

The complaint

Mr and Mrs D complain about a second charge mortgage (secured loan) they had with Prestige Finance Limited. They complain the loan was mis-sold, that they were unfairly charged fees added to the balance over the years, and that Prestige and its predecessor didn't treat them fairly.

What happened

Mr and Mrs D entered into the loan agreement in late 2005, with the funds being drawn down in early 2006. They borrowed £53,500 including fees over a fifteen year term, at a variable interest rate 7% above the Barclay Bank base rate (which, in practice, is the same as the Bank of England base rate). Prestige was not the original lender, but the loan was later transferred to Prestige.

Mr and Mrs D experienced some financial difficulty in the early years of the loan, and it went into arrears. Additional interest and fees and charges were added to the loan balance as a result. More recently, Mr and Mrs D were able to maintain the payments. The loan was redeemed in 2019.

Mr and Mrs D have complained about the loan several times over the years. This most recent complaint was brought in 2023. Mr and Mrs D are concerned that the loan was mis-sold, because they were in financial difficulties at the time of the original lending and it wasn't affordable for them. And they say that the fees, charges and interest added over the years increased the balance and were unfair.

Our investigator didn't think the complaint should be upheld, so Mr and Mrs D asked for it to be reviewed by an ombudsman.

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.

Because the balance of the original loan was for more than £25,000 and it was taken out before April 2008, this is an unregulated loan. At the time of the sale, the then lender – GE Money Secured Loans Limited – didn't come within the jurisdiction of the Financial Ombudsman Service.

From April 2007 until March 2014, the lender did come within the jurisdiction of the Financial Ombudsman Service – but only for regulated Consumer Credit lending, which excludes this mortgage. The loan was then transferred to Prestige, which is in our jurisdiction for all forms of secured lending, regulated or not, and has been since April 2014.

No fees have been applied to the loan since 2013. That means that we can't consider the complaint about the original lending decision, or the complaint about fees and charges added to the loan balance, because those complaints are about things that happened when the loan did not come under the jurisdiction of the Financial Ombudsman Service.

However, we can consider whether or not those matters resulted in the relationship between Mr and Mrs D as debtors and Prestige as creditor becoming unfair. The lending relationship came to an end in 2019, which was less than six years before this complaint was made. As the lender at the end of the relationship, Prestige had an ongoing responsibility to put right any unfairness in the relationship. Whether there was any unfairness – and whether Prestige failed in that responsibility – is a complaint the Financial Ombudsman Service can consider. But, for reasons I'll explain, I don't think that the relationship was unfair at the point it came to an end and so I don't intend to uphold this complaint.

The underwriting file from the time of the lending has survived. It shows that of the £53,500 Mr and Mrs D borrowed, around £29,000 was used to repay an existing secured loan. £22,00 was used to consolidate various unsecured debts, and the rest covered application fees. Mr and Mrs D also had a first charge mortgage of around £85,500 and their combined income was £49,000 – so their total mortgage borrowing was less than 2.5 times their total income. The lender obtained payslips as evidence of income, and reviewed their credit files. There were some recent missed payments, but Mr and Mrs D's unsecured debts were being consolidated and their overall outgoings reduced. Based on the lending standards of the time – and taking into account that this was an unregulated loan – I'm not persuaded that this was an irresponsible lending decision which made the whole relationship from then on unfair.

Mr and Mrs D did experience some financial difficulty within the first few years of the loan. In 2006 and 2007, the interest rate increased – as did the monthly payments. A direct debit bounced in October 2006, though the payment was made up the next month, and some payments were missed in 2007. A suspended possession order was issued in December 2007. An arrangement to repay the arrears was set and – although it wasn't always kept to – the arrears were cleared by 2011. By then the interest rate, and monthly payments, had fallen substantially.

There's limited information now available about the reasons why Mr and Mrs D experienced difficulty at this time. The interest rate increased, and there's also evidence of changes in their personal circumstances. In early 2008, the lender's contact notes record a conversation in which it was explained that Mr D had been off work unwell for several months, so it seems likely that at least part of the arrears was caused by this. Mr and Mrs D told our investigator that Mr D had experienced significant health problems around this time. That would suggest that it was a change of circumstances, rather than the original lending decision being unaffordable from the outset, which led to the arrears.

During the period of arrears, the lender added various fees and charges. There were also a couple of fees added after the period of arrears – the most recent being a charge for a rejected direct debit in 2013. The terms and conditions allow the lender to add its expenses, including fees for dealing with missed payments and arrears as well as legal costs, to the loan balance.

As I've explained, I can't consider complaints about the period of arrears, or the fairness of adding of fees and charges, because the lender and loan didn't come under the jurisdiction of the Financial Ombudsman Service at the relevant times. But I can consider whether they resulted in the overall relationship between Mr and Mrs D and the lenders becoming unfair, such that Prestige had a responsibility to remedy that unfairness at or before the end of the loan.

Having considered this, I'm not persuaded that the relationship did become unfair as a result of these factors. I think the evidence suggests that it's most likely that Mr and Mrs D fell into arrears because of a change of circumstances – the loan becoming more expensive because of rising interest rates, and Mr and Mrs D's income suffering because of a period of

ill health – rather than because of anything the lender did. It was those factors which meant that they weren't able to make all their required payments, falling into arrears.

I can see that the lender did try to discuss their situation with them, and ultimately agreed an arrangement for the arrears to be cleared, including allowing it to continue when Mr and Mrs D didn't keep to it. This allowed them to clear the arrears by 2011, and ultimately they were able to repay it before the end of the term. Dealing with an account in arrears causes extra work for the lender, which under the terms it's entitled to charge for – as it is for legal fees. And where an account falls into arrears, the balance is higher and so more interest is charged. I can see Mr and Mrs D were made aware of the effect of this.

I'm not therefore persuaded that Mr and Mrs D's situation at the time of their financial difficulty was because of anything the lender did. The costs and interest it added to the balance as a result flowed from the arrears and were permitted by the loan agreement, and the lender allowed Mr and Mrs D to bring the balance back under control rather than repossessing the property. While I'm sure this was a very difficult time for Mr and Mrs D, I don't think it made the overall relationship between them and the successive lenders unfair. So although Prestige had a responsibility to mitigate or remove any ongoing unfairness in the relationship by the time the loan came to an end in 2019, I don't think that, in the particular circumstances of this complaint, there was any ongoing unfairness for it to remove. I therefore don't 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 Mr D and Mrs D to accept or reject my decision before 17 December 2024.

Simon Pugh
Ombudsman