

The complaint

Mr and Mrs G complain that The Royal Bank of Scotland Plc trading as First Active has not given them appropriate support with their mortgage.

What happened

In 2007, Mr and Mrs G took out a mortgage with First Active. It was part repayment and part interest only with a term of 16 years. The mortgage had a fixed interest rate until June 2010 followed by a variable rate that was 1.10% above the Bank of England base rate. The mortgage term ended in August 2023, but Mr and Mrs G did not repay the balance.

Mr and Mrs G complain:

- The mortgage is unaffordable for them because First Active would not give them an affordable interest rate. As a result, the balance of the mortgage has increased.
- First Active would not give them a new interest rate in the final year of the mortgage – that meant they were mortgage prisoners.
- Has not offered them appropriate support when the term of the mortgage ended.
- Has recorded incorrect information on their credit files.
- They are unable to remortgage because of the adverse information recorded on their credit files.
- First Active has not treated them fairly over the past six years.

I issued a jurisdiction decision that set out that there were some parts of the complaint we couldn't consider as they had been referred outside our time limits.

I then 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:

Interest rate

First Active said that its policy is not to offer a new interest rate where the term of the mortgage is less than two years. That is very unlikely to be fair in every case. But looking at the overall circumstances here, the level and type of contact from Mr and Mrs G before the term expired and the way the account was conducted, I don't consider it was unreasonable for First Active not to offer a new interest rate product in the individual circumstances of this case.

The evidence I have is that First Active or RBS did not offer any variable rates at the time in question. The shortest term fixed rate it could offer was for two years. That would have taken Mr and Mrs G past the agreed end of term. So the only way First Active could consider such a switch would have been by also extending the term of the mortgage.

First Active told us “due to the arrears, a term extension could not be considered, and the case was passed for litigation action to commence.” That is incorrect. Under MCOB, where a mortgage is in arrears a lender must consider a number of concessions – and that includes a term extension.

Nevertheless, there is no evidence that Mr and Mrs G requested a new fixed interest rate product before the term expired. So there was no opportunity for First Active to explore the options with them.

There was contact once the term ended. But once the term has ended it is not usually unreasonable for a lender not to offer a new interest rate. That is because the full balance of the loan was due. A fixed rate would usually have an early repayment charge – and that would not be appropriate if Mr and Mrs G were expected to repay the mortgage. In any event, looking at the interest rates that were available, it does not appear that they would have helped Mr and Mrs G bearing in mind what they paid and what they said they could afford.

Looking at the information First Active had, I don't see there is any more it could have done to help Mr and Mrs G. The mortgage was not affordable or sustainable and the term has ended. First Active has given Mr and Mrs G time to explore their options. Ultimately, it is reasonable for First Active to look for the mortgage to be repaid. And legal action is a legitimate step for it to take in these circumstances. But it should be a last resort.

I would encourage Mr and Mrs G to keep in contact with First Active and updated on the progress of the sale of their home – and if their circumstances change to explore if there is anything else it can do.

Credit file

First Active accepted that it had made errors on Mr and Mrs G's credit files. It has agreed to amend some of the information it recorded between July 2019 and September 2020 . Based on the information I have the amendments it has agreed to make are reasonable. And the amount it has already paid of £200 was fair in the circumstances, bearing in mind that it still would have recorded the account in arrears over some of the time in question if it had not made the errors it did.

First Active is obliged to record true and accurate information with credit reference agencies about how they handle their mortgage. So it was reasonable for it to record that Mr and Mrs G have not kept up with payments since, I understand, October 2022.

Six years

I've already issued a decision that explained that we could not look at some matters where First Active had already issued a final response. Bearing in mind I can't consider those points, I can't see that First Active has not treated Mr and Mrs G fairly overall – apart from one point.

I understand that Mr and Mrs G were on a variable interest rate that was 1.10% above the Bank of England base rate (the base rate). On 16 January 2021, First Active confirmed that Mr and Mrs G's contractual monthly payment was £771 a month – and the annual statements show that was the payment due until 1 February 2023 when it increased to £1,958.

That does not look right to me. The base rate increased on 16 December 2021 from 0.10% to 0.25%. So I would have expected the monthly payment to increase accordingly. There

was also eight further increases in the base rate until 1 February 2023 without any increase in payment.

In saying that the annual statements show that First Active did change the interest rate it applied to the mortgage in line with changes to the base rate. And the payment of £771 was sufficient to cover the interest applied each month until October 2022.

The difficulty I have is that I do not know what the correct payments should have been. Mr and Mrs G's mortgage was part repayment, so even when the payments covered the interest they are likely to be insufficient. Further, it is not clear if the payments should have increased that Mr and Mrs G could have afforded the correct payments.

Nevertheless, I am satisfied that First Active has not treated Mr and Mrs G fairly. When I pointed out this problem to it, it was unable to understand what has gone wrong. It needs to get a handle on this matter.

Usually, in these circumstances I'd expect a lender to calculate what position the mortgage would have been in had it been operated correctly and to adjust the interest accordingly. I think First Active should do that. It would not be fair for First Active to claim additional interest where the payment it collected was lower than it should have been.

It is not clear if the issue with the payments meant Mr and Mrs G paid less than they otherwise would have towards the capital balance. But I am not proposing that First Active make up any shortfall. I say that because I am not persuaded that Mr and Mrs G could have afforded any increased payments.

Mr and Mrs G already do not trust First Active. They've had a number of problems with their mortgage over the years including around how the payment was set. They are already in a very difficult position and do not trust First Active – and I can see how they will be left with the feeling that the maladministration of the account has contributed to the position they are in. Despite raising a complaint, First Active did not recognise the problem with the payments. I do not see how a lender could reasonably have missed that bearing in mind the nature of the complaint Mr and Mrs G have made if it had carried out a proper investigation.

Overall, I consider First Active should pay Mr and Mrs G a further £600 in view of the impact on them of collecting incorrect payments for over a year.

First Active responded to say that it accepted my provisional findings.

Mr and Mrs G responded to make a number of points, including:

- They'd lived in their home for over 25 years and had the mortgage with First Active for 16 years. They have repaid the repayment part of their mortgage and it is only the interest only element that remains unpaid.
- The 2022 annual statement showed all payments made in full and on time with no arrears, with the interest rate increasing from 1.20% to 2.85%.
- In January 2023, the payments went up. The balance quoted in writing was £262,364.52.
- On 3 February 2023, First Active wrote to them and said the interest rate had increased to 5.10% with a new monthly payment of £2,394 and a balance of £338,529.34. The letter said arrears of £4,045.90 have been added to the balance.

- On 24 March 2023, First Active wrote them and said the interest rate had increased to 5.35% with a new monthly payment of £2,386 and a balance of £340,479.12. The letter said arrears of £7,625.81 had been added to the balance.
- They did not understand why the monthly payment was lower in March 2023, despite both the interest rate and balance going up.
- When they speak to First Active and explained their circumstances, they were told there was nothing it could do to help other than refer them to lifetime mortgage providers and debt advice charities. They have continued to speak to First Active and to raise complaints – but it has not made any difference. First Active does not have any policies and procedures to help customers in their circumstances.
- They are “mortgage prisoners”. It is not fair that First Active continues to add interest to the balance.
- Their home is up for sale, they have changed estate agents and dropped the price – but properties in their price range are not selling quickly.
- They want all interest refunded from August 2023 refunded and the balance placed on hold until their home is sold. They want First Active to allow them to stay in their home and they will agree to pay £1,500 a month. They have life insurance policies in place that cover the mortgage balance – and there is enough equity in the property to repay the mortgage.

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.

End of term

When Mr and Mrs G took out the mortgage they agreed to repay it in full when the term ended in 2023. They are in breach of contract by not doing so. In saying that, mortgage lenders ought to understand that sometimes circumstances can change. So they are expected to treat borrowers who are unable to repay their mortgage as planned fairly.

What is fair will depend on the individual circumstances of each case. We'd usually expect a mortgage lender to undertake an objective assessment of what is in the borrower's best interests and to give a borrower reasonable time to carry out their plans to repay this mortgage.

The difficulty in this case is that Mr and Mrs G have said they can only afford to pay £1,500 a month. That is less than the amount they would need to pay bearing in mind their interest rate is the Bank of England base rate plus 1.10%. I understand why Mr and Mrs G think they should not have to pay interest – but when they took out the mortgage they agreed to do so. It is reasonable for a lender to apply interest until the amount borrowed is repaid. I can't see any reason why First Active would be required to waive or reduce the interest rate in this case while the balance remains outstanding. The term has ended, it has a reasonable expectation that the mortgage will be repaid and there is sufficient equity in the property to cover the full balance including any arrears.

It is not in Mr and Mrs G's best interests for the mortgage to continue on an interest only basis either indefinitely or on an extended term. I've already found they can't afford the

payments as they are, they've already paid interest for over 16 years and by extending the term they would still be required to repay the mortgage – it would be pushing the problem further down the line.

A repayment mortgage would not help because it is not clear that would be affordable or sustainable bearing in mind their overall circumstances. And it is reasonable for First Active to take into account the mortgage was in arrears before the term ended.

I understand that First Active does not offer lifetime mortgages. Therefore I can't see there is anything else that it could reasonably do to help Mr and Mrs G. It appears to be in their best interests to repay the mortgage as soon as they can. So I don't think it was unfair for First Active to look for the mortgage to be repaid.

First Active has already exercised forbearance by giving Mr and Mrs G the time it has to sell the property, bearing in mind the term ended in August 2023. Taking legal action is a legitimate step for a lender to take in these circumstances – but it should be a last resort.

I know Mr and Mrs G do not see the value in speaking to First Active about their circumstances. But for a lender to be able to decide what is the right thing to do, it is usually helpful if a borrower provides as much information as they can about their circumstances and how any sale is progressing. It is reasonable for a lender to ask for evidence of how a sale is being conducted or to ask permission to speak to the estate agent.

Whether any action is fair or reasonable will depend on a borrower's individual circumstances. But as things stand, I don't consider First Active has acted unfairly in the support it has given Mr and Mrs G when the term of their mortgage ended.

Mortgage payments

In my provisional decision I identified that First Active had not calculated the monthly payments correctly from December 2021. First Active accepted my proposal to calculate what the balance of Mr and Mrs G's mortgage would have had it collected the correct payments and adjust the interest that it has applied accordingly. First Active said it has done that and has calculated that Mr and Mrs G overpaid interest by £5,561.42. It said it had already refunded that to the mortgage.

Mr and Mrs G have identified what they consider to be a discrepancy in March 2023, when their monthly payment went down – even though the interest rate and balance went up. To be clear, the recommendation in my provisional decision was for First Active to look at the full period from 1 December 2021 – and to make sure the correct payments have been collected to date. If not, then First Active should adjust the interest charged and refund that to the mortgage.

It is not clear if First Active's calculation has covered the full period or not. But if Mr and Mrs G accept this decision, it should write to them and confirm it has carried out the recalculations over the full period and what the final figure is. It should also address Mr and Mrs G's specific point about the March 2023 payment going down, even though the interest rate and balance went up. That should clarify if that payment was calculated correctly and if not that it has been included in the calculation. If it has been calculated correctly, then it should explain why the payment went down. I would remind First Active of its obligation to support consumers understanding and to make sure it meets their information needs.

My final decision

My final decision is that The Royal Bank of Scotland Plc trading as First Active should:

- Pay Mr and Mrs G £600.
- Calculate what the balance of Mr and Mrs G's mortgage would have had it collected the correct payments and adjust the interest that it has applied accordingly.
- Write to Mr and Mrs G to confirm that it has completed the recalculation as set out above and what the final refunded figure is. It should explain if the March 2023 payment was included in the recalculation – and if not explain the reason why the payment went down.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G and Mrs G to accept or reject my decision before 5 February 2026.

Ken Rose
Ombudsman