

The complaint

Ms P has complained about how Capital Home Loans Limited (“Capital Home Loans”) treated her between August 2018 and January 2022, when her mortgage account was in arrears.

What happened

Ms P held a shared equity mortgage with Capital Home Loans which she started accruing arrears on around November 2014. Although Ms P was in arrears, she was still making some payments towards her mortgage, it wasn’t until 2018 Ms P became totally unable to contribute to her mortgage payments and Capital Home Loans informed Ms P it was commencing legal proceedings.

In September 2018, the Citizen’s Advice Bureau (“CAB”) assisted Ms P in corresponding with Capital Home Loans. CAB informed Capital Home Loans Ms P had a chronic illness that had affected her mental health and due to both conditions she was unable to work. Despite this, with help from friends and family, Ms P was able to clear her arrears in full and legal proceedings were adjourned by the court.

Unfortunately, as Ms P was still unable to work, the arrears started to accrue again. CAB said Ms P was intending on being able to contribute with assistance from the Department for Work and Pensions (“DWP”), but later explained Ms P had a severe episode with her mental health which delayed her being able to sort it out.

The arrears continued to build throughout 2019, and CAB’s authority to communicate with Capital Home Loans expired. Capital Home Loans made several attempts to get in touch with Ms P by phone, letter, email and field agent visits and on 28 November 2019, it sent a letter explaining that it had exhausted all attempts to resolve the situation with Ms P and gave 15 days’ notice of its intention to seek a repossession order. It then confirmed it was starting legal proceedings again in January 2020.

Ms P started engaging with Capital Home Loans again and confirmed she had been trying to sort things out with DWP. Capital Home Loans had returned the paperwork it needed to, but Ms P explained she was having to resubmit paperwork as it seemed to have been lost either in the post or by DWP. Communication was ongoing about this through May and June 2020, and Capital Home Loans confirmed legal proceedings were stopped due to the coronavirus, Covid-19 pandemic (“the pandemic”) and that they wouldn’t start it again while the DWP issue was pending. It recommended Ms P chase DWP as it was unable to do that on her behalf.

Contact dropped off for some time, but Ms P got in touch with Capital Home Loans again in June 2021 to confirm that she intended to make a lump sum payment to clear the arrears. She explained she had been hospitalised in December 2020, suffered with long-Covid throughout January, sadly her mother passed away around the same time, and she was then diagnosed with another health concern which required surgery and ongoing treatment.

Ms P was waiting for an email from Capital Home Loans to confirm how she could go about making the payment. Ms P was unhappy there was a delay in receiving the email and once she did have access to it, she was unhappy Capital Home Loans requested evidence of where the funds had come from before it would accept the payment. Ms P's concerns have mainly related to this period of time, but all of the issues surrounding this were investigated separately under a different complaint reference, so I won't be commenting on anything related to that in this decision.

During that complaint, Ms P raised a new complaint point about how Capital Home Loans treated her from August 2018 to January 2022. Our investigator said it wouldn't be appropriate for them to look into this before Capital Home Loans had had an opportunity to do so itself, so the new complaint point was referred back to Capital Home Loans. Capital Home Loans investigated this including other new complaint points as follows:

- Capital Home Loans didn't inform Ms P the October 2018 court date had been withdrawn until the day it was due to take place.
- Capital Home Loans didn't stop fees and charges to Ms P's account while she was waiting for DWP to set up regular payments.
- Capital Home Loans instructed field agents to visit Ms P's home, prior to, and during, the pandemic.
- Ms P experienced unnecessary problems when she set up a direct debit in February 2022.

Capital Home Loans issued a final response letter addressing these issues on 5 July 2022. In summary, Capital Home Loans said that overall it thought it had helped Ms P with her situation as far as it could, but there were some areas it accepted it could have done better. Specifically, it said Ms P could have been informed sooner that the court case in 2021 had been adjourned. That it wasn't the right decision to send field agents to Ms P's home during the pandemic. And that it took Ms P longer to set up a direct debit than it should have. Capital Home Loans apologised and offered Ms P £250 to compensate her for any distress and inconvenience caused. It also offered to refund some arrears fees she incurred in 2020.

Ms P did not accept Capital Home Loans' response and referred her complaint back to this service. Our investigator reviewed everything that happened, but they felt the compensation offered by Capital Home Loans was a fair way to resolve things. As Ms P remained unhappy the complaint was referred to me to consider.

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.

Having done so, I don't think Ms P's complaint should be upheld and I'll explain why.

October 2018 court date

Ms P says she only found out her court date was cancelled on 2 October 2018, the same day it was supposed to take place.

Having looked into this further, I don't think Capital Home Loans did anything wrong. I say this because Ms P didn't pay off her arrears in full until 27 September 2018 and the call notes suggest she was advised in that call that legal proceedings would cease. Capital Home Loans then contacted its solicitor to inform them the same day. And CAB who was still representing Ms P at the time, was updated on 1 October.

Capital Home Loans' solicitors informed the court that Ms P had paid off her arrears in full and asked for an adjournment, which was granted on 2 October. So, while Ms P may have found out on the day, I don't think this is surprising in the circumstances. Capital Home Loans was proactive in stopping legal proceedings and I don't think it could have done anything much sooner than it did.

It seems a similar chain of events happened in September 2021 when a new court date was set to take place. Ms P paid off her arrears in full shortly before the court date. In this instance, Capital Home Loans has apologised because Ms P wasn't aware the court case had been adjourned until she phoned to enquire about it. Capital Home Loans says it should have already sent her an email earlier that day to confirm the outcome.

As Capital Home Loans has accepted it could have communicated this sooner, I don't think I need to look into this further. From what I can see, Ms P still found out on the same day because she phoned Capital Home Loans herself and I think an apology is sufficient in the circumstances.

Fees and charges while waiting for DWP payments

Capital Home Loans has confirmed Ms P was not charged any arrears fees to her account while she was waiting for DWP to set up regular payments throughout 2019. While Capital Home Loans did charge some arrears fees in 2020 it has now offered to refund those fees and adjust the interest to reflect that as well.

Ms P's account was charged with other fees which haven't been refunded, but Capital Home Loans was within its rights to apply those fees to Ms P's account. As much as I empathise with Ms P's situation, I can't ask Capital Home Loans to refund fees that were charged in line with the 'Tariff of Charges' Ms P would have received when she took the mortgage.

Unfortunately, as difficult as Ms P's circumstances were, she was in significant arrears on her account and unable to make her CMPs for extended periods of time. There were also long periods of time where Capital Home Loans lost contact with Ms P and so, after several attempts to get in touch with Ms P, it eventually took legal action which would result in additional fees.

As I've said above, Capital Home Loans was entitled to charge Ms P the associated costs for that. Overall, I think it's been fair in not charging arrears fees for both 2019 and 2020 even when it was entitled to.

Field agent visits

Capital Home Loans sent field agents to visit Ms P's home in 2019 and 2021.

Based on the lack of contact Capital Home Loans had with Ms P in 2019, I don't think it was wrong to send field agents to her home in order to try and resolve the situation. This happened again in 2021, but considering Ms P's health and the ongoing pandemic, Capital Home Loans has accepted it wasn't appropriate to send field agents at this time.

Based on Government guidelines for the pandemic in 2021, Capital Home Loans was technically allowed to send field agents when it did. I appreciate, under normal circumstances, this probably would have been the most appropriate thing to do having lost contact with Ms P once again. But Capital Home Loans was aware Ms P had a chronic illness that would have made her particularly vulnerable during the pandemic, so it's reasonable to say a field visit wouldn't have been appropriate for Ms P at this time and I was pleased to see Capital Home Loans acknowledged that in its response.

Capital Home Loans has said sorry to Ms P and confirmed that it will consider this action more carefully in future. Capital Home Loans has also offered compensation of £250 which is to acknowledge any areas it thinks it could have done better, including this issue. I think the other issues Capital Home Loans has upheld will have had less impact on Ms P and so my award for those issues, if any, would have been relatively low. Considering that, I think the £250 offered in total is fair and reasonable in the circumstances as this is broadly in line with what I would have suggested for this particular situation.

Setting up a direct debit

Ms P is unhappy with issues she encountered when setting up a monthly direct debit. She's also unhappy she incurs additional interest due to the day the direct debit is taken.

Ms P phoned Capital Home Loans to sort out her direct debit for her monthly repayments in February 2022. Capital Home Loans accepts this didn't go as smoothly as it should have. There were some issues to do with Ms P's surname having changed and this took longer to resolve than it should have.

I haven't listened to the calls that took place, but I understand Ms P was placed on hold a few times and had to speak to Capital Home Loans three times in one day. Capital Home Loans agrees this would have been frustrating and has upheld this part of Ms P's complaint already. The compensation it's offered includes this and based on what it's said about the calls, I think it's fair to have offered some compensation.

That said, the issue stems from Ms P's surnames being different on her mortgage account and payment account, so I don't think the issues were totally avoidable. Ms P may not have experienced problems with this previously as she was making her payments manually before. But Ms P hadn't changed the name on her mortgage account and told the call handler she didn't want to. I think this more likely than not would have caused some problems for any direct debit instruction. And the matter was resolved the same day, so the inconvenience was limited to that day only.

Considering everything, I would only recommend a small award to acknowledge that Capital Home Loans has said this could have been handled in one call. So, I still think the £250 compensation Capital Home Loans has already offered is still fair in the circumstances.

Ms P arranged for the direct debit to be taken on the 4th of every month, which means she will incur interest as the payment is actually due on the 1st of every month. Capital Home Loans has explained all accounts are operated this way and I can't ask Capital Home Loans not to charge interest for this. So, if Ms P remains unhappy she would need to amend her payments to be made on 1st of every month instead.

Unfair treatment from August 2018 to January 2022

When referring her case for a final decision, Ms P referenced regulations and legislation – including the Equality Act 2010. I feel it's important to explain that our service is an informal alternative to the courts. This means we don't have the power to make a finding on whether Capital Home Loans has breached the legislation Ms P has referred to. My role is to make a finding on what I consider to be fair and reasonable, and in doing so, I've taken relevant regulations and legislation into account.

Ms P has complained that she was treated unfairly between August 2018 and January 2022. This is a very broad complaint point and I think the main issues Ms P's unhappy with are covered by her other more specific complaint points – either in this complaint or her previous complaint.

I'm sure the situation Ms P found herself in will have had a profound impact on her, but I don't think that means Capital Home Loans is solely responsible for that. Ultimately, Ms P was in significant arrears for a number of years and Capital Home Loans needed to manage that as best as it could. From the correspondence I've seen, Capital Home Loans was understanding of Ms P's situation. It gave her a long time to sort things out whenever she presented an option for repaying her arrears and I haven't seen any evidence to suggest it chased her when it shouldn't have.

Ms P went through long periods of being unable to contact Capital Home Loans due to her health, and except for the field agents sent during the pandemic, I don't think it's unreasonable Capital Home Loans tried to get in touch with Ms P several times, using various methods. When CAB had authority to represent Ms P, Capital Home Loans kept it informed and worked with it to find a way forward.

Capital Home Loans seems to have been responsive whenever Ms P did get in touch. And I haven't seen any instances of the representatives Ms P spoke to not being understanding of her situation or being obstructive in any way. I've reviewed the whole file, including a significant number of contact notes, and overall I think Capital Home Loans has treated Ms P fairly other than the isolated events I've commented on above.

So, I've considered everything, and I don't think Ms P's complaint should be upheld. I know this will be disappointing for Ms P and I empathise with everything she's been through over the last few years, but I think the main stresses Ms P will have endured are down to the level of arrears she was in and external circumstances outside of Capital Home Loans' control. The mistakes Capital Home Loans did make were short term.

Given what Ms P's told us, I can understand why she may feel Capital Home Loans has had a great impact on her and caused her to lose trust in it. But I'm still persuaded Capital Home Loans did what they could to make up for the mistakes they made and did so with Ms P's personal circumstances in mind. It's for that reason I think £250 is fair in the circumstances.

If Ms P now wants to accept Capital Home Loans' offer she can sign and return the attached settlement form.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms P to accept or reject my decision before 16 March 2023.

Hanna Johnson
Ombudsman