

The complaint

Mrs A complains about how Target Servicing Limited has administered her second charge mortgage (secured loan). In particular, she's unhappy that it repeatedly sends her arrears letters even though she believes she's paid on time. And she's unhappy with what it has reported to her credit file.

What happened

Mrs A took her loan out in late 2008. The lenders have changed over the years since. The current lender is not itself a regulated firm, but it has appointed Target to manage the loan on its behalf. As the regulated entity administering the loan, Target is responsible for answering this complaint.

Mrs A complains that Target sends her arrears letters each month. That's because Target believes the payment due date is the 13th of the month, but Mrs A believes it's the 27th. So when she doesn't pay on the 13th, Target writes to her to tell her she has missed a payment and her loan is in arrears.

Separately, Mrs A was in arrears having missed some payments in early 2020. At the start of the coronavirus pandemic, she asked Target for a payment deferral in line with the regulator's guidance. But Target refused to agree a payment deferral because of the arrears. Instead, it offered a nil payment arrangement – and recorded the payment arrangement on her credit file.

Mrs A complains about how Target recorded this period to her credit file. And she also complains that after the arrangement ended, it continued to record arrears on her credit file. She doesn't believe the information on her credit file is fair or accurate, and says it has stopped her taking out alternative finance to repay this loan, and stopped her re-mortgaging her main mortgage.

Target said that the payment date was the 13th of the month and it couldn't change that. If Mrs A wanted to avoid getting arrears letters, she would need to change her direct debit to pay on the 13th of each month. Target also said that Mrs A wasn't entitled to a coronavirus payment deferral in March 2020, because her loan was in arrears at the time. It said it offered her a payment arrangement and correctly recorded that as agreed arrears on her credit file.

Target said that when the payment arrangement ended in September 2020 it sent Mrs A an income and expenditure form but she didn't return it until mid-October. Once it received the form, it put a further payment arrangement in place. But there was no arrangement in place for October. Target said it had recorded her account correctly on her credit file and it wasn't responsible if the income and expenditure form had been delayed in the post.

Target has issued several final responses to Mrs A's complaints:

- 26 October 2021 – about information reported to Mrs A's credit file.
- 29 June 2021 – about changes to the payment due date and whether Mrs A was in arrears as a result, and about whether Target can communicate by email rather than post.
- 29 October 2020 – about reporting to Mrs A's credit file. Target said there was a payment arrangement until September 2020. Mrs A then did not return an income and expenditure form, so no new arrangement was put in place for October.
- 18 April 2020 – about refusal of a covid-19 payment deferral, offering a two month payment arrangement (recorded as arrears) instead, and about whether a payment missed by agreement in December 2019 should be recorded as arrears.
- 23 January 2020 – about the loan balance and whether the settlement figure Mrs A had been given was too high.

Our investigator said part of the complaint was out of time. And he said that Target should have been treating the payment due date as the 27th of the month. And he said that Target should have granted Mrs A a coronavirus payment deferral in March 2020 – although that part of the complaint was out of time, he said Target should correct the impact of refusing to do so on her credit file from October 2020 onwards. It should pay Mrs A £300 compensation.

Mrs A accepted that. But Target didn't. It said it would amend Mrs A's credit file and pay £300 compensation. But it said it couldn't change the due date on Mrs A's account. It said she would need to change the date she made payment to the 13th of the month if she wanted to avoid arrears letters in the future.

Target then made some changes to Mrs A's credit file. But Mrs A wasn't happy with what it had done. As no agreement could be reached, the case comes to me for a decision to be made.

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.

There are time limits for making complaints to the Financial Ombudsman Service. I've set out above that Mrs A has made several complaints to Target, and has been sent several final responses. A complaint must be made to us within six months of the date of the firm's final response (unless there are exceptional circumstances). Our investigator explained that this meant we could only consider Mrs A's complaints about:

- The due date, and how Target has administered this;
- The administration of Mrs A's account since October 2020, including what was reported to her credit file.

The complaints about the refusal of a coronavirus payment deferral and how that was recorded to Mrs A's credit file were out of time, as she hadn't brought them to us within six months of Target's final response. The same was true of the complaint about the settlement figure quoted in January 2020.

I agree with his findings about that. And Mrs A accepted what he said. So in this decision I'll focus on those two complaints which were made in time.

Reporting to Mrs A's credit file since October 2020

Target has shown us what it initially reported to Mrs A's credit file. This shows that she was one month in arrears in December 2019, by arrangement, but the account was up to date in January and February 2020.

From March 2020, it reported arrears by arrangement, with the arrears showing as the equivalent of one month's payment, two in April and three in May. From June to August it reported the account as being up to date, but then reported it as four months in arrears in September. From October 2020 to March 2021 it is reported as being up to date, but is then four months in arrears again in April 2021. From May 2021 onwards it is reported as being up to date again.

Following the investigator's view, Target made some changes. Following those changes, it removed the record of number of months of arrears. But it still reported that Mrs A was in an arrangement between March 2020 and May 2021.

I'm conscious that I can only deal with a complaint about what was recorded to Mrs A's credit file from October 2020 onwards – her earlier complaints about the refusal of a payment deferral in March 2020 and the reporting to her credit file between then and September 2020 are out of time.

However, I need to consider what happened in that period to decide whether the reporting from October 2020 onwards was fair.

Target said Mrs A wasn't entitled to a covid-19 payment deferral in March 2020 because she was in arrears at the time.

Mrs A was in arrears – her December 2019 direct debit had bounced. She'd made small overpayments in January and February 2020, so by March the arrears were less than one month's payment. But they hadn't been cleared completely.

However, this was not a good reason for refusing a payment deferral. The regulator's guidance was clear that pre-existing arrears was not a bar for a payment deferral. Target should not have refused a payment deferral to Mrs A.

Mrs A didn't make any payments in March, April and May 2020. She resumed making payments in June 2020, though paid slightly less than the monthly payment.

Under the regulator's guidance, had Target given Mrs A a payment deferral as it should, it should not have treated the payments missed in March April and May as arrears and should not have recorded a "worsening position" on her credit file as a result of the deferral.

Because of the payment arrangement, Target considered Mrs A to be in arrears of around £1,070 in October 2020. Had Target granted a payment deferral instead, in line with the regulator's guidance, then she would instead have been around £270 in arrears – this is disregarding the deferred payments from March to June, but taking into account the remaining part of the missed December 2019 payment, and taking into account that from June onwards Mrs A paid slightly less than the monthly payment due.

At this time the contractual monthly payment was £246.67, so – even had a payment deferral been granted in March – in October 2020 Mrs A would have been in arrears by more than one month's payment.

As she continued to pay £231 until February 2021 – against an amount due of £246.67 – the

arrears continued to mount slightly. And then in May 2021 Mrs A paid a lump sum of just over £1,000, which cleared the arrears (including what ought to have been the deferred payments from March 2020).

Therefore, had Target granted Mrs A a payment deferral in March 2020 – as it should have done – then between October 2020 and May 2021, her credit file would still have shown that she was in arrears by arrangement.

That is in fact what her credit file does show after the amendments Target made following the investigator's view. The copy credit file Mrs A has provided shows that, and so does the record of its reporting Target has given us.

I'm therefore satisfied that the amendments Target has now made to Mrs A's credit file mean that, from October 2020 onwards, it fairly reflects what it should do. And therefore I don't intend to require Target to make any further amendments.

The payment due date

Target says that when the previous lender entered into the loan agreement, the monthly payment date was set at the 13th. But the previous lender also said that Mrs A could choose a different date that suited her, and she chose the 27th. Mrs A has therefore always paid on the 27th. The loan has since been transferred to the new lender and Target has taken over the administration. It says that it can't change the contractual payment date, and because Mrs A continues to pay on the 27th, that means she pays late and it has to contact her to understand why the payment has been missed.

I don't think this is a reasonable explanation. As soon as the loan was taken out the previous lender agreed with Mrs A that she could pay on the 27th. To my mind, that's a change to the contract. The previous lender agreed to vary the contract to accept payments on the 27th. Target should have honoured that agreement, and should have amended its systems to expect payment on the 27th of each month not the 13th.

I've also noted the welcome letter sent when Target took over in May 2018. This tells Mrs A that she does not need to take any action regarding her direct debit. So if it was the case that Target proposed to revert to requiring payment on the 13th of the month, and not honour the previous lender's agreement to accept payment on the 27th as the due date, this letter is misleading. Target ought fairly to have explained this change to Mrs A at the time.

In any case, the contractual documents *don't* say the due date is the 13th of the month. The fixed sum loan agreement says that payment is due "one month after the date of this agreement and then on the same date every month after that". The agreement is dated 30 December 2008 – which would make the payment date the 30th of the month not the 13th. However the 30th of the month wouldn't always be practical – in February, for example. On the day the loan completed, the lender wrote to Mrs A telling her that the due date was the 27th of the month – which is consistent with a completion date of the 30th, adjusted to allow for February each year.

Taking that into account, therefore, I think the contractual due date at the start of the loan was not the 13th, it was the 30th – but changed immediately to the 27th. Therefore the 27th is the contractual due date.

And even if I'm wrong about that, and the contractual due date was set as the 13th as Target says, I think it's clear that the previous lender did agree to accept payments on the 27th and treated that as the due date from the outset. Mrs A had a reasonable expectation that would continue after the transfer. And I can see no good reason why Target wouldn't continue that

arrangement. So even if, as a matter of contract, Mrs A is required to pay by the 13th of the month I see no reason why Target can't, acting fairly, agree to accept payment on the 27th of the month and only treat Mrs A as being in arrears if that date is missed.

My conclusion on that is supported by the rules of mortgage regulation – MCOB 13.3.2A (4) says that as part of dealing with payment difficulties a lender should grant a change to the payment due date unless there's "*good reason*" not to. As the regulated administrator, Target stands in the lender's shoes in this respect. I see no good reason why it shouldn't have agreed to retain the change to the due date agreed by the previous lender. Saying that it can't agree to a change because the original contract documentation says the 13th is the due date is not, in my view, a good reason.

Target has been aware of this issue for some time – it appears since around 2019 – and hasn't taken steps to resolve things. It's merely said there was nothing it could do and Mrs A would need to change her payment date. I've already explained why I don't think this was a fair approach – and in my view Target's insistence on this for several years compounded the issue. It resulted in Mrs A regularly receiving unnecessary arrears letters, which she found distressing. I'll take this into account in assessing the overall level of compensation I think is fair.

Putting things right

I've explained that the changes Target made to Mrs A's credit file following our investigator's involvement are enough to resolve that part of her complaint. In respect of the payment date, I think Target should allow Mrs A to pay her monthly payment on the 27th of each month without treating her as being in arrears.

I've said that I'm not persuaded that there's any evidence that the payment date was ever actually the 13th of the month – that's not what the loan agreement says, and it's not what the previous lender said. I think it's most likely Target is simply mistaken about this.

Target says it's not possible for it to amend the payment date. It's not clear to me whether this means that it doesn't believe it's entitled to do so, or whether its systems physically won't allow it to do so.

But in any case, it should, acting fairly, treat Mrs A's payment due date as the 27th of the month. It could do that either by:

- Amending the due date recorded on its systems; or
- Not amending the due date recorded on its systems, but manually amending the account each month so that a payment on the 27th is not recorded or treated as arrears and does not result in arrears letters being sent.

There may be other options too. But whatever the means by which it chooses to give effect to this, Target must allow Mrs A to make payment on the 27th of each month, and must not treat her as being in arrears as a result – including that it must not send her arrears or missed payment letters unless she has not paid by the 27th.

I'm satisfied that the repeated and unnecessary arrears letters, and the – now corrected – entries on Mrs A's credit file caused her considerable distress. And I agree that £300 represents fair compensation. I understand Target has already paid this to Mrs A; if it has not done so, it should do so now.

My final decision

For the reasons I've given, my final decision is that I uphold this complaint and direct Target Servicing Limited to:

- Treat the 27th of each month as Mrs A's payment due date and not treat her as being in arrears, or contact her or send automated letters to her as if she had missed that month's payment, provided she makes payment on or before the 27th.

I'm satisfied that the amendments Target Servicing Limited has made to Mrs A's credit file in respect of entries from October 2020 onwards mean that it now fairly reflects the conduct of her account. And I understand that it has already paid her £300 compensation – if it has not, I direct it to do so now.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or reject my decision before 24 February 2023.

Simon Pugh
Ombudsman