

## **The complaint**

Mr and Mrs M's complaint is about their mortgage account with Pepper (UK) Limited trading as Engage Credit and referred to here as Engage. Mrs M has dealt with the complaint throughout on behalf of herself and Mr M.

On 10 January 2024 I issued a jurisdiction decision in which I explained that I would only be looking at the following matters.

- the interest rate and monthly payments from 6 April 2016 until 6 April 2022;
- fees and charges applied to the account from 6 April 2016;
- the request to switch the mortgage from interest-only to capital repayment;
- a fees balance appearing on the mortgage account.

## **What happened**

The evidence in the case is detailed, running to several thousand pages of documents. I've read everything, and it's apparent that some parts of the evidence are less relevant to the underlying case than others. There are also a lot of duplicated documents and repetition of arguments. In what follows, I have, by necessity, summarised events in rather less detail than has been presented.

No discourtesy's intended by that. It's a reflection of the informal service we provide, and if I don't mention something, it won't be because I've ignored it. It'll be because I didn't think it was material to the outcome of the complaint. This approach is consistent with what our enabling legislation requires of me. It allows me to focus on the issues on which I consider a fair outcome will turn, and not be side-tracked by matters which, although presented as material, are, in my opinion peripheral or, in some instances, have little or no impact on the broader outcome.

I will therefore not set out the full background to the complaint. This is because the history of the matter is set out in the correspondence between the parties and our service, so there is no need for me to repeat the details here. In addition, our decisions are published, so it's important I don't include any information that might lead to Mr and Mrs M being identified. I will also clarify that our process is for an Ombudsman to review an Investigator's findings, not re-investigate the complaint from the start.

I also note that throughout the investigation of this complaint Mrs M has raised new issues about the administration of the mortgage account. However, I will explain that before the Financial Ombudsman Service can consider any new issues, Mr and Mrs M will need first to raise them with Engage and obtain its response to the complaint.

So for these reasons, rather than setting out the entire history of the matter I will instead concentrate on giving a brief summary of the complaint, followed by the reasons for my decision.

In July 2006 Mr and Mrs M took out an interest-only mortgage with a lender I will call MP. They borrowed £91,595 over a term of 30 years at an initial fixed rate until 31 August 2009.

The mortgage was transferred to another lender I will call K after completion. When the fixed rate expired, the mortgage reverted to a variable rate capped at no more than 2% above the London Interbank Offered Rate (LIBOR) and which I will call SVR. In October 2021, K told Mr and Mrs K they would be able to switch to a 'mortgage prisoner' interest rate (which I'll refer to as MPR). In March 2022 the mortgage was transferred to Engage. I understand that Mr and Mrs M have agreed a 2.15% reduction in their interest rate with Engage as a concession.

Mrs M has raised a number of complaints about K's handling of the mortgage and about Engage. As I said above, this decision is about the following issues:

- the interest rate and monthly payments from 6 April 2016 until 6 April 2022;
- fees and charges applied to the account from 6 April 2016;
- the request to switch the mortgage from interest-only to capital repayment;
- a fees balance appearing on the mortgage account.

In her consideration of the complaint the Investigator found that Mr and Mrs M ought to have been offered a fixed rate by K in October 2021 at the same rates offered to existing customers. She thought Engage should allow Mr and Mrs M to choose the lowest fixed rate they'd have qualified for, apply that to the mortgage and re-work the mortgage to reduce the balance by any overpayments, or else pay the overpayments to Mr and Mrs M, with 8% simple interest.

Engage agreed with the Investigator's findings, but wasn't able to re-work the mortgage in the way the Investigator recommended, as it had been administered on K's system. Instead, Engage said it would calculate the redress (plus 8% simple interest) and pay this to Mr and Mrs M (who would then be able to use this amount make a capital reduction to the mortgage, if they wanted to). Engage also agreed to pay the £500 compensation recommended by the Investigator.

It's important to note here that Mr and Mrs M were paid the redress of £3,749.27 by Engage in October 2023. However, Mrs M believes the calculation carried out by Engage is incorrect and so has asked for an Ombudsman to review this. She is also unhappy about the other matters listed above.

As the matter is unresolved, it falls to me to issue a decision.

### **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.

**Interest rate:** K has provided the Financial Ombudsman Service with detailed information about the reasons why it varied its SVR in the way that it did. The information K has given us is commercially sensitive, so can be treated as confidential. The information has been reviewed in line with K's mortgage documentation, relevant law and regulations.

I've considered whether K acted fairly overall. Having done so, I'm satisfied K varied the SVR in line with the mortgage terms and conditions and that K exercised those terms fairly. I'm satisfied K did not overcharge interest on the mortgage from 6 April 2016 until Engage took over the mortgage in March 2022.

One of the considerations that I am required to take into account is relevant law. I consider that the application of the UTCCRs to the relevant terms in this case falls into that category

of relevant law. The way the UTCCRs apply to the relevant terms of Mr and Mrs M's mortgage contract is ultimately a matter for the courts. But they are a relevant consideration I must take into account when determining what is fair and reasonable in all of the circumstances of this case.

The crux of this is whether any of the terms, contrary to the requirements of good faith, cause a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer. As part of this, relevant considerations are:

- the extent to which the terms are sufficiently clear and transparent;
- the extent to which there were any barriers to Mr and Mrs M being unable to exit the contract.

At a general level, interest variation clauses such as those that applied to this mortgage have a legitimate purpose and are common in financial services consumer contracts, particularly those of long or indeterminate duration, such as mortgage agreements. A fair variation term can benefit both consumers and lenders, by providing flexibility and a wider choice to consumers and enabling firms to provide competitively priced products, knowing they can vary the interest rates they charge to reflect changes in circumstances, particularly in their own cost of funding.

A reversion rate also permits lenders to provide for future changes that justify increases in the rate, and a lender's own costs of funds are by nature difficult to foresee.

When considering whether there was a significant barrier to exit, it is important to note that there was no ERC applicable to Mr and Mrs M's mortgage at the point it reverted to the SVR in 2009. So, when K exercised its rights as set by the variation terms, if Mr and Mrs M were unhappy with that decision they were free under the contract to re-mortgage to another lender.

Overall I am not persuaded there is any basis to say that the variations K made to the SVR in line with the contract terms resulted in Mr and Mrs M being charged an unfairly high rate of interest on the mortgage during the period I can consider. Nor does the evidence lead me to conclude that the interest rate applied during that period was unfair for any other reason.

Mr and Mrs M didn't ask for another interest rate product, and it wasn't until October 2021 that they were considered for the MPR by K. I agree with the Investigator that Mr and Mrs M should have been offered the lowest fixed rate available to existing customers. The very small amount of arrears that accrued from May 2021 was quickly cleared. It would therefore have been unreasonable of K to decline to offer a new rate from its existing product range. Given this, I'm satisfied that from December 2021 (which is when the MPR took effect), Mr and Mrs M were charged too much interest by being on MPR.

I appreciate Mrs M believes the redress figures calculated by Engage are incorrect. I will explain here that the Financial Ombudsman Service doesn't provide an auditing service and so it's not our role to carry out the redress calculations ourselves.

I've reviewed the calculations Engage has provided (a copy of which Mr and Mrs M also have). These appear to me to have followed a reasonable methodology, and so I don't require Engage to do anything further in this regard.

If Mr and Mrs M still disagree with the figures, it's always open to them to have their own independent audit of the mortgage carried out, at their own expense, by a suitably-qualified third party (such as an accountant or actuary). If such an audit showed errors that could be attributed to any act or omission on the part of Engage, it could be used as the basis for a

new complaint, but not for this one to be re-opened. If errors were found that were to their detriment, Mr and Mrs M could claim back the cost of the audit in any new complaint.

Overall, I'm satisfied the redress paid to Mr and Mrs M is correct and I don't require Engage to carry out any further calculations or pay any other redress. I will also explain that, if the redress is not used to reduce the capital balance of the mortgage, interest will continue to be charged on the existing balance. It is Mr and Mrs M's choice whether or not to reduce the capital balance, but it is only right for me to point out that they will be charged more interest over the mortgage term if they do not do so.

Because I'm not asking Engage to do anything further, I don't uphold this part of the complaint.

***Fees and charges applied since 6 April 2016:*** I've reviewed the account history and I am satisfied that no fees and charges have been applied to the account since 6 April 2016. I therefore don't uphold this part of the complaint.

***Requesting a switch from interest-only to capital repayment:*** In August 2020 Mr and Mrs M asked K about switching the mortgage from interest-only to capital repayment in order to clear the account balance before the end of the mortgage term, which at that point had just under 16 years left.

K explained that payments on the account would need to be maintained for 12 months, following which Mr and Mrs M would become eligible to request a switch to capital repayment. Mrs M says that it was her understanding that this was a binding agreement with K to switch the mortgage to capital repayment, which in August 2022 Engage failed to honour. Engage says it has been unable to locate anything in writing from K confirming it had agreed a switch to capital repayment.

I'm satisfied that there was no binding agreement by K to switch the mortgage to capital repayment. I say this because mortgage lenders will not agree to switch a borrower from interest-only to capital repayment unless they are satisfied that this would be affordable. It would be a breach of K's regulatory obligations to transfer Mr and Mrs M's mortgage onto a capital repayment basis with substantially higher monthly repayments unless they first met its affordability criteria.

Mr and Mrs M never reached the stage with K of an assessment of affordability for a capital repayment mortgage, because the mortgage was transferred to Engage. I can see that in early 2023 Mr and Mrs M completed an assessment with Engage of their income and expenditure (I&E). Mrs M explained that she wanted Engage to adjust the interest rate downwards in order to make the monthly payment around £461.

A switch to capital repayment would have resulted in the mortgage repayments exceeding £1,000 (at that time). Noting what Mr and Mrs M had told Engage about their I&E, I'm not persuaded that a capital repayment mortgage would have been affordable, either when the mortgage was with K, or after it was transferred to Engage. Given this, and because I'm not persuaded K ever agreed to switch the mortgage to capital repayment, I don't uphold this part of the complaint.

***Fees balance on the mortgage account:*** As I said above, no fees or charges have been added to the account since 6 April 2016. However, there are historic fees on the account,

which are interest-bearing. Given this, the account balance has increased and these fees and charges will continue to accrue interest, in line with the mortgage terms and conditions. There is nothing untoward or unfair about this, although I acknowledge Mrs M believes otherwise. I therefore don't uphold this part of the complaint.

## **Conclusion**

I appreciate Mrs M has devoted considerable time to this complaint, and I am grateful for the detailed submissions she's made. I do understand why she believes Engage hasn't treated her and Mr M fairly. But overall, I'm unable to find that Engage has miscalculated the redress, that it was obliged to switch the mortgage to capital repayment, or that it has added fees and charges to the account since 6 April 2016.

Mr and Mrs M don't have a repayment vehicle for their mortgage, and I appreciate that they've been thinking about what to do when the mortgage reaches the end of its term in 2036. Understandably they're concerned about how they will repay the capital balance. It might help Mr and Mrs M to speak to an independent financial adviser to discuss their options. The Financial Conduct Authority website at <https://www.fca.org.uk> has details of financial advisers local to Mr and Mrs M.

## **Putting things right**

Because Engage has already paid the redress recommended by the Investigator, I do not require it to do anything further.

## **My final decision**

My final decision is that I don't uphold this complaint.

This final decision concludes the Financial Ombudsman Service's review of this complaint. This means that we are unable to consider the complaint any further, nor enter into any discussion about it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs M to accept or reject my decision before 26 February 2024.

Jan O'Leary  
**Ombudsman**