

## **complaint**

Mr and Mrs Q complain about how Mortgage Express has treated them whilst they've had financial difficulties.

## **background**

Mr and Mrs Q have a mortgage with Mortgage Express and they've been in financial difficulties for some time, with the arrears being capitalised in 2011 and a suspended possession order being granted in 2016.

An ombudsman colleague issued a decision in October 2017 setting out what parts of Mr and Mrs Q's complaint we can – and can't – consider. I've reviewed that decision and I agree with my colleague, so this decision will only deal with the following complaint points:

- the monthly payment increasing when the interest rate dropped;
- the charges that have been applied to the account since January 2015;
- the mortgage balance being wrong following the capitalisation in 2011 and how the account has been managed in relation to repayments; and
- the format of the mortgage statements.

Our adjudicator didn't think Mortgage Express had done anything wrong in respect of points one, three and four. But she thought Mortgage Express should refund some of the arrears fees incurred since January 2015. Neither side agreed so it's been passed to me to decide.

## **my findings**

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

### *the monthly payment increasing when the interest rate dropped*

The reason why the payments would rise is quite complicated. I think most people would assume that as interest rates go down, so would their monthly payments. That's an entirely reasonable assumption, but it doesn't always happen to be correct.

Mortgage Express calculates the monthly payment due each month based on various assumptions; some of those being that the interest rate doesn't change, all the monthly payments are made in full and on time, and that no fees or charges are added to the debt. Mr and Mrs Q were in arrears on their mortgage (and had incurred fees for that) so the balance of their mortgage was higher than it should have been. An up to date mortgage account - that is, one that's not had arrears and fees - would see a monthly payment reduction if interest rates went down. But as Mr and Mrs Q's mortgage wasn't up to date they had a higher balance which obviously means more interest is charged each month.

Rather than adjust the monthly payment due every single month to take into account any over or under payments (as that would cause a lot of confusion) Mortgage Express (along with a lot of other lenders) only adjust the monthly payments when a certain trigger happens. One of those triggers is a change in interest rate. So a calculation is undertaken based on the actual balance at that time (including any arrears and fees) and the term remaining. So even though the interest rate goes down, the payment could go up (as it did here) as there's more debt to incur interest then there was when the monthly payment was last recalculated. Equally the reverse could happen. If a

person pays more than is needed each month, and then interest rates goes up, they could end up having to pay less each month as there's a lower debt to charge interest on.

Due to the arrears and fees, Mr and Mrs Q's balance was higher than it should have been. So interest for the whole of the rest of the term was recalculated on that higher balance. Any missed payment will increase the level of debt, which means the monthly payments will have to go up to cover the additional interest due.

I hope this explanation puts Mr and Mrs Q's minds at rest that there's nothing untoward about their payment going up when interest rates went down, it's simply a matter of how much the debt had increased rather than decreased since the last calculation of their monthly payment was done.

*the charges that have been applied to the account since January 2015*

I've looked at the mortgage account since January 2015 and agree with the adjudicator that some of the arrears fees should be refunded. Whilst I understand Mr and Mrs Q's mortgage account remained in arrears, it seems unfair for Mortgage Express to charge them an arrears fee in months where Mr and Mrs Q have met, or exceeded, their contractual monthly payment.

I list each arrears fees charged between January 2015 and July 2017 individually below along with my thoughts on whether they were fair or not:

- |                  |   |
|------------------|---|
| • January 2015   | - full payment made so fee to be reversed as unfairly charged |
| • February 2015  | - full payment made so fee to be reversed as unfairly charged |
| • March 2015     | - full payment made so fee to be reversed as unfairly charged |
| • December 2015  | - full payment made so fee to be reversed as unfairly charged |
| • January 2016   | - fairly charged so no reversal due                           |
| • February 2016  | - full payment made so fee to be reversed as unfairly charged |
| • March 2016     | - fairly charged so no reversal due                           |
| • May 2016       | - fairly charged so no reversal due                           |
| • June 2016      | - fairly charged so no reversal due                           |
| • July 2016      | - full payment made so fee to be reversed as unfairly charged |
| • August 2016    | - fairly charged so no reversal due                           |
| • September 2016 | - full payment made so fee to be reversed as unfairly charged |
| • October 2016   | - fairly charged so no reversal due                           |
| • November 2016  | - full payment made so fee to be reversed as unfairly charged |
| • December 2016  | - full payment made so fee to be reversed as unfairly charged |
| • January 2017   | - fairly charged so no reversal due                           |
| • February 2017  | - full payment made so fee to be reversed as unfairly charged |
| • March 2017     | - fairly charged so no reversal due                           |
| • April 2017     | - full payment made so fee to be reversed as unfairly charged |
| • May 2017       | - full payment made so fee to be reversed as unfairly charged |
| • June 2017      | - full payment made so fee to be reversed as unfairly charged |
| • July 2017      | - full payment made so fee to be reversed as unfairly charged |

So this means 14 charges should be reversed as at the day they were charged to ensure no interest has been incurred on them. Mortgage Express should also review the mortgage account from July 2017 to the date Mr and Mrs Q accept this final decision (that is, if they accept this decision) on the same basis I've set out above and ensure any arrears fees charged in that period are reversed for any months Mr and Mrs Q met, or exceeded, their contractual monthly payment.

*the mortgage balance being wrong following the capitalisation in 2011 and how the account has been managed in relation to repayments*

Arrears of £6,096.16 were capitalised in 2011 (not £6,834.16 as Mortgage Express erroneously said in its letter in August 2017). Mr and Mrs Q have queried why that balance has gone up rather than down saying they haven't borrowed any extra money. That's because they've been arrears pretty much ever since. So whilst they haven't borrowed any extra money, they've also not made the monthly payments they should have made and that extra debt has to go somewhere. Mortgage Express hasn't increased the interest-only part of the mortgage (as that wouldn't be in Mr and Mrs Q's best interests as that debt would then need to be repaid at the end of the term), so any fees, charges and arrears are added to the repayment side of the mortgage, hence the repayment balance increasing.

If Mr and Mrs Q had made all their monthly payments in full and on time since the 2011 capitalisation, then the repayment balance would have reduced significantly by now. But they haven't, so instead the balance has increased.

I understand Mr and Mrs Q want a breakdown of how much of their monthly payment goes to the interest-only part of the debt and how much to the repayment. I'm not sure why they want that as it's not two separate debts to be paid, it's one mortgage with a total outstanding debt and a total monthly payment due. If Mr and Mrs Q had made all the payments due in full and on time since the 2011 capitalisation then they'd have, at the end of the term, just the original interest-only debt outstanding. The monthly payments Mortgage Express would have been collecting would have covered all the interest due on the total mortgage, plus a sum sufficient to repay the repayment element by the end date.

Mr and Mrs Q have said their understanding is that £53.43 a month goes towards the repayment side of the debt, but then £40 charges plus interest are being added. They say they'd have expected Mortgage Express to inform them they're not paying enough to bring the repayment side of the debt down. But Mr and Mrs Q are being told they're not paying enough (when they don't pay the full monthly payment) as they get arrears letters telling them they're in arrears. As I said above, the two sides of the debt (the interest-only and the repayment) can't be looked at in isolation as the mortgage doesn't work like that. Any payments made go to covering the interest first (that's the total interest charged on the total debt), and then if the payment made was large enough the rest of it will be used to reduce the mortgage debt.

I'm ordering some of the £40 arrears fees be refunded as I've set out above, but others will remain as in those calendar months Mr and Mrs Q didn't pay enough to meet their contractual monthly payment.

As our adjudicator said, it isn't the role of the Financial Ombudsman Service to provide an auditing service or carry out a forensic analysis of mortgage records. But I've looked at the transaction history and there's nothing on there that appears unusual or incorrect (other than the fees I've said should be refunded above).

Of course, it's open to Mr and Mrs Q to instruct an independent qualified professional to audit their account. But that would have to be at their expense – though if errors were found, they could complain about them and their costs in discovering them could be taken into account in putting matters right. But as things stand, I'm not persuaded that Mortgage Express has mis-managed their account.

*the format of the mortgage statements*

Mr and Mrs Q queried the format of their mortgage statements, saying it's not clear what's held on a repayment basis and what's interest-only. We're not the regulator - that's the Financial Conduct Authority (FCA) - and any concerns about the standard wording of mortgage statements would be a regulatory issue. So the FCA would be organisation to contact with any feedback about mortgage statement wording.

That said, I can only assume Mr and Mrs Q have overlooked the wording at the bottom of the *'Mortgage Summary'* page of the statement which says "*This mortgage includes £170,377.14 borrowed on interest-only terms.*" And as the closing/current balance is noted as £178,423.07 this means £170,377.14 is interest-only and so the remaining £8,045.93 must be repayment.

### **my final decision**

My final decision is that I don't uphold the main thrust of the complaint, but I find that Mortgage Express should reverse the fees listed above to Mr and Mrs Q's mortgage account as at the day they were incurred (so as to cancel out any interest charged on them). Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs Q to accept or reject my decision before 10 May 2018.

Julia Chapman  
**ombudsman**