2024 between colleagues

The team Mr N was dealing with is a call centre. Mr N wanted to speak to a specific individual rather than simply the person who answered the call. The person he wished to speak to was in another call, and it took fifteen minutes for that person to become available. Such a wait was unfortunate, but understandable in that situation. I've no doubt Mr N found it irksome, but it's not unfair treatment.

Other matters

More recently, there's been another conversation between Mr N and C&G; it took place on 27 February 2025, in the period between Mr N asking for his complaint to be reviewed and it being allocated to me. During that time, he was trying to sell the mortgaged property, and feared C&G's enforcement of the possession order would derail the sale. Strictly speaking, that call is not part of what I'm dealing with here, but for completeness I've listened to it, as did the investigator.

Having done so, I have to agree with the investigator's opinion that it changes nothing as far as the broad outcome of the complaint is concerned. Two other things are apparent. Firstly, the description Mr N gave us of the call content bears little resemblance to the actual content of the call. Secondly the description Mr N gave C&G in the call of our investigator's view of the complaint bears little resemblance to the actual opinions our investigator expressed

Mr N says his solicitor intends to highlight the difference between the "correct" redemption balance and whatever amount C&G asks for. However, when I put all of the above together, there are no grounds for me to find that C&G has treated Mr N unfairly or that C&G needs to amend the amount it seeks to redeem the mortgage, whether that be as a result of an open-market sale by Mr N or a sale by C&G following enforcement of its possession order.

That begs the question of what happens next. I don't know what the current position is regarding C&G's enforcement of its possession order over Mr N's property and/or his attempts to complete a sale. I understand why Mr N wanted C&G to pause whilst we continued our review of the complaint, and that he would have been very upset when it didn't agree to do so. But it's important to explain here that whilst lenders will often agree not to pursue recovery action whilst we look at a complaint, they don't have to and we can't force them to.

If the Financial Ombudsman Service had that power it would undermine our impartiality between the parties to a complaint. It would also create the potential for consumers to use our service to bring complaints with the intention of having any legal action put on hold, thereby obstructing businesses that were trying to take action through the courts to recover money legitimately owed by the consumers.

I do not wish to alarm Mr N but I would not want him to be under any misunderstanding that we would tell C&G that it must delay enforcement action in the event of any new complaint being raised about the mortgage. It is a matter for a court to decide whether it is appropriate to adjourn or suspend any enforcement action, not this service.

I'll make one final observation. As I said earlier, it's not in my remit to interfere with the court process. My final decision here deals solely with the complaint about the specific issues listed above, and whether C&G treated Mr N unfairly. I've explained why I consider it did not, but of course, Mr N is free to make the same arguments he's made here to the court in defence against any enforcement action C&G might yet take, in the event that has not already happened.

My final decision

My final decision is that I don't uphold this complaint, or make any order or award against Lloyds Bank Plc trading as Cheltenham & Gloucester.

My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 6 May 2025.
Jeff Parrington
Ombudsman