

The complaint

A complains that Fleet Mortgages Ltd (Fleet) unfairly declined its request for a second covid related mortgage payment deferral.

What happened

In 2018, A took a buy-to-let mortgage with Fleet for approximately £600,000, on an interest only basis, for a term of 15 years. The mortgage offer dated 3 September 2018 confirms that the mortgage was not a regulated mortgage contract under the Financial Conduct Authority's (FCA) regulatory regime.

In March 2020 the FCA announced measures aimed to help mortgage borrowers during the covid pandemic. One of these measures was to be able to take a mortgage payment deferral, initially for up to three months, without it impacting the borrowers credit history.

A requested a payment deferral in April 2020 and Fleet allowed three months from 1 May 2020. Towards the end of the payment deferral, A requested that the payments it had missed were capitalised and Fleet agreed to that request.

A requested another payment deferral in November 2020. By this point the FCA had amended its guidance to allow borrowers up to six months' worth of payment deferrals. But Fleet declined that request, saying it no longer offered payment deferrals to limited companies. So, A complained to Fleet.

In its final response letter sent in December 2020, Fleet said it doesn't think the guidance given to lenders to assist customers adversely affected by the covid pandemic applies to limited companies. And there are other support measures available from the Government for businesses.

Dissatisfied with Fleet's response, A asked us to look into its complaint. It says it wanted help because its tenants could not pay their rent. And it pointed out that, the cost of the payment deferral – the deferral of their contractual monthly payments – would ultimately be borne by A, not Fleet.

Our investigator found that, despite Fleet's opinion that the FCA's covid guidance didn't apply in the circumstances, it was reasonable to expect it to follow good industry practice at the time. She thought Fleet should have allowed A a second payment deferral. However, she didn't think it was in A's best interests for Fleet to apply the payment deferral retrospectively, given that A had managed to make all the payments during the time the payment deferral would have applied. But she did think a payment for the inconvenience caused to A was appropriate because of the impact on A's cashflow at the time. So, she asked Fleet to pay A £150 in that regard.

Neither party agreed. A said the £150 was not of significant benefit to it and it wanted Fleet to apply a payment deferral to its account as a point of principle.

Fleet said that the inconvenience suffered was as a result of A not agreeing with its process for accepting a payment deferral request. And A making its mortgage payments at that time shows the payment deferral wasn't truly needed.

As neither party agreed with our investigator, A's complaint has been passed to me for a final decision.

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.

To decide A's complaint, I've thought about whether it was reasonable for Fleet to decline A's request for a second covid payment deferral, considering all the circumstances that are relevant here.

After issuing the guidance referred to in the above section of my decision, the FCA updated its guidance to lenders several times to reflect the developing covid related circumstances as the pandemic continued. I've carefully considered the version applicable when A requested a second payment deferral. The FCA's guidance refers to both unregulated agreements and lenders that aren't regulated under the Financial Services and Markets Act.

Fleet says it didn't have to adopt the FCA's covid guidance because it is only regulated by the FCA for anti-money laundering purposes. And, when Government support grants and other support was available for limited companies, it stopped offering payment deferrals to limited companies.

I've thought carefully about Fleet's comments in relation to the FCA guidance. And I'm mindful of the fact that while Fleet isn't regulated by the FCA in relation to mortgage lending it does fall under the jurisdiction of this service, albeit on a voluntary basis. We consider complaints on a fair and reasonable basis – that means what we consider to be fair and reasonable taking all relevant circumstances into account, not just the law or the guidance of the regulator. We do however consider relevant regulation as well as best industry practice at the time. I think the FCA guidance in this case was intended as guidance for all mortgage lenders, because of the guidance's reference to professional diligence. I also think that the general good practices of the industry – those adopted by the majority of mortgage lenders – have a significant impact on what may be considered fair and reasonable. So, I've also thought about what I think the majority of mortgage lenders would have done in similar circumstances when deciding what's fair and reasonable here.

Despite being a limited company, A has explained that it is a husband and wife partnership, deriving all its income from property letting. It says that means it is treated as a limited company deriving its income from investments so didn't qualify for the Government support Fleet has referred to. It's also explained to us the difficulty it has had with specific tenants.

Fleet appears to have applied a 'blanket' policy when declining A's request. I haven't seen that it sought to engage with A to understand its circumstances. I think it should've done so to truly understand A's situation at the time. That is something the FCA's guidance says it should do and something I would expect all mortgage lenders to have done in the circumstances as a matter of best practice. Having gained an understanding of A's needs, I would expect most mortgage lenders to have accepted a request for a second mortgage payment deferral. It's clear they were being impacted by the pandemic and, whilst they may have made arrangements to maintain the payments, this doesn't mean it was easy for them or that A didn't have to make alternative arrangements for other payments. As Fleet didn't

engage with A and so didn't consider its individual circumstances, I don't think Fleet acted fairly and reasonably when dealing with A's request.

Putting things right

I know A wants Fleet to retrospectively apply a payment deferral to its mortgage account – it has said that's now a matter of principle. And it's said that a payment in respect of the inconvenience caused isn't much use. However, my role isn't to award redress based on what a consumer wants. Rather, I must think impartially about what is appropriate given the circumstances of the complaint.

I've thought about what retrospectively applying a payment deferral would achieve, given that A did manage to make the payments in question. It would increase the loan balance from that point in time by the payment deferral that would have applied and therefore also increase the interest-bearing balance from that time. Put simply, this would mean that A's mortgage balance would increase, and they wouldn't have made payments to cover the additional payments this would have attracted since. Therefore, it doesn't seem like it would be in the best interests of A, despite it wanting that outcome as a point of principle. So, I'll not direct Fleet to do that.

I think A did suffer some inconvenience due to it having to manage its cashflow in a way it wouldn't have otherwise had to. So, I think a payment in recognition of that is appropriate here. But because A is an entity – despite its make up – I think its inconvenience should have been limited to additional challenges in managing its business, rather than the potential distress caused to the directors of A as they aren't eligible customers here. So, I can't consider the impact on them. I think a payment of £150 in that regard is appropriate here.

My final decision

My decision is I uphold A's complaint about Fleet Mortgages Ltd and it should pay A £150 for the inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask A to accept or reject my decision before 20 July 2022.

Gavin Cook
Ombudsman