

complaint

This complaint's about long term difficulty Miss Y has had in paying her interest-only mortgage with Preferred Mortgages Limited (Preferred). She says it's unfairly added fees to her account over the years and she can't understand the interest she's been charged. She wants an explanation of how the balance of her mortgage has reached £126,000 and why it's not reducing. A different firm administers Miss Y's mortgage but Preferred's responsible for it.

background

Miss Y took an interest only mortgage with Preferred in 2004. But she soon got into arrears she's not been able to pay off.

Because of the arrears Preferred applied to court for a possession order in February 2009. The judge issued the order but suspended it provided Miss Y kept to an agreed repayment plan. Miss Y did make repayments to the account following the court hearing, but Preferred say they began to be late or missed altogether. So it began to charge her fees.

In April 2014 Miss Y sent the first of a series of letters complaining to Preferred. I've condensed the contents of these letters below to form what I consider the main thrust of her complaint.

She said, in summary;

- She wanted Preferred to explain why her mortgage balance was £126,000 and why it wasn't reducing.
- She wanted Preferred to explain how it was calculating the interest it was adding to her balance.
- Preferred overstated to the court the amount of arrears she owed during the hearing in 2009 as it had added charges including fees for the litigation.
- Preferred didn't tell the court the monthly mortgage payment and interest would be added to the arrears.
- Preferred added charges and fees to her account that weren't in its "tariff of charges and sundries fees guide".
- It was agreed at court she would pay a lump sum to Preferred of £2,182 by 23 February 2009 and thereafter £100 every calendar month towards the arrears. The first payment of £100 to be made on 1 March 2009. She asked why Preferred was adding charges to her account when she was abiding by the order.
- Her mortgage payment was due on the last day of each month. But Preferred changed the agreed concessionary payment date so it could add further charges.
- She made a repayment of £2,000 on 23 February 2009.
- As she gets paid on the 23rd of each month she makes her mortgage repayment early but it's not due until the last day of the month.
- Preferred was crediting payments she made to her account late.
- Late payment fees had been added to her account from March to August 2009 when she had been making her repayments on time.
- Preferred had been inconsistent in charging her late payment and other fees from November 2004 to June 2014.
- Preferred was continuing to add fees each month as she had a balance of £869 outstanding under the arrangement.

- Preferred unreasonably refused to enter into another arrangement to clear the payment shortfall without a payment of £4,000.
- Preferred hadn't updated her credit report as it had agreed to.

Preferred responded to her letters. It;

- Told her the balance of the mortgage (at the time of its letter) was actually about £116,000 not £126,000 as she thought. It reminded Miss Y her mortgage was on an interest-only basis. So any payments she made would be used to pay the interest and arrears but wouldn't reduce the capital balance. It sent her a transaction history to show how fees and charges had increased her balance.
- Explained how her mortgage statement was broken down and how charges were shown on it.
- Told her that her contractual repayment date was the 1st of each month but the concessionary repayment date had been agreed with her to suit her circumstances. It said since November 2013 she'd been making repayments in arrears as agreed.
- Explained that any fees added to her account were in accordance with the terms and conditions of the mortgage. It said these were detailed in the "Tariff of Charges and Sundry Fees" booklet that had been issued to her and had been republished from time to time. It gave an explanation about a series of fees Miss Y questioned.
- Said she'd failed to abide by the judge's repayment order. Because of this further arrears management fees were added to her account.
- Gave an explanation for the arrears figures that were presented in court. It said that the judge would have been familiar with how mortgages work and that interest would be added to the arrears.
- Agreed she'd paid £2,000 on 23 February 2009.
- Said as Miss Y hadn't maintained the court order it couldn't be reset. A lump sum would be needed to reduce the current level of payment arrears before a new arrangement could be made. It said it reserved the right to enforce the possession order as the court order hadn't been maintained.
- Apologised for the error it had made in reporting her arrears to the credit reference agencies and promised to correct this.

Miss Y wasn't satisfied with Preferred's explanation. So she brought the complaint to this service. She says Preferred hasn't justified why her balance is so high and it's been unfairly adding charges even though she's been making repayments to the mortgage. Preferred says it hasn't done anything wrong and in any case this service can't look at some aspects of Miss Y's complaint because it's "time barred". It also says as Miss Y made a complaint to it in 2011 about some charges we can't look at those either as she didn't refer it to this service in time.

Our adjudicator looked at Miss Y's complaint. He agreed with Preferred that we can't consider certain aspects of it as it falls outside of our jurisdiction. Because of this he says he's limited in what he's been able to consider. But he did note that only a small part of Miss Y's complaint would be caught by the time bar and that the main crux of it applied to later events. He went on to say, that he doesn't think Preferred wrongly added any fees or charges to Miss Y's account. But he explained, as we aren't an actuarial service we couldn't examine how it's made certain calculations. He confirmed that Miss Y has since told him Preferred has corrected her credit file.

Miss Y asks that an ombudsman review her complaint.

my findings

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

Firstly, I'd like to apologise to Miss Y for the delay in dealing with her complaint. A lot of information was submitted for review and this has taken time to look at.

For ease of reading I'll structure my Final Decision in a similar manner to that of our adjudicator.

jurisdiction

This service isn't able to consider every complaint that's brought to it. We have to operate under a set of rules that tell us which complaints we may consider and how we must deal with them. They're laid down by the industry regulator, the Financial Conduct Authority. It's because of these rules that Preferred says we can't look at part of Miss Y's complaint

One of these rules concerns time limits. It says a complaint must be made (to a business or to us) within six years of the date of the event complained of, or, if later, three years from when the complainant knew, or ought to have known, there was a cause for complaint. In addition, once a complainant has complained to a business and received a final response it must be referred to the Financial Ombudsman Service within six months of the final response being issued.

Miss Y's complaint was received by Preferred on 29 April 2014. So, applying the six-year rule means we can't consider anything Miss Y complains about that happened before 29 April 2008. But I also need to consider when Miss Y knew or ought to have known she had cause for complaint. That is to say when she first knew or ought to have known the charges and fees Preferred were adding to her account might be unfair.

This is difficult for me to do but I can look at the customer contact notes Preferred has submitted. This documents the contact it's had with Miss Y about her mortgage since 2006. It's clear Miss Y was in regular contact with Preferred often on a weekly or fortnightly basis. She regularly discussed with it not only her arrears but also the charges and interest applied to her account. I see that Miss Y often questioned these and asked they be removed as she felt they were unfair. So from what I've seen I can safely conclude Miss Y knew she had cause to complain about the fees and charges at the time they were applied and indeed often *before* they were applied to her account. For that reason I say there's no justification to extend the time bar on the grounds of the "three-year" rule.

I've also looked at Preferred's other objection on jurisdictional grounds. It says Miss Y complained to it on 14 October 2011 about some "Late Stage Arrears Management Fees." As Miss Y didn't bring this complaint to this service within six months of Preferred's "final response" and there doesn't appear to be any exceptional reasons why she didn't do so, I'm satisfied our adjudicator is right to say we can't consider these specific charges as part of this complaint.

misrepresentation in court

Miss Y says Preferred misrepresented her arrears in court. I don't think this is something we should rule on. I say this for a number of reasons. First, this service isn't an account

checking service. We don't have the resources or technical expertise to calculate whether the sums presented to the court were correct. We would also need to consider the mortgage transactions since Miss Y first went into arrears. But, for the reasons I explained above, we aren't able to consider mortgage transactions that occurred before 29 April 2008.

In any case, and more importantly, if Miss Y had grounds to think the figures presented to the judge were wrong or she didn't understand them, she could have challenged them in court at the time. Moreover, it's reasonable to assume the judge hearing the case would have satisfied himself the figures quoted by Preferred were correct and reasonable. This also applies to the litigation fees Miss Y says Preferred presented in court. The judge was free to refuse the application by Preferred to claim litigation costs from Miss Y if he thought they were unreasonable or it wasn't fair for her to pay them. I'm also satisfied that a difference of £297.50 in arrears quoted by Preferred at court and a later quoted figure has been explained. This was in connection with an unpaid insurance premium later removed from Miss Y's account.

Miss Y says Preferred didn't tell the court that monthly repayments would be added to the arrears total and it would continue to rise through the addition of interest and fees. But I think it's reasonable to assume the judge would have understood how mortgages operate and that this is a normal feature of them. If he wanted further clarification he could have asked for it. Also, as I explained above, if Miss Y thought something hadn't been presented fairly at court or indeed if she wanted clarification she could have brought this up herself.

Regardless of whether the information presented to the court was correct or not, it's not my role to "second-guess" how the court might have ruled if it had been presented with different information.

tariff of charges and sundry fees

The terms and conditions of Miss Y's mortgage require her to agree to meet all Preferred's fees and costs in connection with the operation of her mortgage. Her mortgage offer says,

"Fees payable in connection with the operation of the Loan: Please refer to the enclosed 'Tariffs and Charges Guide for Customers' booklet

Note: the fees in this Part 2 are subject to change in accordance with the Conditions."

Preferred's power to recover any costs and fees from Miss Y is also detailed in the title charge registered with HM Land Registry. It says,

"You must pay on a full and unqualified indemnity basis all fees, expenses, taxes, liabilities and legal and other costs, including VAT if applicable on all such amounts, incurred or charged by the Lender in or incidental to:-

(a) the preparation, completion, registration, administration, protection and enforcement (including the costs of any proceedings) of this Mortgage; and

(b) the exercise by the Lender of its rights and powers under this Mortgage.

The amount of such fees and costs are contained in a booklet called published by Preferred called the "Tariff of Charges and Sundry Fees" ("the tariff").

I've looked at Preferred's tariff. Miss Y says some charges don't feature in the 2009 or more recent tariff. Preferred has sent us copies of its tariff guide. In fact it's been published several times since Miss Y took the mortgage. It was re-issued in 2005, 2008, 2010, 2011 and 2014. They detail all of Preferred's arrears fees and other charges in force from time to time. It may be the fact that Miss Y doesn't have copies of all of them but I've no reason to assume they weren't sent to her when they were re-issued. It's understandable that due to the passage of time she may not remember receiving all of them. But as I've seen from Preferred's customer contact log it's clear that fees and charges were the subject of regular discussion with Miss Y so there's no doubt in my mind that she knew of their existence.

Preferred say that although Miss Y's contractual repayment date is the first of each month, provided that she makes her agreed repayments on the agreed concessionary date no arrears fees would be charged. This seems entirely reasonable to me as I'll explain.

Miss Y hasn't highlighted to us any one specific fee she says shouldn't have been charged but mentions a series of fees debited to her account over periods of time. So I will discuss our general approach to arrears charges.

As with Miss Y's mortgage, a lender's terms and conditions usually allow it to recover its costs incurred when pursuing arrears. The view of this service is that those charges should be a reasonable reflection of the lender's actual expenses and should be detailed in the tariff of charges issued by it. Generally where an agreement has been reached about the repayment of arrears, or has been the subject of a court order, and the borrower is honouring this agreement, we say it's generally not fair to impose such charges. This is because there's no additional work involved in collecting repayments that are being made as agreed. So there's nothing to charge for.

I've looked at Preferred's tariff of charges. They're generally in line with what this service would deem reasonable and aren't significantly different from those charged by other lenders. I note Miss Y says charges shouldn't have been made after the court hearing. Providing she'd kept to the payment arrangement ordered by the judge I'd agree, as that would be in line with our approach as outlined above. But Preferred says although she did indeed pay £2,000 after the hearing, she broke the terms of the arrangement shortly after. So it began to charge its costs to her.

This accounts for the series of charges Miss Y questioned when she believed she was making repayments in line with the judge's order. I think this is the key point of this element of the complaint. Miss Y and Preferred appear to have interpreted the judge's repayment order differently. Preferred believes she's broken it and so has charged arrears fees, Miss Y thinks she's kept to it and so shouldn't be charged the fees. But it's not the role of this service to interpret the order of the court and to impose that interpretation on Miss Y and Preferred. If either party needs clarification, that's the role of the judge who made the order. So for this reason I can't say that Preferred has unfairly applied any fee or charge.

payment date

I've considered that Miss Y says she makes her monthly repayments in advance each month. But I'm satisfied that Preferred has explained this isn't the case. In fact the concessionary payment date has changed several times over the years and Preferred has explained this was always in agreement with Miss Y. So I'm satisfied this wasn't an attempt by Preferred to manipulate Miss Y's account so it may charge additional fees.

withholding of repayments

Miss Y says after making her repayment, Preferred “withholds” them for a while before applying them to her account. I’ve looked at the transaction history provided by Preferred and have read its explanation. Miss Y’s contractual repayment date is the 1st of each month. This is the date by which she must make repayments (although by concession a later date has been agreed). When her mortgage payment falls due on the last day of each month but is not received, this is temporarily shown as a debit to her “payment arrears balance”. When Miss Y’s monthly payment is received a few weeks later the balance is updated. I can understand why it may appear that Preferred is debiting her repayments before re-crediting them. But I’m satisfied this isn’t the case.

To summarise then, I’ve seen no evidence to suggest that Preferred has unreasonably added fees and charges to Miss Y’s account. I’m satisfied Preferred has reasonably explained how it’s operated her account but it’s not something we can audit. As I’ve explained this service isn’t able to do calculations about interest or check Miss Y’s account in its entirety for errors. That’s the job of an actuary. It seems to me that Miss Y’s interpretation of the court’s ordered payment arrangement is different from that of Preferred. But it’s not within our remit to decide which the correct interpretation is.

I appreciate that this will come as a disappointment to Miss Y but, from what I’ve seen, I don’t think Preferred has done anything wrong.

my final decision

For these reasons, I don’t uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Miss Y to accept or reject my decision before 6 November 2015.

James Hargett
ombudsman