

The complaint

Mrs D complains that Yorkshire Building Society trading as Chelsea Building Society allowed her former partner to take a payment deferral on their joint mortgage without her agreement.

What happened

Mrs D and her former partner have a joint mortgage with Chelsea. Her former partner asked Chelsea for a payment deferral on the mortgage in March 2020, following the coronavirus pandemic and the first lockdown.

Mrs D complained. She said that Chelsea shouldn't have allowed a payment deferral without her agreement. She said that a court had ordered that her former partner be responsible for the mortgage. Chelsea has facilitated him breaching the court order. Chelsea should have carried out a full income and expenditure assessment before allowing him to withhold payments.

Mrs D says she spoke to Chelsea about this. She says it agreed to remove the payment deferral if she agreed to make the payments herself, but she can't afford to do so.

Chelsea initially agreed to remove the payment deferral, but then reinstated it. It said this was to avoid the mortgage falling into arrears, and it thought this was in the best interests of all parties.

Mrs D complained. She said that it wasn't fair to grant a payment deferral without her agreement. That resulted in the loan balance going up – and reducing her share of the equity in the property. Chelsea should be requiring her former partner to comply with the court order and should have investigated his circumstances. And she said it was a breach of the mortgage rules against auto-capitalisation without consent for Chelsea to add the deferred payments to the mortgage balance and increase the contractual monthly payments.

Our investigator didn't recommend upholding the complaint so Mrs D asked for an ombudsman to review it.

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.

It's clear that there's a dispute between Mrs D and her former partner about what should happen in relation to their finances, including the mortgage. Mrs D says there's an ongoing court case to finalise the division of their assets following their divorce.

I've looked at the interim court order that Mrs D has given us. It doesn't in fact say that her former partner is responsible for paying the mortgage. It says that he is required to pay maintenance to her that is equivalent to the mortgage payments (though in practice he was paying the mortgage payments directly to Chelsea). If he hasn't complied with that order,

that's a matter for Mrs D to raise with the court. Neither I nor Chelsea have any role in resolving financial disputes between borrowers.

Mrs D and her former partner took out this mortgage jointly. Both are parties to the contract and both agreed to make payments. They are jointly and severally liable, which means Chelsea can require either one or both of them to make payments, and both are responsible for doing so. A court order or other agreement that he is required to pay her maintenance makes no difference to that; Mrs D is still contractually required to pay the mortgage and liable if no payments are made.

This complaint is about a payment deferral Chelsea granted at the start of the coronavirus pandemic. When the UK was locked down in March 2020, various measures were put in place.

One of those was a system of payment deferrals. The regulator told mortgage lenders to allow borrowers to take payment deferrals for a maximum initially of three months, later extended to six.

A very large number of borrowers applied for deferrals in a short space of time. It is estimated that at one point as many as one in six mortgages was subject to a payment deferral.

At a time of national emergency, when a very large number of people needed help in a very short space of time, there were limits on what it was practical for lenders to do. Making detailed assessments of every application wasn't possible. So the regulator told lenders to accept applications for payment deferrals, unless it was clearly not in the borrowers' best interests to do so.

Chelsea granted a payment deferral in this case, on application from Mrs D's former partner. While it already knew their relationship had broken down, it also knew he was the one then making the mortgage payments. It accepted his application for a deferral.

When Mrs D learned of the deferral and complained, Chelsea removed the deferral – on condition that Mrs D agreed to make the payments herself.

In fact, Mrs D didn't make the payments. She says she only agreed to do so to get the deferral removed.

This meant the mortgage went further into arrears. In March 2020, it was in arrears by just under one month's payment. When no payments were made between April and August, the arrears increased significantly.

Chelsea reported the arrears to Mrs D's credit file. That was fair, as it accurately reflected the fact that neither party was making any payments, and so the mortgage was in arrears.

Chelsea then reviewed the mortgage again. It agreed to reinstate the payment holiday, backdated to April. This means it removed the arrears, and removed the report of the arrears from Mrs D's credit file.

I think this was fair and reasonable. It was in line with the regulator's guidance that the payment deferral process should be quick, light touch and designed to support borrowers.

When the mortgage isn't being paid but there's a payment deferral in place, no payments are made. The missed payments mean that the mortgage balance doesn't come down each

month as it should, and so more interest is incurred. The extra interest is added to the balance. And at the end of the deferral period the missed payments need to be made up.

When the mortgage isn't being paid and there's no payment deferral in place, exactly the same thing happens. The missed payments mean that the mortgage balance doesn't come down each month as it should, and so more interest is incurred. The extra interest is added to the balance. And the missed payments need to be made up.

The key difference is that where there's a payment deferral in place, the lender doesn't record arrears on the borrower's credit file. By putting the payment deferral in place, Chelsea put Mrs D's credit file in a much better position than it would have been without the payment deferral.

Without the payment deferral, the mortgage still wouldn't have been paid. The balance would still have gone up. Extra interest would still have been added. The missed payments would still be outstanding. Financially, the position would have been the same. But Mrs D's credit file would have shown six months of mortgage arrears for the next six years.

So while Mrs D was concerned that the effect of a payment deferral was to increase the capital balance of the mortgage, that would have happened anyway while neither of the borrowers were making payments. The only practical difference the deferral made was to ensure the missed payments weren't recorded on either credit file. When their separation is resolved and Mrs D wants to move on with her life – possibly applying for a mortgage or other borrowing in the future – she will find it much easier to do so now six months of arrears aren't recorded on her credit file.

Mrs D says that Chelsea should have made her former partner repay the mortgage, as per the court order. Chelsea has no power to enforce a court order in a case it's not party to – and, as I've said, in any case the order didn't require him to pay the mortgage. It required him to pay Mrs D.

A lender can't force a borrower to pay their mortgage. If neither Mrs D nor her former partner paid the mortgage, and there was no agreed deferral in place and the arrears were going up, all Chelsea can do is take arrears management action – ultimately leading to repossession of the property. Lenders are barred from enforcing repossession until 1 April 2021 – but steps short of that can still be taken, and the costs of doing so would be added to the mortgage balance.

In all the circumstances, therefore, I don't think it was unfair for Chelsea to agree and reinstate the payment deferral. Given she didn't take over the mortgage payments herself, any of the other options would have left Mrs D in a worse position. She would have had six months of arrears recorded on her credit file, as well as potentially arrears management and legal costs added to the loan balance.

A lender is required to act fairly taking into account their customers' best interests, and I think Chelsea did that in this case.

Mrs D also points to the mortgage rule that says a lender shouldn't auto-capitalise arrears. There is such a rule, but it doesn't apply in this case. Agreed payment deferrals aren't arrears. The regulator's guidance on payment deferrals says a lender can auto-capitalise payments missed as part of an agreed payment deferral – but should explain the consequences of doing so, and if the borrower doesn't want that should agree alternative ways of making up the missed payments.

Based on the situation at the end of the payment deferral, I don't think Chelsea acted in breach of the regulator's rules in capitalising the deferred payments. But if Mrs D has alternative proposals for paying back the deferred payments, she can discuss that with Chelsea.

My final decision

For the reasons I've given, my final decision is that I'm satisfied Yorkshire Building Society trading as Chelsea Building Society has acted fairly and reasonably and so I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 30 March 2021.

Simon Pugh
Ombudsman