

The complaint

Ms P complains that Norton Home Loans Limited asked her for information about her income and expenditure before they'd allow her to take a payment deferral on her secured loan.

What happened

Ms P has a secured loan with Norton. On 23 March 2021, Ms P's daughter called Norton to ask if Ms P could take out a payment deferral on her loan as a result of the impact the pandemic was having on her finances. Norton asked if Ms P's income had changed over the last 12 months, and Ms P's daughter explained that it hadn't, as she was in receipt of benefit payments, but her outgoings had increased as a result of increases in care fees and having to pay for PPE.

Norton advised that they would need to go through a financial statement to see if a payment deferral was the right option for Ms P, or if there were other options that might be more suitable for her. Ms P's daughter said she didn't have that information available at the time, so Norton said that if Ms P's daughter could call back once she had the information to hand, they could run through the options with her.

Ms P's daughter asked what other options there were, and Norton said it depends on what the financial information about income and expenditure shows. They said if the information shows the loan is affordable, they would ask that Ms P makes the payments as this loan is a priority debt. Or if Ms P can't afford the full payments, they may look at arranging reduced payments. They said that if Ms P has any unsecured debts, they would ask that the loan payments take priority over those. And Ms P should try and agree payment deferrals or arrangements with her unsecured lenders before doing so on the secured loan.

Ms P's daughter asked what information would be needed, and Norton explained they needed details of Ms P's monthly income and expenditure. Ms P's daughter acknowledged the next steps and the call ended.

In June 2021 Ms P's daughter wrote to Norton to complain on her mother's behalf. She said that as Ms P had been asked about her income and expenditure, she'd been worried that providing that information would put her home at risk, and could damage her credit file. So she decided the only option was to continue to struggle to pay the monthly payments.

Ms P's daughter said since the conversation she'd had with Norton in March, she'd learnt that Norton had no right, or legal expectation to ask her mother to provide financial information in order to grant the payment deferral. And so she thought they should now apply the three month payment deferral, which could be extended to six months, on Ms P's loan that she was entitled to. She said as a result of Norton's actions, Ms P has been unable to financially recover from the impact of the pandemic, and this has continued to affect her health conditions.

Norton responded and explained that they could no longer put a payment deferral in place for Ms P's loan without it impacting her credit file, as the scheme set up by the Financial

Conduct Authority (FCA) closed on 31 March 2021. They also explained that Ms P was being assisted by their collections team, and so they still hope to be able to provide her with support.

Ms P's daughter responded to Norton and explained that the deadline for the payment deferral had not expired when she called in March. And if Norton had handled things as they should have done, Ms P would have been granted a payment deferral in line with FCA guidelines, so she still wanted Norton to rectify the situation.

Norton explained that they'd asked for information about Ms P's income and expenditure during the call to ensure the payment deferral was the best solution for her at the time. They said they acted in line with the guidelines, as lenders were obliged to ensure that any payment deferral was in the best interests of the customer. Norton said asking for information was appropriate to determine that, or whether there were other options they could explore to help.

Ms P remained dissatisfied with Norton's response and following another email, Norton issued their final response letter on 6 September 2021. They didn't uphold the complaint. Ms P asked our service to look into her complaint. She said that if Norton were unable to put the payment deferral in place now, then she would like Norton to pay her £1,803.06 to cover the amount she would have saved if a six month payment deferral had been granted. She could then use that to clear the debts she'd accrued in order to make her monthly payments.

Our Investigator considered what had happened, and she didn't think Norton had acted unfairly. Ms P disagreed with the outcome, so the complaint's been passed to me to issue a decision.

My provisional decision

I issued a provisional decision on 27 July 2022. This is what I said.

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

Firstly, I think it would be helpful to explain that whilst Ms P and her daughter have referred to their request as a 'payment holiday', the money was still owed to the loan account.

The guidance issued by the FCA during the pandemic allowed lenders to grant 'payment deferrals' to those borrowers who needed them, but whilst those deferrals gave borrowers temporary breathing space whilst they were impacted by the pandemic, those payments still needed to be made up somehow after the deferral period ended. Ms P has said that if Norton are unable to put in place the payment deferral for her now, she would like them to pay her the equivalent of those monthly payments she says she should have been allowed to miss. But those payments were always going to be due under the loan agreement, so it's not money that Ms P has paid unnecessarily. If the payment deferral had been granted, Ms P would have needed to agree with Norton how those payments would be made up at the end of the deferral period.

The FCA guidance that was in place at the time Ms P requested a payment deferral said that where a customer was experiencing payment difficulties as a result of circumstances relating to coronavirus and wished to take a payment deferral, a firm should agree a deferral with the customer provided they were eligible for one. This is unless the firm agreed with the customer a different option that the firm reasonably considered to be in the best interests of the customer. The guidance also said that firms could choose to make enquiries they consider necessary in order to offer an alternative to a payment deferral that is in the customer's best interests, provided this does not cause undue delay.

At the time of the call in March, I'm satisfied Ms P was eligible for a payment deferral under the FCA guidelines. In the call Norton did explain that if Ms P was able to make her payments to the loan, she should be prioritising those over other debts, but they would go through her financial circumstances to check whether there was a more suitable option for her based on what she could afford to pay. As I've already explained, if Ms P was able to afford the loan payments it was in her interests to continue making her payments – as the payments would need to be made up at a later date in any event and so it was not in her interests to delay that if it wasn't necessary.

However, I do think the FCA guidance was quite clear that lenders should grant borrowers payment deferrals if they were impacted by the pandemic and asked for one, and that they could make enquiries about a borrower's circumstances to see if there were alternatives available as long as it didn't cause an undue delay. When Ms P's daughter spoke to Norton she made it clear that Ms P could not afford to pay her monthly payments as a result of the impact the pandemic was having on her. As a result, I think Norton should have granted the three month payment deferral during that phone call, as Ms P was eligible for one.

I do appreciate that Norton wanted to explore whether there were alternative options that may have been more suitable for Ms P and her circumstances, but Ms P's daughter wasn't in a position to provide the information Norton required during the call to go through those options.

The FCA guidance said that lenders could make enquiries they consider necessary to explore alternatives as long as it doesn't cause undue delay. Here, I think it did cause an undue delay as the information was not available at the time of the call – which was only one week before the deadline to apply for a payment deferral. Norton did not mention the deadline or the urgency of providing that information in the call. And nonetheless – I don't think that information was necessary in order to grant Ms P the payment deferral she'd asked for. So I think Ms P should have been given a three month payment deferral on her secured loan when her daughter called and requested one on her behalf on 23 March 2021.

Whilst I'm satisfied Norton ought to have granted a three month payment deferral in March 2021, I don't think Ms P would have been able to benefit from a six month deferral. The FCA's guidance said that payment deferrals could only be granted to cover payments due up to and including July 2021. So once Ms P's three month deferral ended, she wouldn't have been eligible for another one. And if she remained unable to afford her monthly payments after that date, she would have had to engage with Norton about her circumstances to see what other options may have been available to support her. And that would likely have required going through her financial circumstances, including her income and expenditure.

I appreciate Ms P is reluctant to provide that information. But if she is still struggling from the impact of the pandemic as she's told us, then she will need to speak to Norton about that so they're able to provide appropriate support.

Putting things right

As I've explained, whilst I do think Ms P should have been given a three month payment deferral when she asked for one – those payments would still needed to have been made up after the deferral period would have ended in June or July 2021. Ms P was able to maintain her payments, albeit with difficulty and by borrowing from elsewhere. So I don't think it would be in her interest for Norton to now refund those payments Ms P made for three months – for them to be added back onto the mortgage with additional interest – increasing her debt. Especially if Ms P is still struggling to afford her monthly payments, as it's likely they would increase as a result of the deferral.

However, it's clear that the conversation Ms P's daughter had with Norton caused Ms P some distress. She was worried about the implications of Norton advising this loan was a priority debt and that her home was at risk. I can understand that the call with Norton left Ms P feeling like the deferral was subject to approval. She also had to continue borrowing money in order to make the monthly payments which could have been avoided had the deferral been granted. As a result, I think Norton should pay Ms P £300 for the distress and inconvenience caused by asking for information that was not necessary for them to grant the deferral, and for not putting it in place when requested."

Norton agreed to pay the £300 award recommended in my provisional decision.

Ms P responded and in summary said:

- She would still like the payments she made when she should have had a three month payment holiday refunded to her, as it's her understanding that doing so would not dramatically increase the balance/repayment amount, it would simply extend the loan by three months which isn't an issue.
- She would like Norton to refund the three monthly payments without Norton adjusting the interest on the account as a gesture of goodwill.
- Receiving that refund would clear Ms P's outstanding debts accrued during the pandemic and she could finally move on with things.
- She's now reached state pension age and will never be able to free up enough income to make a significant dent in her debts. If Norton had agreed the payment holiday those debts would have been significantly reduced or paid off last year and would not have accrued as much interest as they now have.

Following the responses I received, I wrote to both parties to explain that I was intending on changing the way I felt this complaint should be put right. This is what I said:

"Ms P has told us that during the pandemic, she accrued a lot of debt in order to try and maintain her mortgage payments and other priority bills. Her circumstances have also recently changed and her income has reduced as a result. She's now in an even worse position to repay those other debts that have high interest rates attached.

Had Norton put in place the three month payment deferral when requested as they should have done, Ms P would have been able to use some of that money to reduce those other debts, and she would have been charged less interest on them since then as a result. Now ordinarily we would expect a borrower to prioritise secured lending repayments and my initial decision was based on the fact that as Ms P was able to make those payments to Norton's secured loan - she's better off with that money remaining on the mortgage. But in light of the new information provided I do think Ms P would actually have been in a better financial position had the payment deferral been agreed, and she had access to those three months' payments for her to use on those other debts.

As a result I now think this complaint should be settled in the following way:

- Norton should refund the three months' worth of payments Ms P made when the payment deferral should have been in place.
- This will increase the outstanding balance, as the payments wouldn't have reduced as expected and additional interest would have been charged.
- Norton should also pay 8% simple interest on the refunded amount from the date each monthly payment was made, to the date of the refund as Ms P hasn't had access to those funds.
- Norton should ensure that Ms P's credit file is not negatively impacted by this re-work of her account.

- Norton will need to engage with Ms P about how the deferred payments will be made up. Ms P has expressed a preference for the term of the loan to be extended in order to keep the monthly payment amount the same. But I appreciate Norton will want to discuss Ms P's circumstances with her to establish what is going to be affordable and in her best interests."

Norton responded and said, in summary:

- The payment deferral rules at the time entitled them to request evidence and to carry out an appropriate affordability check to ensure any arrangement was affordable.
- They received no further call from Ms P during the qualifying payment deferral period and so it was their view that she'd chosen not to proceed with the request.
- Ms P paid all the payments on time, and they were not aware of a continuing issue with her making the repayments.
- They are unsure if they would be able to retrospectively amend the credit file to show the loan as being up to date when it would have been in arrears – as the payment deferral guidelines no longer apply.
- They would be happy to discuss extending the term with Ms P.
- They are still happy to pay Ms P £300.

Ms P responded and agreed with the outcome reached.

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.

I've given much thought to the comments provided by both parties throughout the journey of this complaint. Having done so I'm satisfied this complaint should be upheld and put right in line with my most recent thoughts sent to both parties, for the reasons I've already explained.

Norton have explained why they still believe they treated Ms P in line with the FCA guidance that applied at the time. But I've set out in my previous decision why I don't think that's the case, and nothing they've said has changed my mind about that.

So I'm still satisfied that when Ms P requested a payment deferral in March 2021, Norton ought to have granted one. I've explained previously why I think Ms P would only have been entitled to a three month payment deferral as opposed to six months. My mind hasn't changed about that.

Norton are right in that Ms P was able to continue making her loan payments. But that seems to have been the result of her borrowing money from elsewhere, which she is still struggling to repay. She has said that she would have been better off financially if those three monthly payments hadn't been made, as she wouldn't have needed to borrow more money to afford the secured loan payments, and she wouldn't be in the current financial position she's in now. Even with the knowledge that the interest would have been charged on the unpaid monthly payments with Norton.

As a result, I think Ms P has suffered a financial loss as a result of Norton's actions and that should be factored into the resolution of this complaint.

Putting things right

Having considered all of the evidence and comments provided by both parties, this is how Norton should put things right in respect of Ms P's loan account.

- Norton should refund the three months' worth of payments Ms P made when the payment deferral should have been in place directly to Ms P.
- This will increase the outstanding balance of the loan, as the payments wouldn't have reduced as expected and additional interest would have been charged. I'm not satisfied Norton should waive that interest as it's interest that would have been applied to the loan in line with the terms, had the deferral been agreed as Ms P wanted.
- Norton should also pay Ms P 8% simple interest* on the refunded amount calculated from the date each monthly payment was made, to the date of the refund, as Ms P hasn't had access to those funds.
- Norton should ensure that Ms P's credit file is not negatively impacted by this re-work of her account. Norton shouldn't have to amend the way it's reported Ms P's loan to credit reference agencies if payments were maintained. I don't think it would be reasonable for them to now retrospectively report arrears on the account as Ms P was not given the opportunity to address those arrears at the end of the deferral period – as the deferral was never granted. So, to be clear, Norton should not report any negative information to credit reference agencies in relation to the loan conduct from March 2021 to date.
- Norton will need to engage with Ms P about how the deferred payments will be made up. Ms P has expressed a preference for the term of the loan to be extended in order to keep the monthly payment amount the same. But I appreciate Norton will want to discuss Ms P's circumstances with her to establish what is going to be affordable and in her best interests. And as I've explained, it's unlikely to be as simple as just extending the term by three months, as the balance will be greater as a result of the interest charged on those missed payments.
- Pay Ms P £300 for the distress and inconvenience caused.

*Interest is at the rate of 8% a year simple. If Norton Home Loans Limited considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Ms P how much it's taken off. It should also give Ms P a certificate showing this if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

I uphold this complaint, and instruct Norton Home Loans Limited to put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms P to accept or reject my decision before 26 October 2022.

Kathryn Billings
Ombudsman