

The complaint

Mr and Mrs P complain about the way Capital Home Loans Limited (CHL) have treated them at the end of their mortgage term. They say they felt forced into making overpayments, and CHL have unfairly reported mortgage arrears to credit reference agencies which has prevented them from getting another mortgage.

What happened

Mr and Mrs P had an interest only mortgage with CHL, the term of which expired in 2016. CHL granted a two year term extension until 2018 to allow Mr and Mrs P more time to redeem the mortgage.

In September 2018, Mr and Mrs P still weren't able to redeem the mortgage balance, and so it was agreed that some of the mortgage would be switched to repayment, and the term was extended for another five years. That would have left an outstanding balance of £23,000 at the end of the extended term. As a result of this change, Mr and Mrs P's contractual monthly payment (CMP) changed. Although they continued to pay more than this each month in order to reduce the balance.

Mr and Mrs P were able to maintain these payments until early 2020 when Mr P became unwell and Mrs P's job was impacted by the global pandemic. CHL agreed a payment deferral for the months of April, May and June 2020. This was then extended for a further two months for July and August 2020.

In July 2020 CHL spoke to Mr P about the impact the payment deferral would have on his and Mrs P's future CMP – as they said it would increase. Mr P explained that he wouldn't be able to afford to pay more than £1,850 per month until he was able to return to work in January 2021. Due to his and Mrs P's ages, they were having to self-isolate. CHL asked if he still wanted the payment deferral to be extended given that it would make the new CMP unaffordable, and Mr P explained they couldn't pay the CMP at the moment and so needed the payment deferral in place. CHL said that if Mr and Mrs P don't resume making the full CMP in September then the account will fall into arrears. Mr P explained he will be able to increase his payments in 2021 to repay any arrears. He also explained that the plan to repay the interest only balance at the end of the term was that his children would take out a mortgage to buy the property from Mr and Mrs P. Mr and Mrs P said they have no other way of repaying the balance as they don't have any savings.

In September 2020, Mr and Mrs P resumed making monthly payments, although these didn't cover the full new CMP that had increased as a result of the payment deferral. And in November 2020, Mr P retired which substantially reduced his income. He explained to CHL that he would pay what he could afford each month, but that his children were now buying the property and that would repay the mortgage in full. He said that he would need to be added to the new mortgage as a guarantor to get the mortgage approved, it was all being processed, and should complete in 2021. So from November 2020, Mr and Mrs P have been paying £600 towards the mortgage, which was less than a third of the CMP. CHL refused to agree to this as an arrangement at the time, as there was no guarantee when the property would be sold. CHL reported the mortgage as being in arrears.

Mr and Mrs P complained to CHL. They were unhappy that CHL were reporting their mortgage as being in arrears as this was preventing them from obtaining a new mortgage which would repay the existing one. CHL didn't uphold the complaint, they said they were obliged to report accurate information to credit reference agencies. They had supplied Mr and Mrs P with a letter confirming they were making reduced payments, but they wouldn't amend the way this was being reported.

Mr P contacted CHL again as he had received a mortgage offer from another lender, but this had since been withdrawn as a result of the mortgage arrears reported on his credit file. He complained to CHL about the fact they'd forced him to make overpayments that he didn't agree to and now his mortgage was in arrears. CHL didn't uphold that complaint. They said that in 2018, Mr and Mrs P had agreed to the increased payments in order for the mortgage to be extended. Their income showed that was affordable at the time, and that was demonstrated by the fact the payments were maintained until 2020. CHL also received confirmation from Mr and Mrs P's financial adviser that they would be able to maintain those payments until the end of the term.

CHL also said the payments were increased further at the end of the payment deferral in 2020. That was a result of the increased balance that had resulted from the deferred payments. They said Mr P had confirmed he was happy with that at the time the payment deferral extension was agreed. They recommended that Mr and Mrs P discuss their situation with their financial adviser to explore what options may be available to them now.

Mr and Mrs P raised another complaint. They said that they never agreed to the five year term extension on the basis of higher payments, and they knew it wouldn't be affordable for them at the time. CHL didn't uphold the complaint. They said that prior to the term extension being put in place, Mr and Mrs P had signed to accept the terms of the extension, including the new payment amount. They said the rest of Mr and Mrs P's concerns had already been addressed in previous responses.

Mr and Mrs P brought their complaint to our service. They also explained they'd like CHL to extend the mortgage further in order to allow more time for the balance to reduce, and increase the likelihood that Mr and Mrs P's daughter could get a mortgage for the full amount. They said they have a lot of equity in the property but that an equity release product wasn't suitable for them. They also said they have life insurance policies that would be sufficient to cover the mortgage balance. Our Investigator looked into things, and explained that overall, whilst she empathised with Mr and Mrs P's situation, she didn't think CHL had acted unfairly.

Mr and Mrs P disagreed. They said that CHL had not taken their age and their health into consideration. They said CHL's actions had caused them a lot of stress and anxiety, and so they wanted the complaint to be reviewed by an Ombudsman.

My provisional decision

I issued a provisional decision on 26 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."

What happened in 2018

Mr and Mrs P's original mortgage term ended in 2016, but as they were unable to repay the balance at that time, CHL agreed to extend it until 2018. However, by 2018 Mr and Mrs P still weren't able to repay the balance and asked CHL for another five year extension. Mr and

Mrs P had been making significant overpayments to the mortgage to reduce the balance at that point, and explained to CHL they could continue with that in order to pay off as much as they could.

CHL agreed to the extension on the basis that Mr and Mrs P would be contractually obliged to continue making those higher monthly payments, and they would need to repay the outstanding balance at the end of the five year extension. Mr and Mrs P said they planned for their children to take out their own mortgage over the property once they were earning more money. And that would clear any remaining balance.

I'm not persuaded CHL treated Mr and Mrs P unfairly in 2018. The term had ended, and Mr and Mrs P put a proposal to CHL which was accepted. Based on what CHL knew at the time, the proposal was affordable for Mr and Mrs P, and they had a plan to repay the balance by the end of the five year period. I'm also mindful that they were able to maintain the terms of the extension until their circumstances changed in 2020. CHL didn't need to agree to an extension, and could have insisted that Mr and Mrs P redeem the mortgage in 2018, as it had already been extended once before. But they took account of Mr and Mrs P's circumstances and agreed a way forward that would ensure the mortgage was repaid in a way that worked for Mr and Mrs P. So I'm not satisfied they were acting unfairly by accepting Mr and Mrs P's proposal.

What happened in 2020

Sadly in 2020 Mr and Mrs P's circumstances changed. Mr P became unwell, and they were both significantly impacted by the pandemic as due to their ages, they were advised to self isolate. I can appreciate this would have been a difficult time for them.

The Financial Conduct Authority (FCA) issued guidance for mortgage lenders on how to support borrowers who were impacted by the pandemic. As part of that guidance, lenders could allow borrowers to defer payments temporarily, which is what CHL allowed Mr and Mrs P to do for five months.

However, the impact of deferring payments is that the mortgage balance does not reduce as planned, and so there needs to be an agreement as to how those deferred payments will be repaid by the end of the mortgage term. CHL told Mr P what the new CMP would be after the deferral period, and Mr P explained that he wouldn't be able to afford that higher amount each month. Whilst there were several discussions that took place about this and what Mr and Mrs P's plans were, I can't see that any alternative options for repaying the deferred payments were discussed.

I don't think it was responsible of CHL to increase Mr and Mrs P's monthly payments after the deferral when they'd told them they wouldn't be able to afford them. I do think that, in line with the FCA's guidance, there were other options available that CHL ought to have considered and should have been explored. For example, they could have extended the term by a few months in order to keep the CMP at the amount it was at before the deferrals were put in place, or they could have added the deferred payments to the interest only part of the mortgage so that they could be repaid at the end of the term.

Considering Mr and Mrs P's particular circumstances, I think had these other options been explored as they should have been, adding the deferred payments onto the interest only balance would have been the most appropriate option given the circumstances. The FCA required lenders to take account of the borrowers' circumstances and what they could afford when deciding next steps for those deferred payments, and by simply increasing the CMP when Mr P had told them that would be unaffordable for them I don't think they did that. Mr and Mrs P had told CHL they were going to repay the interest only balance at the end of the

term extension (in 2023) when their children could obtain a mortgage to buy the property. CHL had been willing to accept that as a way of repaying the existing interest only balance of around £23,000, so I'm persuaded it added very little risk to them of adding the five months of deferred payments onto that amount. So, considering all the circumstances here, I'm persuaded that's what should have been agreed.

However, Mr and Mrs P were only able to resume payments for two months before Mr P retired in November 2020. At that point, their circumstances changed significantly, and they could no longer afford to pay anywhere close to the CMP – even at its previous level.

Mr and Mrs P were keeping CHL updated with their plans, and as they could no longer afford to pay the CMP, their daughter was trying to obtain a mortgage sooner than originally planned in order to repay Mr and Mrs P's mortgage. Unfortunately, she wasn't able to get the borrowing she needed on her own, so Mr P was added to the application as a guarantor.

Mr P asked CHL not to report the mortgage arrears that were accruing as it would affect his chance of being approved for another mortgage. But CHL refused. They also wouldn't agree to an arrangement as they said there was no way of knowing how long it would take Mr P and his daughter to get a new mortgage, and they'd broken the conditions of the term extension.

CHL do have an obligation to report the mortgage account accurately to credit reference agencies. So if the full CMP wasn't being paid each month, then they did need to report that. I don't think they were acting unreasonably by declining Mr P's request to report the mortgage as up to date when it wasn't.

However, I do think CHL could have given more thought as to whether it would have been appropriate to agree to an arrangement, rather than refusing. I say that because it was clear Mr and Mrs P were paying all that they could afford towards the mortgage after Mr P retired. And they had brought forward their plans to try and repay the full balance as soon as they could. Although I do also appreciate that there was no way of guaranteeing how long that might take, Mr and Mrs P told CHL at the time that they planned to redeem the mortgage in full in 2021.

CHL are required to act in line with the rules set by the regulator, and that includes considering forbearance when a borrower is in financial difficulties and unable to pay their full mortgage payments. There were options that CHL could have considered, such as agreeing to a reduced payment arrangement of £600 per month for a temporary period. Or a temporary switch to interest only if that would have meant that the reduced CMP would have been affordable for Mr and Mrs P. Although to be clear, these options still would have impacted Mr and Mrs P's credit file, so it might not necessarily have resulted in them getting the mortgage they wanted at the time they applied. Nonetheless, CHL reporting an arrangement to credit reference agencies would have reflected more favourably than just reporting missed payments. And I think that's what they should have done.

Overall, I don't consider it was reasonable for CHL to refuse to agree to anything with Mr and Mrs P when it was clear they needed help, and they were trying to take steps to redeem the mortgage in full. The rules set by the regulator state that a firm must deal fairly with customers who are experiencing difficulties with their mortgage payments, and they must make reasonable efforts to reach an agreement with the customer about how any shortfall in payments should be repaid. I'm not satisfied CHL acted in accordance with those rules during their conversations with Mr P towards the end of 2020.

Request for another term extension

Mr and Mrs P have told our service that they want CHL to extend the mortgage further beyond 2023 so they have more time to reduce the balance, and therefore it would be more likely that their daughter could get a mortgage for the amount needed. They've said they're not willing to consider equity release as this house is their only asset.

I can't see that Mr and Mrs P asked CHL to extend their mortgage further before this complaint came to our service, or that they've complained to CHL about that. So CHL haven't had the opportunity to respond to their request. As a result, it's not appropriate for me to make a finding on this part of their complaint without first giving CHL the opportunity to consider it.

But, Mr and Mrs P are currently in a position where they're unable to afford their monthly mortgage payments, and whilst I've said that CHL should have agreed to a short term arrangement to give Mr and Mrs P some more breathing space to sort out their plans for redeeming the mortgage, they still need to find a way to repay what they owe. If they haven't done so already, I would encourage Mr and Mrs P to seek independent financial advice about their situation and what options might be available to them.

Putting things right

Overall, I do think CHL ought to have done more here to help Mr and Mrs P whilst they were experiencing financial difficulties. I've set out below what I think CHL should do to put things right, which should put Mr and Mrs P back in the position they would have been in had CHL given proper consideration to their circumstances, and followed the relevant rules and guidance set by the regulator.

- Re-work Mr and Mrs P's mortgage account as if the deferred payments had been added to the interest only part of the mortgage balance in 2020. Any overpayments Mr and Mrs P have made as a result of this re-structure should be used to reduce the arrears on the mortgage.*
- Re-work Mr and Mrs P's mortgage account as if CHL had agreed to a temporary payment arrangement in November 2020, based on what Mr and Mrs P could afford at the time. If that would have meant that CHL would have applied less fees to the mortgage, these should be refunded to the account.*
- Update the way the mortgage has been reported to credit reference agencies as a result of the above changes.*
- Pay Mr and Mrs P £250 for the distress and inconvenience caused by the conversations they had with CHL about the deferred payments and the payment arrangement. I'm satisfied that in those conversations CHL were not as flexible as they ought to have been, and it was clear from the notes of those conversations the distress this caused."*

Mr and Mrs P responded and explained that they had asked for a further term extension, but this has been declined by CHL. They aren't happy with how the request had been handled. They said they had sent CHL their income and expenditure information as they'd requested but remained unhappy as they weren't helping them with solutions for their case.

CHL responded and provided detailed submissions setting out why they disagreed with my provisional decision. For ease I will only summarise their points here, but I can assure them I've considered all that they've said carefully before issuing this decision.

CHL have said that Mr and Mrs P's complaint about how CHL handled the payment deferral is out of time, as they issued a summary resolution communication letter (SRC) for a complaint about that issue in June 2020. They said that complaint hadn't been referred to our service within six months of that letter. Although in any event, they didn't agree it would have been fair or reasonable for them to have dealt with the deferred payments by extending the term of the loan or adding them to the amount payable at the end of the term.

They said the FCA makes it clear in their guidance that reasonable extensions of the term do not need to be considered alongside capitalisation where this would take customers past retirement. Both customers were in their 70s, the mortgage had already been extended, and there was no evidence they could recommence payments of the full CMP at any time. They said in any event, the changes I suggested would have no practical benefit as Mr and Mrs P were unable to pay the new CMP after Mr P retired in November 2020.

CHL believe they've provided as much forbearance as possible to Mr and Mrs P and have not taken steps to enforce their rights through litigation despite the level of arrears that have accrued on the account. They said they have minimalised the application of arrears fees, as they were only charged June to August 2021.

CHL said they have been keen to assist Mr and Mrs P but are not compelled to continuously provide short or long term extensions, or go beyond what was reasonable in the circumstances – given the extensions that had already been provided. They made attempts to discuss alternative options with Mr and Mrs P, as well as encouraged them to seek independent advice.

Mr and Mrs P wanted to keep the interest only part of the mortgage down and were keen to reduce the capital balance as demonstrated from the numerous discussions they had. They didn't want to accept any other forbearance options when they made the request for the payment deferrals. CHL don't think it would have been in Mr and Mrs P's best interests to re-work the account as if the deferred payments had been added to the interest only balance.

Mr and Mrs P had given CHL no timeframe for when the mortgage would be redeemed. If a payment arrangement was agreed in November 2020 as suggested in my provisional decision, a further £8,000 would have accrued to the account balance. Mr and Mrs P have now failed to meet their CMP for 21 months and are still unable to do so. So the recommendation would only serve to increase the balance owed by the customers in the same way the same action would have done 20 months ago. Any temporary arrangement made in November 2020 would long have expired on their credit file now. Mr and Mrs P's arrears status, and creditworthiness now would remain the same.

CHL have reported the account accurately to credit reference agencies in line with the Information Commissioner's Office (ICO) requirements, and it would not be appropriate to make changes to that now.

In summary, CHL believe they have offered appropriate forbearance to Mr and Mrs P since their mortgage term ended in 2016, and don't think it would have been appropriate, fair or reasonable to have taken the steps I set out in my provisional decision. They re-iterated that the full mortgage payments are still not being made, and Mr and Mrs P need to discuss realistic options for repaying this mortgage with them as a matter of urgency.

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'll first address the concerns CHL have now raised about our service's jurisdiction to consider Mr and Mrs P's complaint about the payment deferral.

CHL have told us that they sent Mr and Mrs P an SRC in June 2020 which addressed their complaint about the payment deferrals. They say they made Mr and Mrs P aware they would

have six months to refer their concerns to our service if they remained unhappy with the response.

CHL have not provided a copy of that SRC letter. I have seen a letter that they sent to Mr and Mrs P on 29 June confirming the payment deferral extension, but there is no mention of a complaint in that letter. However, I have seen from the contact notes that a complaint was raised, and upheld in June 2020 about the fact CHL initially refused to extend the payment deferral. Following the complaint being made, CHL changed their position and agreed to a two month extension.

I'm satisfied that the complaint Mr and Mrs P have asked our service to consider is not the same as the one made in June 2020. The conversations about what the CMP would be after the payment deferral, and Mr and Mrs P's ability to afford that, happened in July 2020, after that complaint had been made and resolved. So I'm satisfied this complaint is a separate complaint that wasn't dealt with by any SRC issued in June 2020. And I'm still satisfied we have the power to consider it.

Now I'll turn to the comments CHL have made about the suitability of my previous recommendations relating to how the deferred payments should have been treated at the end of the deferral period. I've carefully considered what CHL have said, and reviewed the notes from the conversations that took place at the time. Having done so, my decision on this point remains unchanged.

There were conversations throughout July 2020 about what would happen to the CMP once the deferral period was due to end. And Mr P made it clear to CHL that he would not be able to afford the new payment amount. He was aware that would result in arrears, and he told CHL he should be able to start repaying those arrears in 2021. But I don't think it's right that just because Mr P was aware that arrears would accrue if he didn't maintain payments, that it was responsible of CHL to agree to increase the CMP when it wasn't affordable – when they had other options they could have considered.

I appreciate what CHL have said about the fact Mr P did not call to ask about other options that might be available. But there were several conversations that took place in that month – during which Mr P made it clear he wouldn't be able to afford the new payment. So I think it was for CHL – not Mr P – to explore in those conversations whether there may have been alternative options that would have been affordable. In fact in one of the conversations, on 24 July, the notes say that CHL advised Mr P that if he didn't agree to the increased CMP at the end of the deferral period, then they couldn't agree an extension to the deferral. So not only did CHL not make Mr P aware of the other options that might have been available for repaying the deferred payments, they made it seem like accepting a higher CMP beyond what Mr P could afford – was a condition of getting the payment deferral in the first place.

I have also thought carefully about what CHL have said about Mr P not wanting to extend the term or increase the balance that his family would ultimately have to take a mortgage for to repay this one. And I agree they were clearly Mr and Mrs P's priorities whilst they were able to make the regular payments – to pay off as much capital as they could to avoid leaving much at the end of the term for their children to pay. But I think that changed once they became impacted by the pandemic and they were no longer able to afford their payments.

In fact, the contact notes for the account show that Mr P asked CHL for a term extension in June 2020 when he wasn't able to make any payments to the account, and the deferrals were being discussed. He was told then that CHL would discuss the available options at the end of the deferral period. But that never happened, CHL just increased the CMP. I still think CHL had an obligation to explore the different options in regards to Mr and Mrs P 'making up' the deferred payments and I can't see they did that. Instead they added the payments to the repayment balance which increased the CMP to a level that was not affordable for Mr

and Mrs P. I appreciate that shortly afterwards even the previous CMP became unaffordable for Mr and Mrs P and the situation changed again. But that wasn't known at the time.

As a result, I'm still satisfied that had the options been explored, in order to arrange for the deferred payments to be repaid in a way that was affordable for Mr and Mrs P (or seemingly affordable at the time), and in their best interests – the deferred payments ought to have been added onto the interest only balance of the mortgage. That way there was no need for the term to be extended further than it already had been, and there was already a repayment strategy in place to repay the interest only balance.

Now turning to what happened when Mr P retired later in 2020, again whilst I have carefully considered what CHL have said, I see no reason to depart from my provisional decision in that respect either.

Whether the payment arrangement to pay lower than the CMP was agreed by CHL or not (which it wasn't), there still would have been arrears accruing on the account where the full CMP wasn't being met, and the balance was not reducing as expected. So the net position of the account would have remained the same. I agree with CHL on that point.

But regardless of that, CHL knew that Mr and Mrs P were paying as much as they could afford. CHL say now that they encouraged Mr and Mrs P to think about other options that may have been more affordable, but I can't see from the contact notes that anything was suggested by CHL in terms of other forbearance. They told Mr and Mrs P to keep paying what they could afford, but that the mortgage would go into arrears. They also said they would hold off litigation action (as a result of the FCA guidance in relation to repossession action during the pandemic), but that Mr and Mrs P should seek independent advice.

It seems to me that Mr P was being continuously open with CHL about his situation, what he could afford to pay, and that he was trying to sell the house to his children to repay the balance. Whilst I appreciate CHL did not pursue litigation at the time (and still haven't), and whilst I doubt that had a constructive conversation taken place about other forbearance options that could potentially have helped – there would have been an affordable solution agreed that would have been suitable for all parties, I do think it was unfair of CHL to refuse to recognise the fact they were accepting lower payments as a payment arrangement. As for all intents and purposes – CHL had said that Mr and Mrs P could continue to pay what they could afford and no litigation action would be taken in the immediate future. As CHL were accepting those lower payments without taking further action, I think it was unfair of them not to have recognised that as a formal payment arrangement.

CHL have said that even if they had agreed to a payment arrangement, as there was no clear timeframe for the mortgage to be redeemed, there is no appropriate timeframe for the arrangement to have been in place. But I disagree. Mr P had told CHL towards the end of 2020 that they had started the mortgage process and were getting everything in place. They said the mortgage should be redeemed in 2021 when everything had gone through. Given the circumstances and what Mr and Mrs P had told CHL, I think it would have been reasonable for CHL to have agreed a reduced payment arrangement for six months. That could then have been reviewed at the end of that period and next steps decided.

Mr and Mrs P have said they've since asked CHL for another term extension and they're not happy with how that's been dealt with. They will need to complain to CHL separately about that if they haven't done so already.

Overall, I appreciate that Mr and Mrs P's circumstances have changed in recent years and they're no longer able to afford the mortgage as it currently stands. If they haven't done so already, they need to seek independent advice about their options for redeeming this mortgage as it's no longer sustainable for them. They also need to engage with CHL about what their plans are, and given the level of arrears that are continuing to increase – this should be an urgent priority for them.

I understand that CHL have generally shown forbearance and empathy for Mr and Mrs P's circumstances. But for the reasons I've set out in this decision, and my provisional decision, I still think they ought to have done more to support Mr and Mrs P's ability to pay this mortgage when they really needed it.

Putting things right

In order to put things right I still think CHL should:

- Re-work Mr and Mrs P's mortgage account as if the deferred payments had been added to the interest only part of the mortgage balance in 2020. Any overpayments Mr and Mrs P have made as a result of this re-structure should be used to reduce the arrears on the mortgage.
- Re-work Mr and Mrs P's mortgage account as if CHL had agreed to a six month payment arrangement in November 2020, based on what Mr and Mrs P could afford at the time. If that would have meant that CHL would have applied less fees to the mortgage, these should be refunded to the account.
- Update the way the mortgage has been reported to credit reference agencies as a result of the above changes.
- Pay Mr and Mrs P £250 for the distress and inconvenience caused by the conversations they had with CHL about the deferred payments and the payment arrangement. I'm satisfied that in those conversations CHL were not as flexible as they ought to have been, and it was clear from the notes of those conversations the distress this caused.

My final decision

Considering everything, for the reasons I've explained, I uphold this complaint in part and instruct Capital Home Loans Limited to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P and Mrs P to accept or reject my decision before 4 October 2022.

Kathryn Billings
Ombudsman