

complaint

Mr and Mrs P complain that Firstplus Financial Group Plc ("Firstplus") refused to allow them a shortfall agreement on a secured loan. They feel that this caused the sale of their home to fall through and their financial circumstances to deteriorate still further.

background

I explained in my provisional decision of November 2015 why I intended to uphold this complaint. This is an extract from that decision:

"I shall deal first with the offer of compensation for the delay in dealing with Mr and Mrs P's shortfall agreement application. I can see that Firstplus had an aspiration to deal with shortfall requests within 21 days of receipt. It has admitted that it failed to meet its own service standard in this case and has offered Mr and Mrs P £50 for the delay they experienced.

I do not consider that the delay in processing the application caused Mr and Mrs P any financial loss. So I think Firstplus's offer of £50 for failing to hit its own service standards is acceptable.

I have then looked at whether Mr and Mrs P suffered any loss as a result of Firstplus's refusal to accept their shortfall application, and at the moment I believe that they did.

I entirely understand that it was in Firstplus's interest for the property to sell for as high a price as possible – that way it would lose less of the money it originally lent to Mr and Mrs P.

But The Mortgages and Home Finance Conduct of Business sourcebook – MCOB - rules section 13.3 suggests ways that a business should put in place and implement policies to protect consumers in arrears or in mortgage difficulties. So I think that as Mr and Mrs P were in financial difficulty, Firstplus had a particular duty to treat them fairly.

Clearly Firstplus did not have to accept Mr and Mrs P selling the property for too low a price just to secure a quick sale. But it should also not have prevented a sale (during which Mr and Mrs P's debts continued to rise) just to try and recoup all of its losses. It is about achieving a balance between the two approaches.

I am not sure that Firstplus approached that balance properly.

It seems likely that the mortgage company achieved a reasonable price on the sale and repossession of the property in March 2015. I say this because lenders are required - by law - to obtain at least two valuations on a property they are repossessing and disposing of. They then have a duty to market the property with a view to achieving a selling price at, or close to, the valuations. I have no reason to suspect that the mortgage company did not do so.

But the sale of their house by the mortgage company resulted in a sale price £43,000 less than the cash offer originally made to Mr and Mrs P. That makes me think that the cash offer was a good one which I would have expected Firstplus to consider very seriously. While I accept that I can't know whether the cash offer would ultimately have resulted in a sale, I think Firstplus's refusal of the application effectively ensured that the higher price could *not* be achieved.

I note that Mr and Mrs P have suggested that the speed with which the decision to decline their application – within 30 minutes of being told a manager was ‘on the way’ to assess it - indicates that it was not assessed properly.

It is certainly hard for me to be sure, by looking at the documents provided so far, that it was.

Having looked at this case with care, I do not currently find that Firstplus managed Mr and Mrs P’s overall situation well or treated them particularly fairly. It appears to me that Firstplus’s approach made Mr and Mrs P’s situation significantly more difficult, increasing their ongoing level of debt and then expecting them to repay it despite a smaller selling price on their home.

So I currently intend to uphold this complaint.

But deciding appropriate compensation in this case is challenging, because I cannot know if the cash sale would have completed successfully even if Firstplus had authorised it back in 2014.

That said, I think the overarching issue is that Mr and Mrs P’s situation should not be deteriorating further because of Firstplus’s actions.

Firstplus declined to agree to the shortfall agreement, so it effectively prevented the sale of Mr and Mrs P’s house for £268,000 in August 2014. The realised value of the property fell by £43,000 over the original offer, but I believe that all the other costs that Mr and Mrs P face remain unchanged.

So, instead of £115,522 that I understand that Mr and Mrs P owed Firstplus in August 2014, I intend to find that Firstplus cannot require any more than £72,522 from Mr and Mrs P in full and final settlement of their debt. This is to reflect the £43,000 reduction in the purchase price that resulted from Firstplus declining to provide a shortfall agreement.

I am also of the view that their debt should be frozen at that level and on that day in order to give Mr and Mrs P any hope of repaying it.

Further, I am inclined to award Mr and Mrs P £1,000 for the significant anxiety and distress they have been caused by Firstplus’s approach to this entire issue. I can see that Mr and Mrs P are still struggling with a difficult financial position and that Mr P has been very actively and continuously trying to find a resolution so that they can move on with their lives.

Given the length of time that they have been in this difficult position and the lack of individual support or engagement that Firstplus has given their case, I consider that award is warranted.”

I then invited both Mr and Mrs P and Firstplus to give me any further information that they wanted me to consider before I made my final decision on this case.

my findings

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

Both Mr and Mrs P and Firstplus have accepted my provisional decision to uphold the complaint. As a result, I see no reason to change my findings on this case.

my final decision

For the reasons that I have set out above and in my provisional decision, I uphold Mr and Mrs P's complaint.

Firstplus Financial Group Plc should:

- reduce Mr and Mrs P's outstanding debt to £72,522 backdated to August 2014 and freeze it at that point;
- pay Mr and Mrs P £1,000 for distress and inconvenience caused by its handling of their case. This should be paid directly to Mr and Mrs P – not be offset against their debt unless Mr and Mrs P ask for it to be so;
- pay Mr and Mrs P £50 for failing to meet its service level agreement on processing their request.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs P to accept or reject my decision before 18 February 2016.

Roxy Boyce
ombudsman