

The complaint

Mr L and Ms S complain that Shawbrook Bank Limited didn't allow them to defer their payments to their second charge mortgage in 2020, when it should have done so because of the coronavirus pandemic.

What happened

Mr L and Ms S have a second charge secured loan with Shawbrook, which they're paying on a capital and interest repayment basis. At the beginning of 2020, the loan had been in and out of arrears for several years. Mr L and Ms S were in regular contact with Shawbrook about their mortgage payment arrangements.

Mr L and Ms S have said that their incomes were affected as a result of the coronavirus pandemic. No payments were made to the loan between April and October 2020. There have been some missed or late payments since then, but Mr L and Ms S have resumed making payments more regularly.

In October 2022, Mr L and Ms S complained to Shawbrook. They said they had asked Shawbrook for a payment holiday, or deferral, on the loan in 2020, but Shawbrook had said no. They had recently realised that they were entitled to a deferral in line with regulatory guidance in place at the time to support customers in the early stages of the pandemic. They wanted the loan arrears not to be treated as such by Shawbrook or on their credit files, and they wanted the opportunity to capitalise the arrears.

Shawbrook said that Mr L's and Ms S's loan was already in arrears before the pandemic, and it wouldn't have offered a payment deferral in these circumstances – even if Mr L and Ms S had requested one, which it said they hadn't.

Our Investigator ultimately recommended that the complaint be upheld. He referred to relevant regulatory guidance, and said that Shawbrook should have offered Mr L and Ms S a six-month payment deferral in May 2020, when Mr L had told Shawbrook that their incomes had been affected as a result of coronavirus. He said Shawbrook should re-work Mr L's and Ms S's loan on that basis, and pay them £450 compensation.

Mr L and Ms S indicated that they accepted the Investigator's conclusions. Shawbrook said it didn't accept them. It didn't submit any further evidence or arguments.

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.

In response to the coronavirus pandemic, on 20 March 2020 the regulator, the Financial Conduct Authority (FCA), published specific guidance for lenders with regards to mortgages. The guidance was aimed at helping mortgage borrowers whose financial circumstances had been affected by the pandemic.

The guidance reminded lenders of their obligation to treat customers fairly, and said that lenders should offer a payment holiday, or deferral, where appropriate. It also said:

“Where a customer indicates they may potentially experience payment difficulties in the current circumstances and wish to receive a payment holiday, a firm should grant a customer a payment holiday for the 3 monthly payments that follow that interaction.

If, during an interaction between the firm and the customer, the customer provides information suggesting that the customer may potentially experience payment difficulties, the firm should ask whether the customer would be interested in a payment holiday.

To be clear, there is no expectation under this guidance that the firm investigates the circumstances surrounding a request for a payment holiday. [...]

This guidance applies in respect of a customer regardless of whether they are in a payment shortfall. [...] Customers in payment shortfall should not receive less favourable treatment than other customers.”

The guidance went on to say that a payment deferral shouldn't be recorded as a payment shortfall (arrears) and that loans in payment deferral shouldn't be recorded as having a worsening position as a result of the deferral, including on the customer's credit file.

The guidance also says that firms should have agreed payment deferrals unless it wasn't in the customer's best interests to do so. And the FCA guidance is clear that customers who were already in arrears shouldn't be precluded from being offered a payment deferral. So I'm satisfied that it was unfair and unreasonable of Shawbrook not to have offered a deferral to Mr L and Ms S because of their loan arrears.

The guidance is also clear that customers didn't have to specifically ask for a payment deferral in order for the lender to have offered one. So I don't accept Shawbrook's argument that it didn't offer a payment deferral because Mr L and Ms S didn't ask. While firms weren't required to proactively contact customers and offer a payment deferral, where a customer was already in touch with the firm and said they were experiencing financial difficulties, firms should have offered a payment deferral – the customer didn't have to ask for one.

In any case, leaving aside the FCA's guidance specific to coronavirus, lenders should treat their customers fairly when they're in financial difficulty and explore what options might be available to help them. I think that not offering a payment deferral when Mr L told Shawbrook in May 2020 that he and Ms S were in financial difficulty and couldn't afford to make payments to their secured loan was inconsistent with this obligation.

I've listened to a recording of the call Shawbrook made to Mr L on 21 May 2020. Shawbrook asked him about the loan arrears. Mr L said: “due to coronavirus my employer's not paying me until the end of June”. Shawbrook then asked whether he had been furloughed, and Mr L confirmed he had. He also said Ms S was in the same situation.

I'm satisfied that Shawbrook should have given Mr L and Ms S the option of deferring their loan payments during or shortly after this call. Mr L and Ms S were clearly finding things difficult financially and unable to pay their loan. In the light of the regulatory guidance in place at the time, I see no reasonable basis on which Mr L and Ms S should not have been offered a deferral.

The FCA's guidance about supporting customers during coronavirus was later updated and it extended the maximum payment deferral a customer could have from three to six months.

In all the circumstances, I consider that a fair and reasonable outcome in this case is for Shawbrook to re-work Mr L's and Ms S's loan and credit files as though a payment deferral had been put in place for six months following Mr L's call with it on 21 May 2020.

Shawbrook should also set out the options available to Mr L and Ms S to repay the payments that weren't made during the payment deferral, including the option of capitalising them, so that Mr L and Ms S can see the implications for their monthly loan payments and/or loan term and decide how they prefer to make up the missed payments. Capitalising any other remaining arrears on the mortgage may be an option for Mr L and Ms S, but it is something they would need to discuss with Shawbrook in the first instance.

I also agree with our Investigator that Mr L and Ms S should fairly receive some compensation for non-financial loss. It was clear from Mr L's calls with Shawbrook on 21 May 2020 and in the months that followed that he and Ms S were struggling financially during the early months of the pandemic. I also note that Mr L had told Shawbrook about his health problems and vulnerability in earlier calls, and I think Mr L and Ms S were caused avoidable worry and upset because they weren't offered the help they should have had in line with regulatory guidance. I consider £450 is a fair award in recognition of this.

Putting things right

To settle this complaint, Shawbrook Bank Limited must:

- re-work Mr L's and Ms S's secured loan and credit files as though a payment deferral had been in place for six months following Mr L's call with it on 21 May 2020;
- set out the options available to Mr L and Ms S to repay the payments that weren't made during the payment deferral, including capitalising them, so that Mr L and Ms S can see the implications for their monthly loan payments and/or loan term and decide how they prefer to make up the missed payments;
- pay Mr L and Ms S £450 compensation.

My final decision

My final decision is that I uphold this complaint and direct Shawbrook Bank Limited to put things right as set out above. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L and Ms S to accept or reject my decision before 3 November 2023.

Janet Millington
Ombudsman