

## **The complaint**

Mr A and Ms O complain that Flex Mortgages Limited:

- Did not administer the agreement correctly.
- Unfairly applied interest, fees and charges.
- Took legal action unfairly and unnecessarily.

## **What happened**

In 2006 Mr A and Ms O took out a second charge mortgage with Flex Investments Limited. The loan was for £25,964.81 at an interest rate of 12.7% variable repayable over 25 years.

In 2010, Flex Investments Limited went into administration. All rights under the loan agreement were assigned to Flex Mortgages Limited (Flex).

Mr A and Ms O said that around 18 months into the agreement they noticed that their payments weren't being collected. They said despite making repeated attempts to contact the lender they were unable to find out what they needed to do. They said they eventually found out Flex Investments had been liquidated but they had not been able to find any guidance on what they needed to do.

Mr A and Ms O said they did not hear anything else about the loan for several years until Flex contacted them and told them to resume payments. They said they set up a direct debit for £100 a month but struggled to make the payments.

In 2023 Flex took legal action. A court issued a suspended possession order. It gave Mr A and Ms O until 24 May 2024 to sell the mortgaged property but said Flex could not add any further costs to the mortgage, apart from costs incurred because there was a breach of the order, in enforcing the order or in respect of any application to the court made by Mr A and Ms O.

Mr A and Ms O did not comply with the order. Flex took action to enforce the order and obtain a warrant for possession. But Flex agreed to delay eviction as Mr A and Ms O agreed to give it permission to obtain information from their solicitors regarding the progress of the sale of the house.

In October 2024 Flex notified Mr A and Ms O of a new eviction date. Mr A and Ms O applied to the court for the eviction to be suspended. On 9 December 2024, the court adjourned the hearing to 20 December 2024 allow Mr A and Ms O to obtain evidence that the sale of the property had completed. They exchanged contracts for the sale on 18 December 2024.

Mr A and Ms O complain that Flex has not treated them fairly:

- The reason they fell behind was because, despite their best efforts, they could not contact Flex.

- The amount of interest and charges applied were more than allowed under the terms of the loan.
- Flex unnecessarily took legal action. That meant they had to sell their home for less than it was worth.
- Flex attempted to evict them despite knowing that they had a sale in progress.
- Legal fees of over £5,000 were added to the balance. The amount of fees is excessive and Flex would not explain why the fees had been charged.
- The amount they paid to redeem the mortgage was too high.
- Flex took advantage of their personal circumstances and vulnerabilities.

The investigator said that Flex did not do enough to tell Mr A and Ms O that interest was being applied from July 2010. But Mr A and Ms O ought reasonably to have known that anyway and could have taken steps to mitigate their loss.

The investigator said that in the circumstances Flex was entitled to take the action it did and to pass on its costs to Mr A and Ms O.

Mr A and Ms O did not accept what the investigator said. They responded to make a number of points, including:

- They had agreed payment arrangements and they could provide evidence to support that.
- They had repeatedly told Flex and its representatives about their personal circumstances – that made it difficult for them to make timely decisions because they could not easily contact each other.

### **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.

As the Investigator said, we can consider whether there was an unfair relationship between Mr A and Ms O and Flex - taking into account all matters relevant to the fairness of that relationship, whenever they occurred.

#### Loan balance

The evidence we have is that Mr A and Ms O made payments to the loan from around December 2006 to February 2008. They made a payment in February 2009. From November 2018 until January 2023, they paid either £100 or £200 most months. It follows that they were aware of the loan and how to make payments during those periods of time.

Flex has given us evidence that it wrote to Mr A and Ms O in March 2009, November 2011, May and November 2012, April 2013, and May 2015 and said the mortgage was in arrears and Mr A and Ms O should make arrangements to clear the arrears. If they did not do so it could exercise its rights under the security it held. Flex also sent annual statements that set out the balance, any interest applied and any payments received. But none of the documents contained any contact details, other than Flex's postal address.

Between February 2009 and November 2018 I do not consider that Flex took adequate steps to tell Mr A and Ms O what they needed to do to make payments. But I don't consider there was any real detriment to them from July 2008 to June 2010 and from January 2016. That is because no interest was charged during those periods.

Flex charged interest from July 2010 to December 2015. I am satisfied that it was entitled to do so under the terms of the loan agreement – and I can't see that the interest it charged was out of line with what Mr A and Ms O agreed. But I don't consider it was fair for it to do so bearing in mind that it did not tell Mr A and Ms O that it had started applying interest again and in view of the background where Mr A and Ms O had only made one payment since February 2008. Flex ought reasonably to have been aware that Mr A and Ms O were potentially experiencing financial difficulty and explored whether there was any support that was needed and/or whether applying interest was appropriate in their individual circumstances.

Nevertheless, I consider that Mr A and Ms O had enough information at the time in question to know that Flex was applying interest between 2010 and 2015. So they had enough information to act on that if they believed it was unfair and that an unfair relationship was created. Even if I found there was an ongoing unfair relationship created, there was nothing to prevent Mr A and Ms O making a complaint about the fairness of that at the time in question or indeed in the following six years. In all the circumstances, I do not see how it would be fair for me to conclude that Flex should refund the interest that it applied.

#### Legal action

In 2018, Flex agreed a payment arrangement of £100 a month with Mr A and Ms O. But they stopped making those payments in January 2023. Despite attempts by Flex to contact Mr A and Ms O there was no further substantive discussions until July 2023, when Flex wrote to Mr A and Ms O setting out its intention to commence legal proceedings.

Looking at the contact between Mr A and Ms O and Flex, I consider it was reasonable for Flex to conclude that there was no sustainable way to get the loan back on track. So I consider it was reasonable for Flex to start legal action when it did.

The possession order was granted in December 2023. It said that Flex could enforce the order if Mr A and Ms O had not sold the property within six months and that it should not add any further costs to the mortgage, but it could add any costs in enforcing the order if Mr A and Ms O were in breach of it – in other words if the property had not been sold within six months.

The property was not sold within the six months. Flex told Mr A and Ms O that it would not take any further action until 30 June 2024. As the property was not sold, it applied for an eviction date, which was scheduled for 7 October 2024. I think that was reasonable and in line with the court order as Mr A and Ms O had not sold their property by that time.

Flex agreed to postpone the eviction date when Mr A and Ms O agreed that Flex could contact their conveyancing solicitors. But when it was unable to get sufficient information to show that a sale was imminent it rearranged the eviction date for 9 December 2024. I consider Flex had given Mr A and Ms O sufficient time to arrange a sale and it was reasonable for it to require evidence to show that a sale had been agreed and was likely to proceed.

Mr A and Ms O appealed Flex's decision in court. The court adjourned the application to give Mr A and Ms O a short amount of time to show that a sale had completed. I understand they exchanged contracts for the sale on 18 December 2024 and the sale went ahead in January

2025.

Mr A and Ms O had a sale lined up. But in the circumstances it was reasonable for Flex to ask for evidence that the sale was likely to go ahead. I don't consider it had sufficient evidence of that. So it was reasonable for it to take the action it did.

I understand why Mr A and Ms O are unhappy with the legal fees that were added to the mortgage. But Flex was entitled to apply those costs under the terms of the loan agreement. And a court has already decided that Flex could add the costs of enforcing the possession order. I can't interfere in that.

Flex has given us evidence to show the amount it had to pay in legal fees and costs in respect of this matter. I am satisfied that Flex has only passed on the fees and costs it incurred to Mr A and Ms O. The amount of fees and costs is not out of line with what I would expect bearing in mind the amount of work involved. So I do not consider that Flex has applied the legal fees unfairly.

I appreciate the difficult circumstances that Mr A and Ms O were going through. I accept that this matter has caused them a great deal of upset and stress, And I accept that communication was made more difficult because of their personal circumstances. But I am satisfied the action taken by Flex was fair and reasonable in the circumstances. So I can't fairly tell it to compensate then for the impact of this matter on them

### **My final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A and Ms O to accept or reject my decision before 28 November 2025.

Ken Rose  
**Ombudsman**