

The complaint

Mr and Mrs C complain about a mortgage they had with Preferred Mortgages Limited. They say that Preferred didn't properly check that they could afford the mortgage or that it was suitable for them, and that this led to an unfair relationship arising between them and Preferred.

Mr and Mrs C also complain that Preferred failed to treat them fairly when they were in financial difficulty throughout the term of the mortgage.

They bring their complaint through a professional representative.

What happened

Mr and Mrs C re-mortgaged to Preferred in October 2007. They made their application through an intermediary, although they don't appear to have received advice from them. They borrowed just over £150,000 on an interest-only basis for a term of ten years.

The mortgage initially fell into arrears in December 2007, soon after it was taken out. It was in and out of arrears in the years that followed. Preferred took legal action and a suspended possession order was issued in June 2009. A warrant for eviction was suspended in January 2010. A number of payments arrangements were agreed, and Mr and Mrs C were later able to make more regular payments.

The mortgage term ended in 2017 and Mr and Mrs C repaid Preferred in full on 13 August 2018 by re-mortgaging to another lender.

On 5 April 2024 Mr and Mrs C complained to Preferred through their representative. They said that it had failed to comply with various regulatory obligations when it granted the mortgage and as a result the relationship between them and Preferred was unfair. They also said it hadn't done enough to support them when they were in financial difficulty.

Preferred said it had done nothing wrong. It also said that Mr and Mrs C had complained too late under relevant time limits, that they couldn't rely on section 140A of the Consumer Credit Act 1974 because theirs was a regulated mortgage and therefore excluded under the Act, and that the regulator's rules they sought to rely on didn't apply either because they weren't in force at the time of the events complained about.

Our Investigator concluded that Mr and Mrs C had left it too late to complain about most of the issues they were unhappy with, and that their mortgage wasn't covered by section 140A of the Consumer Credit Act. He said this meant he couldn't consider most of their complaint. He said he could look into their complaint about how Preferred treated them from 5 April 2018 onwards – but he found there were no arrears on the mortgage after that. He didn't recommend this complaint be upheld.

Through their representative, Mr and Mrs C asked for a review. They still thought Preferred had treated them unfairly and said the judge had agreed with them when Preferred took them to court. They said they're still paying their mortgage to another lender because their

Preferred mortgage was on an interest-only basis. They also provided bank statements from 2007 and 2008 and a recent credit report.

The complaint was referred to me to decide. I issued a decision setting out the limits on what I can consider in this complaint. I explained that Mr and Mrs C's mortgage was a regulated mortgage contract and section 140A of the Consumer Credit Act 1974 therefore doesn't apply to it. I also said that the time limits which apply to this complaint mean that I can only consider how Preferred treated Mr and Mrs C during a limited period of time.

I concluded that the Financial Ombudsman Service can't consider Mr and Mrs C's complaint about Preferred's decision to lend to them in 2007 or about its treatment of them and their mortgage before 5 April 2018, because they complained too late.

I said I can however consider the complaint about Preferred's treatment of them from 5 April 2018 onwards. This decision is to set out my conclusions about that.

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.

Mr and Mrs C had significant difficulty keeping up with their mortgage payments over the years they had their Preferred mortgage. By 5 April 2018, however, they were no longer in arrears. Preferred's records from that date onwards show that it had a number of discussions with them about making arrangements for repayment of the mortgage because the term had ended the year before. But Mr and Mrs C haven't complained about that. Their complaint is that Preferred failed to treat them fairly and in line with its regulatory obligations when they missed their monthly mortgage payments.

Our Investigator explained that there was no assistance for Preferred to provide to Mr and Mrs C in relation to payment arrears at a time when there were no arrears. Neither Mr and Mrs C nor their professional representative have explained why they take a different view.

Mr and Mrs C repaid their mortgage in August 2018. Preferred wasn't therefore responsible for providing support and/or reasonable forbearance after that.

For these reasons, I find no basis on which to uphold this complaint.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C and Mr C to accept or reject my decision before 30 September 2024.

Janet Millington
Ombudsman