

complaint

Miss M complains about the way Platform Home Loans Ltd (Platform) has managed her mortgage account.

In summary, Miss M complains that Platform:

- took unnecessary legal action over mortgage arrears in 2012/13, and it should refund the legal costs of this action to her;
- started new legal action against her in 2017 even though she's not behind with her mortgage payments and has repaid half of her arrears since 2013;
- has breached the Equality Act 2010 by not making reasonable adjustments for her although she suffers from a serious chronic health condition;
- has harassed her and tried to pressure her to make higher mortgage payments than are affordable for her;
- doesn't tell her how much the DWP have paid to her mortgage account every four weeks and so fails in its duty to keep her informed of what 'top up' payment she needs to make;
- is incorrectly reporting her mortgage conduct on her credit file; and
- promised to capitalise her arrears and now it has gone back on its word.

background

Miss M has an interest only mortgage taken out with Platform in 2008. Soon after taking out the mortgage Miss M became unwell. She's been unable to return to work since that time as she's been suffering from chronic ill health. Miss M's mortgage fell into arrears when she became unwell.

Miss M says she's worked hard to reduce her mortgage arrears since 2013. She says her arrears have reduced from around £7,000 to around £3,500, by the end of 2017.

Miss M gets help paying the interest on her mortgage from the Department for Work and Pensions (DWP). The DWP makes a payment of Support for Mortgage Interest (SMI) directly to Miss M's mortgage account every four weeks. Miss M pays an extra amount on top of this, to make sure her mortgage payments are met in full, and she pays an extra amount towards the arrears. She sends this by BACS payment every four weeks.

Miss M has been very unhappy with the way Platform has handled her mortgage account and has made a number of complaints over the years.

Miss M had a six month payment arrangement that she agreed with Platform in December 2016. This arrangement expired in June 2017. This caused Platform to try to make a number of calls and send letters to Miss M. During this contact, Miss M complained to Platform about various issues in July 2017. Platform's responded to Miss M's complaint points in final response letters dated 22 August 2017 and 30 August 2017. Further issues have come to light while Miss M's complaint has been with us and Platform has had the opportunity to respond to all of these points looked at in this decision.

Platform doesn't think it has treated Miss M unfairly. It says it has tried to be sympathetic to her situation and show forbearance. It won't agree to capitalise Miss M's mortgage arrears because it's concerned that this will be unaffordable for Miss M, and it's also said Miss M doesn't meet its criteria because a mortgage payment was missed in the six months running up to Miss M's request. Platform's said it isn't responsible for letting Miss M know how much the DWP has paid towards her mortgage every four weeks and it's been flexible about letting Miss M make her mortgage payments during the calendar month rather than on a specific due date.

Platform said it had started new legal action in 2017 over the mortgage arrears because Miss M wouldn't complete an income and expenditure when her six month payment arrangement expired. And then Miss M wouldn't discuss setting up a new payment arrangement to clear her arrears. Miss M was unhappy with Platform's responses to her complaints and brought her complaints to us.

Our investigator looked into Miss M's concerns. She thought we couldn't look at part of the complaint, concerning the legal action in 2012/13 and Platform's decision to apply these costs to the mortgage account. Platform wouldn't give its consent for us to look into these issues because it said these issues had been brought to us out of time. Platform said it had issued a final response on these concerns on 28 January 2015 and Miss M hadn't brought the matter to us within six months of the letter. Our investigator agreed these issues had been brought to us too late and weren't something we could look into.

However, she looked into the other issues Miss M has complained about. To summarise our investigator's findings briefly, on balance she didn't think that Platform had acted unfairly or unreasonably in its treatment of Miss M and she wasn't going to ask Platform to do anything differently.

Miss M disagreed. This case has now been passed to me for a final decision.

my findings

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

It's clear that Miss M feels very strongly about her complaint. She's very unhappy about the way Platform has treated her, and the way it's managed her mortgage account, over a number of years. Our file of evidence related to this complaint is considerable - and I'd like to reassure both parties that I've looked at and thought about all the information that's been provided. I've also listened to call recordings of discussions between Miss M and Platform as part of my review of this complaint.

Miss M has raised a number of further issues and questions she'd like us to respond to. We're an informal dispute resolution service, set up as a free alternative to the courts. In deciding Miss M's complaint, I've focused on what I consider to be at the heart of the matter rather than commenting on every issue in turn. This isn't intended as a discourtesy to Miss M. Rather it reflects the informal nature of our service, and my role within it.

Miss M has queried whether the Financial Ombudsman Service has to follow the law when we reach our findings. When considering Miss M's complaint, I've taken relevant legislation and regulation into account. I've also considered industry best practice. But I'm not constrained by any of these factors. Our rules enable me to look at complaints on an individual basis, and to decide what I think is fair and reasonable in the specific circumstances of this complaint.

legal action in 2012/13 and associated legal fees

Miss M has complained that Platform took unnecessary legal action over mortgage arrears in 2012/13. She's also said that Platform should refund the costs of this action to her.

Platform wouldn't give its consent for us to look at this issue because it says Miss M complained to us more than six months after it gave its final response. I note our investigator also thought that this complaint had been brought to us out of time.

I issued a jurisdiction decision on 10 September 2018 in which I set out why I'd determined that I wasn't able to look at this issue. I found this part of Miss M's complaint had been brought to us out of time. I still think that's the case.

Platform's decision to dismiss previous action and send a new calling up notice in 2017

Miss M's complained about Platform's decision to start legal action against her in 2017. She feels this was unfair because she'd been making her mortgage payments and had repaid half of her arrears.

Miss M's thought her existing repayment arrangement could carry on indefinitely as long as it was higher than the amount she'd agreed to pay after Platform took court action in 2012/3.

Platform's said Miss M's repayment arrangement had expired, having run for six months. It wanted Miss M to update the details it had about her income and outgoings so it can sort out a new arrangement to pay back her arrears. Miss M said she couldn't as her benefits were being reviewed. She was in dispute with the DWP about her benefits so she said she couldn't give Platform this information. Miss M said she just wanted to carry on making payments at the same level as before but Platform wouldn't agree to this.

Platform wanted to update the income and expenditure information it had. I think was a reasonable request. It wanted to make sure that any new payment arrangement was still affordable to Miss M. Platform's said it was also very concerned about the rate at which mortgage arrears were being repaid. With payments at the level being made by Miss M and the DWP, arrears wouldn't be repaid within the mortgage term. As a general principle it's reasonable for a lender to expect arrears to be repaid within the mortgage term. Where this looks like it won't be possible, a lender will want to explore all its options and one potential option is legal action. I accept that Miss M felt that she was paying enough towards the mortgage arrears, but as the amount of SMI reduced, this will have meant she needed to pay more towards her mortgage. This may have ended up being a temporary situation- but at the time I don't think Platform can reasonably have been expected to know that.

I've listened to Platform's call with Miss M in July 2017. Platform spent an hour discussing Miss M's concerns in some detail. I think this call shows Platform genuinely tried to understand Miss M's current state of health and how it could support her paying her mortgage. At the end of this call Miss M said she needed time to check what details had changed before she could update her income and expenditure, and she felt tired having been on the phone for so long.

Platform agreed to set up another call, at a time that was convenient to Miss M to check if any of her income or outgoings had changed. As I've already said, I think it was reasonable that Platform asked Miss M for this information. And I'm satisfied that Platform was making a reasonable adjustment in the way it was interacting with Miss M. It seems to me that it was trying to give Miss M the space she needed to prepare for such a call, at a time that was agreeable to her.

The planned call didn't go ahead - and it doesn't seem to me from the contact history notes that Platform was responsible for this. Platform's call history shows it then went on to try to make contact with Miss M a number of times before a call was eventually made to Miss M in August.

I've listened the call recording of this follow up call. It was made early in the morning when Miss M had specifically told Platform she struggled with morning calls and she wanted to be called in the afternoon. This adjustment was directly related to her health condition. Miss M was very upset to be called early in the morning. She tells Platform in this call that she won't co-operate further with it, and says she's planning legal action against Platform.

Communication between Miss M and Platform seems to completely breakdown from this point. And I think it is this breakdown in constructive communication that ultimately leads Platform to decide to dismiss its previous action and send a new calling up notice in 2017 to protect its legal position. To be fair to Platform, by this point Miss M is refusing to speak to them and she doesn't have an agreed repayment arrangement. She's told Platform to speak to her solicitor because she won't speak with them anymore.

I can see why Miss M was so upset to be called early in the morning when she'd specifically asked not to be. I'll come on to this point below. But, overall, I don't think it was unreasonable in the circumstances that Platform chose to dismiss its previous action, and issue a new calling up notice in 2017. The evidence supplied by Platform shows it took this decision after careful consideration, and I can see that it thought about Miss M's state of health when deciding its next steps.

Miss M's said she's already taken legal advice about whether Platform has followed the correct legal course of action under Scottish law. This may be something that Miss M chooses to pursue in court but from the information available to me I don't think Platform's actions are unreasonable. On balance, I can see why Platform may have felt it had no choice if Miss M was no longer seemingly willing to co-operate with it to arrange repayment of her mortgage arrears.

has Platform treated Miss M's fairly and taken into account her illness?

Miss M says she thinks Platform has breached the Equality Act 2010 by not making reasonable adjustments for her because she suffers from a serious chronic health condition. One reasonable adjustment Miss M has said she wants is for her arrears to be capitalised. Another she's mentioned is that Platform expects Miss M to attend to financial matters at short notice and this is difficult for her due to her suffering from memory loss and 'cognitive decline'. And she considers that under the Act she is guaranteed not to be harassed by her mortgage lender.

It isn't for me to determine whether Platform has broken the law by breaching the Equality Act. We're not a court of law and we have different powers to a court. However, I am able to consider whether – taking into account the law - I think Platform has acted fairly and reasonably in its treatment of Miss M. And I've thought carefully about whether it made reasonable adjustments as requested by Miss M for her health conditions. Such adjustments, if reasonable, are made to help give Miss M access to the same banking facilities as any other customer, regardless of a disability or chronic health condition considered to be a protected characteristic covered by the Act.

Miss M's mortgage account is managed between a sensitive & vulnerable team and a customer care team. This seems to depend upon whether Miss M is maintaining her payment arrangement plans. Platform's contact notes indicate its awareness of her health condition and that it is a factor being taken into account when making decisions about managing the arrears on the mortgage account.

Miss M did make it clear to Platform that she would prefer not to discuss her mortgage in the morning because she has cognitive impairment and problems sleeping. Essentially she was asking for a reasonable adjustment in the way Platform contacts her.

But, despite knowing this, Platform calls Miss M early in the morning in August to discuss her mortgage arrears. Miss M is clearly extremely upset by this call and the call handler doesn't seem to be aware of Miss M's situation, or her requested adjustment, when making the call. This is an important communication in this complaint, as it seems to trigger the end of constructive communication between Miss M and Platform. I think much of this complaint could have been avoided if Platform had followed Miss M's request to be called in the afternoon.

But even though Platform shouldn't have called Miss M early in morning, I don't consider this one call to be enough to change the outcome of this complaint. By the time Platform called in August, Miss M had missed a number of opportunities to update Platform at a time convenient to her. I think Miss M knew that she needed to provide her updated income and expenditure to Platform, and I don't think Platform was unreasonable in following up with Miss M to try to get this information. Platform had been trying to obtain this information since June 2017. And, while Miss M's arrears had reduced, she is still behind with the repayment of her mortgage and needed to be in touch with Platform to set up an agreed arrangement to repay her arrears.

Taking into account regulation and legislation, I don't think Miss M's state of health means that Platform should have to depart from its usual commercial decision making process, and conduct as a responsible lender, when deciding whether or not to agree to capitalise mortgage arrears. If Platform is concerned that Miss M cannot afford such an arrangement, and she doesn't meet its lending criteria, then I think it's reasonable that it doesn't set up such an arrangement, regardless of whether Miss M has a protected characteristic. It wouldn't be a reasonable adjustment to tie her into a higher mortgage payment she couldn't afford.

has Platform harassed Miss M and tried to force her to make payments that are unaffordable?

Miss M complains that Platform has harassed her by sending excessive letters and calling her multiple times. She says its actions have made her state of health worse.

I've looked at all the contact Platform had with Miss M from June 2017, when her repayment arrangement expired. I've considered whether this contact is excessive and whether it could constitute harassment.

Overall I don't think Platform's efforts to get in touch with Miss M are excessive. The number of times Platform tried to get in touch does increase as time goes by. I think this is understandable, but I don't think it equates to harassment. Miss M is outside of any agreed payment arrangement, has mortgage arrears of around £3,000 and she doesn't seem to be engaging with Platform to set up a new payment plan for the mortgage arrears.

I don't think any consumer should be harassed by their mortgage lender- regardless of whether they have a protected characteristic under the Equality Act. But Platform has a regulatory obligation to inform Miss M that her mortgage is in arrears, how much debt she owes, and what the consequences of non-payment could be, as well as to try to come to an arrangement for the arrears to be cleared. The way that Platform communicates this information to Miss M might be different to its other customers, for example, it should only call her about her arrears at certain times of the day, and she may ask it to limit the frequency of calls. But I think it's reasonable that Platform has been informing Miss M by letter about the amount she owes under her mortgage contract, and the fact that she's outside of an agreed repayment plan.

changes to DWP payments

Miss M is frustrated that Platform doesn't tell her how much benefit payment has been paid to her mortgage each month. She considers that it has failed in its duty to keep her informed of what she needs to pay towards her mortgage payment. Platform says this isn't its responsibility and that Miss M should actively manage her own mortgage account.

I can see why this situation is difficult for Miss M to manage. The payments made by the DWP, and the extra amount that she pays are made four weekly. Yet mortgage payments are typically calculated into 12 monthly payments. Platform has agreed to let Miss M to make payments to her mortgage on any day in a month (rather than on a set due date). It says it has made this adjustment to try to help Miss M manage her mortgage. This seems reasonable to me.

But I don't think Platform has a duty to tell Miss M what payments third parties have made to her mortgage account. I do think that Miss M is ultimately responsible for making sure she has met the terms of her mortgage contract, which is to make her mortgage payments in full each month. Even if this means Miss M needs to contact the DWP or Platform to check the amount she needs to top up every four weeks.

If Platform has any suggestions of how it could make this process easier for Miss M, it should be pro-active and tell her. For example, if there is a telephone or online banking service that could help Miss M get up-to-date information about her mortgage account.

I'm also aware that Miss M's said that her memory is poor as a result of her health condition. I appreciate that Miss M's state of health makes it harder for her to manage her mortgage and I think Platform has been reasonably sympathetic on this point. It may be that Miss M might choose to look into getting support from a third party to help her manage her financial affairs. Our investigator can help make some suggestions of where Miss M might get further help, if this is of interest to Miss M.

capitalising arrears

Miss M says that Platform has twice promised to capitalise her mortgage arrears, only to later go back on its word. Platform says it hasn't ever promised to capitalise the arrears. It agreed to review Miss M's request to capitalise arrears on a number of occasions, but that it wanted her to meet its lending criteria before it would agree to this.

I've looked at the evidence to see if there's a record that Platform ever gave Miss M the impression that she was 'guaranteed' to have her arrears capitalised. I don't doubt Miss M's recollection that this is what she felt had been promised to her. But, I haven't found any evidence that supports her recollection. I think it more likely that Platform agreed to review Miss M's request to capitalise her mortgage arrears again but I think it's very unlikely that a promise would have been made to do this in the future.

Miss M missed a mortgage payment in May 2017. And, this meant that Miss M didn't have six consecutive months of making her mortgage payments. Platform has asked that Miss M makes her agreed mortgage payment in full for six months before it will agree to capitalise her arrears. I think this is reasonable. Platform, as a responsible lender, wants to be sure that Miss M can afford a higher mortgage repayment every month before it will agree to increase the balance of her interest only mortgage over the entire mortgage term.

For the reasons I've given, I don't think Platform acted unfairly in refusing to capitalise Miss M's arrears in mid-2017 when her six month repayment arrangement expired.

credit file reporting

Miss M has complained that Platform has incorrectly reported her mortgage conduct on her credit file. Our investigator asked for more information about this part of Miss M's complaint but we haven't received any further information on why she believes the reporting of her mortgage is wrong. For the avoidance of doubt, I haven't looked at this part of her complaint in this final decision.

conclusion

I know this will be a disappointment to Miss M but I don't uphold her complaint.

I hope this decision helps Miss M to get some sense of closure from her previous concerns about Platform. It's very important that Miss M engages with Platform and tries to find an affordable way to repay her mortgage arrears. If Miss M doesn't she could face further legal action from Platform.

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 Miss M to accept or reject my decision before 28 October 2018.

Emma Peters
ombudsman