

## **complaint**

Mr and Mrs T complain that Firstplus Financial Group Plc ("Firstplus") declined their shortfall application and were therefore unable to sell their house.

## **background**

Mr and Mrs T took out a loan secured on their property as a second charge in 2007. The loan was for a term of 25 years. Due to a change in personal circumstances Mr and Mrs T fell into arrears on their account and Firstplus brought possession proceedings.

Mr and Mrs T wanted to sell the property but in order to do so they applied to Firstplus to request that they could sell the property, but not repay all of the Firstplus loan. This was refused.

The court case for possession was adjourned in March 2012 for a year. The property was put on the market for sale and Firstplus accepted reduced monthly payments subject to a review. In 2013 possession was granted but Firstplus agreed not to enforce the order as long as payments were maintained and the house remained on the open market for sale.

Mr and Mrs T received an offer for the property. The buyers already had a mortgage in place but Firstplus wouldn't agree to the shortfall sale- so the property couldn't be sold. As a result the buyers pulled out of the purchase. As Mr and Mrs T could no longer afford the mortgage and secured loan they handed the keys back to the first charge lender.

The property was eventually sold in February 2015. It was sold for less than the original offer on the property. Mr and Mrs T say that the pressure was intense and very stressful from Firstplus throughout.

Firstplus said that the shortfall application was declined as Mr and Mrs T were up to date on their first mortgage and so there was no threat of repossession from the first charge lender. If Firstplus had agreed to the shortfall application then it wouldn't receive any funds from the sale of the property and it thought it was too great a risk to allow the balance of the loan to become unsecured.

Firstplus did say however that it was willing to accept a reduced payment arrangement with Mr and Mrs T to allow them time to sell. It also paid them a total of £400 as a gesture of goodwill for the incorrect information it gave them, about time scales for calling them back and for other aspects of poor service.

Our adjudicator thought the complaint should succeed. She said that she was satisfied that Mr and Mrs T had told Firstplus's solicitor that their income and expenditure would be insufficient to meet their needs and they needed to sell the property. She also said that the solicitors had agreed a new payment arrangement if they continued to market the property. However, they didn't tell them they couldn't sell if they obtained an offer. In addition she didn't think Firstplus took Mr and Mrs T's change of circumstances into account. She thought if Firstplus had made Mr and Mrs T aware that they wouldn't be allowed to sell the property then Mr and Mrs T would have taken steps to hand back the property sooner than they did. She thought that Mr and Mrs T were put through an extra year of unnecessary stress and Firstplus's unreasonable refusal to allow them to sell added to this.

In August 2015 I issued my provisional decision. I said I agreed that the case should be upheld but was intending to set out different compensation. I asked Mr and Mrs T and Firstplus to send me any further evidence or information they wanted me to consider. This is an extract from my provisional decision.

“When the offer to purchase the property was made in 2014 Mr and Mrs T asked Firstplus if it would allow them to sell the property. Firstplus didn't agree to the shortfall sale.

From the paperwork in this case I think it's likely that Firstplus knew Mr and Mrs T's situation. The solicitors acting for Firstplus were aware of the reduced payment amount that Mr and Mrs T were paying and had agreed these amounts. It also knew that the property was being marketed for sale. As solicitors were acting for Firstplus, it is likely that it was told of the situation and realised that Mr and Mrs T would have to sell the property and I think Mr and Mrs T were doing all they could to sort out the situation.

As a result of not allowing the sale to take place and refusing the shortfall application, Firstplus trapped Mr and Mrs T when they were particularly vulnerable. Mr and Mrs T were going through a difficult time. I think Firstplus should have been aware that the only way out of their situation was for Mr and Mrs T to sell their house. I think Firstplus encouraged them to put it on the market and I don't think it was fair for them not to let the sale proceed. I think this added greatly to Mr and Mrs T's stress and made their situation even more difficult.

It is my view that Mr and Mrs T should have been allowed to sell. The shortfall application should have been given at the point when they requested it because they had a buyer. It is my view if Firstplus had reasonably assessed what Mr and Mrs T were saying, it ought to have known that their situation wasn't sustainable and so their only option would be to sell or to hand the keys back or get repossessed. As a result of not allowing the shortfall application Mr and Mrs T had to hand the keys back to NRAM, the first charge lender so that it could sell the property and I can't see how that helped Firstplus or Mr and Mrs T. I think as a result of Firstplus's refusal to allow the sale Mr and Mrs T now owe more than they would have done if Firstplus would have agreed to the sale in the first place.

I think Mr and Mrs T's property could have been sold earlier than it was. This would have resulted in the first loan being settled faster than it was. As it was likely sold at a later date this left Mr and Mrs T paying interest payments to their first charge lender which could have been avoided. So I think Firstplus should pay any mortgage interest payments Mr and Mrs T made to NRAM from three months from the date of the first offer which would have given them a reasonable time to sell the property until the actual completion date together with any arrears fees or penalty charges to NRAM.

So I intend to uphold this complaint. There is no reason to think the sale would not have happened if Firstplus would have allowed the sale to take place when it was originally approached. I think it's more likely than not that the property would have been sold before it was but for Firstplus's refusal to allow the sale to go ahead.

I am also of the view that the stress that Firstplus caused Mr and Mrs T by not allowing them to sell the property had a great impact on Mr and Mrs T's well-being which is still continuing.

Mr and Mrs T were going through a difficult time and their son was suffering with ill health. Mr T was also suffering with ill health. Whilst Mr and Mrs T were dealing with their son's ill health and making visits to the hospital, Firstplus continued to maintain pressure. I don't think Firstplus allowed for their particular circumstances at the time. And I think Mr and Mrs T did all they could to address their difficulties.

Firstplus effectively took away Mr and Mrs T's only course of action which was to sell the property. As a result they had to hand keys back to the first charge lender and lost control to sell their own property. The loan still outstanding is now unsecured but that would have happened in any event. For all the confusion and the trouble and upset this has caused Mr and Mrs T, I am intending to award the sum of £2,500 in trouble and upset.

Although I accept that Mr and Mrs T were in difficulties in paying their mortgage and Firstplus didn't need to give them the shortfall application, if Firstplus would have taken into account Mr and Mrs T's situation, it would have been fair and reasonable for it to allow the sale to go through. In the end, Firstplus is in no better position by refusing the sale but Mr and Mrs T have had to incur further sums which could have been avoided.

It is difficult to put Mr and Mrs T in the position they might have been had the sale been authorised. I can't say for certain that the house would have been sold but there is no reason for me to think that it wouldn't have been. I hope the sum I intend to award might go some way to compensate them for the fact they could not sell their house at a higher price than it was, and for the stress caused at a time when they most needed assistance and a sensible approach to be taken.

I understand Firstplus are still writing to the wrong address. It would be helpful if it amends its records to reflect the correct respective addresses of Mr and Mrs T."

### **my findings**

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

Firstplus confirmed it received my provisional decision. In its response it said in summary;

1. Firstplus was in no way responsible for the financial difficulties in which Mr and Mrs T found themselves in. It had a second charge over the property which was intended to alleviate financial burden through debt consolidation.
2. The impact of the provisional decision meant that Firstplus are left in a situation where the first charge lender is entirely protected but it is not.
3. It asked for me to direct that the proceeds of sale be split proportionally between NRAM and Firstplus.

Mr T responded to say his concern was whether or not Firstplus would be amicable following this decision in principals. He was concerned that a significant amount of the total amount outstanding to Firstplus was due to escalating interest charges and he didn't want to endure the past treatment in the future by Firstplus.

Mrs T confirmed she had received my provisional decision and had nothing further to add.

I have considered very carefully what all parties have told me.

Whilst I accept that Firstplus wasn't responsible for Mr and Mrs T's financial difficulties, it agreed to take a second charge over the property. This meant that once the property was sold it would only be paid after the first lender had been paid its share. By giving a second charge mortgage it took the risk that the property wasn't valuable enough to pay of both the

first mortgage and its second charge. So I don't think it would be fair or reasonable to ask the first charge lender to split the sale proceeds proportionally between NRAM and Firstplus.

I am sympathetic to Mr and Mrs T's situation. But I can't ask Firstplus to refund the interest charges accruing as I think its likely Mr and Mrs T wouldn't have been in any different position even if the sale had taken place earlier. However, I would ask that Firstplus treat Mr and Mrs T sympathetically while the debt is being sorted out.

### **my final decision**

For the reasons given above I uphold this complaint. Firstplus Financial Group Plc should pay compensation as set out below:

Firstplus should:

- Calculate what would have been paid as additional payments in mortgage interest to the first charge lender, three months from the date of the original offer to the final completion date in 2015 and refund this together with any arrears fees or penalty charges to NRAM.
- Pay a sum of £2,500 to Mr and Mrs T for trouble and upset.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs T to accept or reject my decision before 16 November 2015.

Nicola Woolf  
**ombudsman**