

## **complaint**

Mr E complains about the way he was treated by Blemain Finance Limited when he fell into financial difficulties.

## **background**

Mr E had two secured loans with Blemain. I'll mostly focus on the larger loan he took out in 2013. It was for £30,000, repayable at about £500 a month over 10 years.

In 2016 Mr E was out of work and so was unable to make his repayments. He'd stopped making repayments, and asked Blemain for a three month repayment break/reduced repayments, and later asked for reduced repayments of £100 a month.

Blemain didn't agree to Mr E's requests. Mr E didn't think he was being treated fairly so he complained. Blemain responded to the complaint saying it had tried to gather information to assess Mr E's financial situation. But because the information he sent it couldn't be verified, and because it couldn't speak to him, it was unable to agree to any arrangements. So it didn't think it had done anything wrong. It did acknowledge though that it could've responded to one of Mr E's letters sooner, so it offered to refund a £50 arrears fee - together with any associated interest - as a gesture of goodwill.

Mr E didn't think this was a fair outcome so he brought the complaint to us. One of our investigators looked into what had happened. She thought, in summary, that Blemain had tried to assess Mr E's financial situation, but hadn't been able to. So she thought it had been reasonable for it not to agree to a repayment arrangement, or to waive/refund interest and fees. And she thought that overall Blemain had responded to Mr E's correspondence in a timely manner.

Mr E didn't agree. He said, in summary, that Blemain took over four months to tell him it wouldn't agree to a repayment arrangement; that he'd provided it with the information it needed to assess his financial situation; and that it didn't offer to suspend interest, fees or collection activity.

By this point the complaint had moved on somewhat. Mr E was in the process of selling his house and would soon be in a position to repay the loans in full. Some further issues had arisen.

These were that he hadn't been sent details of Blemain's assisted voluntary sale scheme (AVS for short, a scheme where Blemain nominates a third party to help someone sell their house); that when he provided further information about his finances a repayment arrangement couldn't be agreed without a long term repayment solution; and that a £50 monthly arrears fee, as well as interest, had been added to both his accounts each month.

Our investigator looked into the further issues. She said that she'd seen that Blemain had accepted it might not have sent Mr E details of the AVS, but that as his house was in the process of being sold she didn't think he'd been disadvantaged. She still didn't think Blemain had been unreasonable not to accept his repayment proposals. And she noted Blemain had said following contact from his solicitors around the sale of the house it'd stopped applying the £50 monthly arrears fees.

Mr E didn't think a fair outcome had been reached. He stood by his previous points, and added that he'd recently repaid both the loans, and the redemption figures were higher than he'd expected; that he'd been charged a £150 fee on each account; that the refund of the £50 fee plus interest previously offered hadn't been done; and that although he was told no £50 monthly fees would be added after February 2017, some had been.

The complaint was passed to me for a final decision.

### **my provisional decision**

I issued a provisional decision saying why I thought the complaint should be upheld. I said:

#### repayment arrangement

Mr E faxed a letter to Blemain in July 2016. In it he explained he'd lost his job, and asked for a suspension or reduction in repayments for three months. He asked for communication in writing only.

By August 2016 Blemain had received details of Mr E's income and expenditure. But it seems his expenditure exceeded his income by a large margin. So Blemain asked for bank statements. I think this was reasonable as it needed to verify the information it'd been given to make sure any repayment arrangement it agreed was affordable for Mr E.

Blemain received Mr E's bank statements. But they didn't have a bank name or account number on them. They also showed transactions to another account. So Blemain asked Mr E for bank statements in another format, and asked for statements from the other account.

I know Mr E doesn't think this was necessary. But I can see why Blemain wanted to understand his financial situation as best it could before agreeing to a repayment arrangement.

There was some further back and forth between Mr E and Blemain. And quite late on (early November 2016 - roughly four months after his initial fax) it told him that it wouldn't be able to accept a repayment arrangement without a "long term repayment strategy" being in place, and encouraged him to sell his house. He was also told while no arrangement was in place collection activity would continue and the £50 monthly arrears fees would apply.

I think this would've been distressing for Mr E. He'd been open about his financial difficulties, and had tried to come to an arrangement. But after months of back and forth he was in a position where he couldn't avoid being contacted about the loans; being charged £100 each month (£50 on each account) in arrears fees for not being in an arrangement; and having interest continuously applied to his loans, increasing his debt.

Mr E made further contact with Blemain, but it didn't make any concessions to assist him. It continued to apply the £50 monthly arrears fees until Mr E's solicitors got in touch to say the sale of his house had been agreed. And it continued to apply interest until the loans had been repaid. As a result, Mr E's debt increased quite significantly, and there was nothing he could do about it.

Blemain had a duty to treat Mr E positively and sympathetically. I don't think this was a positive and sympathetic way to treat someone in financial difficulties. Even without his bank statements, the fact his arrears were continuing was sufficient for it to know he was struggling financially. Blemain might not have been able to agree a repayment arrangement with Mr E, but that didn't mean it couldn't assist him.

I think by early November 2016 - when it knew Mr E's situation was unlikely to improve until his house was sold - a positive and sympathetic action would've been for Blemain to have stopped applying further £50 monthly arrears fees to both of the accounts.

By December 2016 Blemain knew Mr E's house was up for sale, and being actively marketed. And when asked, he provided details of the estate agents promptly. Again, Blemain did nothing to assist Mr E. Instead, it tried to get him to use its AVS scheme – even though it knew his house was already being marketed. A positive and sympathetic action would've been for Blemain to have given him some breathing space by suspending further interest on his whole balances.

Mr E has now repaid the two loans, although I understand there may still be small balances outstanding – which I'll come on to. But I'm considering requiring Blemain to refund to Mr E the arrears fees applied to his two loans from November 2016 onwards, and all interest (on the full balances) applied to his two loans from December 2016 onwards.

And I'm considering making an award in recognition of the distress Blemain's lack of assistance caused Mr E. At the moment, taking everything into account, I think £200 is a fair and reasonable amount.

#### other

Mr E is unhappy he wasn't sent details of the AVS. Blemain has accepted that it might not have sent them. But as he was already in the process of selling his house I think it's unlikely he was going to use the scheme. So although a mistake may have been made, I don't think Mr E has lost out. So I'm not planning on requiring Blemain to take any action on this point.

Mr E says when he repaid his loans he paid more than he expected to. I can see the settlement figures were higher when he repaid the loans than they were a few months earlier. But I think this is because interest continued to be added. But as I'm considering requiring Blemain to refund the arrears fees applied to his two loans from November 2016 onwards, and all interest (on the full balances) applied to his two loans from December 2016 onwards, I don't think this issue will remain.

As I understand it, when Mr E repaid the loans he didn't pay two £150 fees. I think these may have been repayment administration fees (a fee for each account). According to Blemain's tariff of charges this type of fee is payable when a loan is repaid and a charge against a property is removed.

I can see the credit agreement (on the larger loan) makes reference to it, so I think Blemain is allowed to ask Mr E to pay it. I think the credit agreement for the smaller

loan is most likely to have the same terms. So I think Blemain can ask Mr E to pay the fee on that account too.

Mr E has said despite Blemain saying it'd stop applying £50 monthly fees from February 2017, it didn't. I've looked at the account movements for both accounts, and I can't see any £50 monthly fees after January 2017. So I think Blemain has done what it said it would. In any case, as I've said, I'm considering requiring Blemain to refund arrears fees from November 2016 anyway.

Blemain acknowledged it could've responded to one of Mr E's letters sooner. It offered to refund a £50 charge (from July 2016) - together with any associated interest - as a gesture of goodwill. Mr E didn't accept this offer. But Blemain has said the offer still stands should Mr E wish to accept it now. I think this is fair.

### **the response to my provisional decision**

Mr E had some further comments around the service he received from Blemain. But he agreed with my provisional decision. .

Blemain said, in summary, that:

- it didn't think freezing interest for a short period of time would've given Mr E breathing space, but that allowing reduced repayments or no repayments for a short period of time would have;
- it has a contractual right to charge interest and would consider freezing interest in cases of extreme financial hardship where the situation is unlikely to improve. But in Mr E's case he was asking for a three month repayment arrangement as he thought he'd resume work during that time and be in a position to resume repayments;
- although there was a lot of back and forth to establish Mr E's financial position, things could've been resolved sooner if the appropriate documents had been provided sooner. And that whilst Blemain was establishing Mr E's financial position he could've made the reduced repayments he was offering;
- in December 2016 Mr E said he'd start making full repayments on his smaller loan, and reduced repayments on his larger one, but he didn't; and,
- the repayment administration fees had been paid on 28 June 2017, and the accounts were closed on 30 June 2017.

### **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I've also considered again my provisional decision in light of the responses to it.

I still think that freezing monthly arrears fees and interest in late 2016 would've given Mr E some breathing space. It might not have affected his day-to-day finances. But it would've taken the pressure off him seeing his debt rising each month and not being able to do anything about it.

Blemain did have a contractual right to charge interest. But it also has a duty to be positive and sympathetic to its customers when they're in financial difficulty. Mr E may have been asking for three month repayment arrangements. But as I've said, by late 2016 I think Blemain ought to have known that his position was unlikely to improve.

I think Mr E provided documents within a reasonable time of being asked for them. In any case, I think it's unlikely things would've worked out differently even if he had caused some delays. I say this because when Blemain had all the information it asked for, it didn't agree to a repayment plan or offer any meaningful assistance to Mr E.

I accept that Mr E could have made reduced repayments, and didn't. And he might have said he would make some repayments, and didn't. But I don't think that affects my decision about whether Blemain treated him positively and sympathetically when he was in financial difficulty.

Overall, I'm not persuaded to change my opinion and my provisional findings stand. So for all of the above reasons, and the reasons in my provisional decision, I'm upholding this complaint.

### **my final decision**

I uphold this complaint, and direct Blemain Finance Limited to:

- calculate the arrears fees applied to both accounts from November 2016 onwards (A). Calculate the interest applied to the whole balances of both accounts from December 2016 onwards (B). Add A+B and pay the remainder to Mr E plus 8% annual simple interest\* from the day he redeemed his two loans, until the date of settlement;
- once the above has been calculated if surplus funds still remain from the redemption payments made on both accounts, then those funds should also be refunded to Mr E plus 8% annual simple interest\* from the day he redeemed his two loans, until the date of settlement
- refund the £50 monthly arrears fee from July 2016, plus associated interest (as it offered to do);
- pay Mr E £200 compensation in recognition of the distress he's been caused; and
- amend Mr E's credit file to show the loans as settled on the day they were redeemed.

\*If Blemain Finance Limited considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Mr E how much it's taken off. It should also give Mr E a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate."

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 16 October 2017.

James Langford  
**ombudsman**