DRN-4594460

The complaint

Mrs S complains that Pepper (UK) Limited, trading as Engage Credit, told her she could re-mortgage to another lender without fully repaying her existing mortgage but reneged on that agreement after she had arranged a new mortgage elsewhere. She's also unhappy with the interest rate she's being charged on her mortgage by Engage and that it didn't implement a temporary interest rate reduction sooner.

What happened

Mrs S took out her mortgage with Money Partners Limited in 2006. She borrowed £208,500 plus fees to be repaid over a term of 25 years. The mortgage was set up to be paid on a capital and interest repayment basis initially, but was later changed to interest-only. The mortgage was also later transferred to Engage.

In December 2022, Mrs S asked Engage to reduce the interest rate on her mortgage because she was struggling financially. Engage says it declined the request, but Mrs S says she never received a response.

On 4 May 2023, Mrs S phoned Engage to ask about her options. She was already paying the mortgage on an interest-only basis and was finding the payments difficult to maintain following increases in the interest rate. She was also worried about how she would repay the mortgage at the end of the term in 2031.

Mrs S asked again about a getting a lower interest rate. She also asked what would happen if she sold her property and couldn't settle the mortgage in full, or if she re-mortgaged elsewhere but couldn't borrow enough to clear the mortgage.

Engage told her it could consider accepting settlement with a shortfall in either case, and said it would expect then to come to an agreement with Mrs S for repayment of the remaining debt. It also said it could consider reducing the mortgage interest rate temporarily, as a forbearance measure to help her get things back on track. Mrs S asked for a rate reduction to be backdated, and pointed to her earlier request for a lower rate in 2022 to which she said she had never had a proper response.

Engage agreed to reduce the interest rate on Mrs S's mortgage for a month, but declined her request to backdate the lower rate or to put it in place for longer. It said this was because it thought the information it had seen about Mrs S's financial situation showed that she could afford the monthly payments.

On 7 June 2023, Engage told Mrs S during a phone call that she'd have to repay her mortgage in full if she re-mortgaged to another lender. It wouldn't be able to accept a shortfall if she couldn't borrow the full amount. Mrs S had by that time already got a mortgage offer from another lender at a much lower rate of interest than the rate on her Engage mortgage – but it was for around £70,000 less than her existing mortgage balance. Engage's refusal to accept a shortfall meant she was unable to go ahead with the re-mortgage.

Mrs S complained about how Engage had treated her. Engage later agreed to an interest rate reduction for another three months – covering June, July, and August 2023.

Engage said it had given Mrs S wrong information about accepting a shortfall if she were to re-mortgage but not repay her mortgage with it in full. It said that it in fact wouldn't accept a shortfall in those circumstances. It also said it hadn't put the interest rate reduction in place in May 2023 as it should have done, so it would rework the mortgage and correct Mrs S's credit file. It wouldn't, however, backdate the rate reduction any further. It apologised for its shortcomings and said it would pay Mrs S £150 by way of compensation.

Mrs S referred her complaint to the Financial Ombudsman Service. Our Investigator found that Engage had given her incorrect information about accepting a shortfall. He thought Mrs S wouldn't have gone ahead with a re-mortgage application if she'd been given the right information. He recommended that Engage reimburse any costs Mrs S incurred in her mortgage application (other than any initial costs of consulting a broker), pay interest on those costs, and increase its offer of compensation to £300. The Investigator didn't, however, make any recommendations in respect of the mortgage interest rate.

Engage accepted that, but Mrs S did not. She wanted Engage to honour its promise about accepting a shortfall, or at least match the interest rate she was offered by the other lender in 2023. She also still thought Engage should have agreed a rate reduction when she asked in late 2022.

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.

Having done so, while I realise Mrs S will be disappointed, I've come to the same conclusion as the Investigator, for much the same reasons.

There's no dispute that Engage got things wrong – it told Mrs S during a phone call on 4 May 2023 that it would consider accepting payment of less than she owed if she were to re-mortgage to another lender, and come to an agreement for repayment of the shortfall on an interest-free basis over a number of years.

I'm satisfied that this was wrong information and it isn't an arrangement Engage would accept. It is something lenders consider where the mortgaged property is being sold but the sale price isn't enough to repay the mortgage. That is not, however, the case for a re-mortgage – and in any event the offer Mrs S got from the other lender shows a property valuation which indicates that there would be more than enough equity in the property to repay her first charge mortgage to Engage if she were to sell it.

While Engage gave Mrs S the wrong information on 4 May, that doesn't mean it must stand by its mistake. The general remedy for misrepresentation – which is what happened here – is for the complainant to be put in the position they would have been in if they had been given the right information.

I don't think that Mrs S would have gone ahead with a mortgage application if Engage hadn't misled her. It would have been clear at an early stage when she discussed her situation with a broker that she couldn't borrow enough to repay Engage. So I agree with the Investigator that she should fairly receive a refund from Engage of any resulting costs, plus interest (but not including any costs involved in initially consulting a broker, which I think she is likely to have done in any event to explore her options).

I can't, however, fairly require Engage to match the rate Mrs S was offered by the other lender she applied to last year. That isn't an offer Mrs S would ever have been able to take up, because it was for around £70,000 less than her existing mortgage and she didn't have another way to repay the difference. Engage doesn't offer new interest rate products and I can't make it do so. The Financial Ombudsman Service isn't the regulator; I have no power to require a firm to change its policies, and it's not for me to interfere in the legitimate use of its commercial judgment.

Mrs S is also very unhappy with the interest rate on her mortgage, in particular since it has risen significantly in recent years.

As Mrs S has pointed out, it's not her fault that her mortgage is with a 'closed book' lender. But Engage doesn't offer new interest rate products to any of its customers – and there's nothing to say that it must do so, either in Mrs S's mortgage contract or in relevant rules or regulations. It is, however, required to treat its customers fairly, and consider what help and support it can offer if a customer is in financial difficulty.

Engage has discussed temporary interest rate reductions with Mrs S a number of times, and it put such reductions in place on her mortgage between May and August 2023, as well as, I understand, for a further two months after that – making a total of six months. Engage has said it can offer a rate reduction for up to six months, which is the period Mrs S has now had.

The purpose of reducing the interest rate in this way is to reduce the borrower's monthly payments and to allow them some time and breathing space to consider their options. It's not a new rate for the longer term in the same way as a fixed interest rate product would be, for example.

Mrs S considers that an interest rate reduction should have been applied following her request in December 2022. Engage said it declined that request because it didn't have all the information it needed to assess Mrs S's circumstances and from the information it did have, it thought Mrs S could afford the mortgage payments at the contractual interest rate. It appears that this wasn't properly communicated to Mrs S but, in any event, I don't consider that I can fairly require Engage to retrospectively apply a reduced rate for a further period given that it has already applied such a rate for a full six months and given that Mrs S was able to make the monthly payments – although I understand that doing so was difficult.

There was some confusion about the May 2023 interest rate reduction. Engage has, however, said it has corrected Mrs S's credit file and I can see that the rate reduction was put in place for that month.

Overall, I think it's clear that Engage made mistakes in its communication with Mrs S – it gave her wrong information and was at times slow to update her. Mrs S was put to unnecessary inconvenience in trying to arrange a new mortgage which could never have gone ahead, and she experienced considerable disappointment after being wrongly led to believe there was an affordable way for her to pay off her mortgage with Engage and move to a lender at a lower interest rate. I think she should fairly receive some compensation in recognition of all of this, and I share our Investigator's view that £300 is a fair award.

Putting things right

For the reasons I've explained, Pepper (UK) Limited, trading as Engage Credit, should:

- refund any costs Mrs S incurred in applying for a new mortgage in May 2023 – including any product fees and solicitors' costs (subject to evidence of payment), but not including any costs of an initial broker consultation;

- pay Mrs S simple interest on any fees or costs she paid as set out above, at an annual rate of 8%, from the date she made each payment to the date of settlement;

- pay Mrs S a total of £300 compensation for non-financial loss. If Engage has already paid part of this sum, it may deduct what it has already paid from the £300.

If there is an 8% interest element to any payment to Mrs S, Engage may deduct income tax from that element as required by HMRC. But it should tell Mrs S what it has deducted so that she can reclaim the tax from HMRC if she's entitled to do so.

My final decision

My final decision is that Pepper (UK) Limited, trading as Engage Credit, must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 1 March 2024.

Janet Millington
Ombudsman