

## **The complaint**

Mr F complains that TSB Bank plc (trading as Whistletree) granted a Covid-19 payment deferral on his joint mortgage account without his consent.

## **What happened**

Mr F holds a joint mortgage with his ex-wife (Mrs F). When they separated in 2009 Mr F moved out of the security property. Mrs F remains living there and makes the mortgage payments.

In response to the Covid-19 pandemic, the Financial Conduct Authority (FCA) released specific guidance for mortgage lenders – including allowing customers to defer up to a maximum of six-monthly mortgage payments. Where a payment deferral is offered, the lender needs to ensure that a consumer is given adequate information to understand any implications this may have.

In April 2020 Mr F told Whistletree that he did not consent to any requests for a payment deferral that may be made by his ex-wife. Mr F was concerned that any deferred payments combined with a downturn in the housing market could push the property into negative equity and have financial implications on him upon its sale. He also says that his ex-wife's financial circumstances were not significantly impacted by Covid-19, so any payment deferrals were not necessary.

Whistletree approved a payment deferral for May 2020 at the request of Mrs F. When Mr F received a letter about this, he called Whistletree to raise his concerns which led to a formal complaint being made.

Whistletree responded to the complaint which wasn't upheld. It said the FCA had relaxed the payment deferral rules in response to Covid-19, allowing agreement by just one party to the loan during these special circumstances. Whistletree offered to cancel the payment deferral if Mr F was able to maintain the contractual monthly payments himself. He didn't agree to this, so the payment deferral remained in place. A further payment deferral was agreed for June 2020 at Mrs F's request.

Mr F says he subsequently called the FCA to seek clarity on the guidance and received conflicting information in relation to joint account holder consent. Mr F raised a further complaint about this which Whistletree escalated to TSB. Mr F says he had to chase Whistletree on a few occasions as promised call backs weren't adhered to. It wasn't until March 2021 that he discovered TSB had already reviewed the complaint and the decision remained unchanged. Mr F was unhappy he wasn't made aware of this sooner.

Unhappy with Whistletree's response and how it handled his complaint, Mr F brought his complaint to our service. An investigator looked into things and upheld the complaint in part. She thought Whistletree had acted in accordance with the rules set by the FCA when agreeing the payment deferral. So that part of the complaint wasn't upheld. But she did think that Mr F should be compensated for the shortfalls in the service received. She thought £150 was fair in the circumstances.

Mr F didn't agree. He provided various reasons why he thought Whistletree's actions went against the law and the FCA's rules and principles. Our investigator responded to Mr F's concerns, but her option remained unchanged. Mr F remained unhappy and asked for the matter to be considered by an ombudsman.

### **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.

It's clear Mr F feels strongly about what's happened and I appreciate he's gone to a lot of effort to support the arguments he's made. I've given careful consideration to all of the submissions made before arriving at my decision. But I won't be addressing every single point raised. I've instead concentrated on the issues I think are central to the outcome of this complaint.

When reaching my decision, I've considered whether Whistletree has acted in accordance with the FCA's guidance to firms during the Covid-19 pandemic. It is not my role to comment on or determine on how that guidance has been decided by the FCA.

The FCA guidance said that where a consumer is experiencing or is reasonably expected to experience difficulties making their mortgage payments due to Covid-19, a lender is expected to grant a consumer a payment deferral.

The guidance makes clear that in these circumstances, the customer should be granted a payment deferral without the need to make detailed enquiries into their circumstances. This was so firms could quickly and easily react to the volume of customers needing help at the time. Lenders were also generally expected to offer a payment deferral in circumstances where only one joint borrower's income was impacted. The guidance doesn't say that both parties need to confirm this.

Mr F says that Mrs F's financial circumstances weren't impacted by the Covid-19 pandemic, so she didn't need the payment deferral. Mrs F is not a party to this complaint so I'm unable to comment on her personal circumstances here. But in any event, as mentioned, Whistletree wasn't required by the FCA to assess affordability. So, I can't say it did anything wrong by approving the payment deferrals without carrying out further checks.

Mr F and Mrs F wanted different things here. Whistletree can't favour one customer's request over another. What it should do, is act in accordance with the guidance.

In this case the joint borrower living in the property, who was making the mortgage payments, contacted her lender for help during the pandemic. She asked for payment deferrals. In line with the guidance, this was granted.

I can understand why, from Mr F's perspective, he feels the deferred mortgage payments puts him into an unfair financial position and I do sympathise with the circumstances he's explained in regards to a potential shortfall that he'll be partly liable for upon sale of the property. Whilst I don't doubt these specific circumstances may apply here. It's not something I can hold Whistletree responsible for, as I can't say it has acted against the guidance or has done anything wrong when agreeing to the payment deferrals. Any lasting implications of the payment deferrals in relation to any marital dispute is a civil matter between the parties and not something that Whistletree has any responsibility for.

The guidance says that during the initial (maximum) six months deferral period, a borrower's credit file shouldn't be impacted by any payment deferrals. The alternative to a payment

deferral would mean payments being missed. The account would go into arrears and this would affect both Mr and Mrs F's credit files. So, I don't think it was unreasonable for Whistletree to look to avoid this, by granting payment deferrals. Especially as Mr F said he would not make the payments himself.

Whistletree made Mr F aware of the payment deferrals by writing to him at his home address in the preceding months. I consider the content of these letters to include adequate information to understand any possible implications and next steps, including re-calculating the contractual monthly payments once the deferral period ended.

Although not part of his initial complaint, Mr F has more recently said that Whistletree failed to explain the implications of capitalising the deferred payment amounts. I've asked Whistletree to confirm the necessary letters were sent. It has provided copies of the letters (following both deferrals) sent directly to Mr F on 18 May 2020 and 16 June 2020. I'm satisfied both letters met the requirements previously explained by our investigator.

Mr F has given various reasons why he thinks the actions of Whistletree were unlawful. As I've explained it hasn't acted unfairly or contrary to the guidance set by the FCA. Any concerns that the guidance itself is not fit for purpose is not something I have the power to consider.

So, when considering everything, I can't say Whistletree did anything wrong by granting the payment deferrals and I'm satisfied it did enough to keep Mr F, as the joint borrower, informed about the agreement.

### **Putting things right**

When considering the general service provided, our investigator thought Whistletree could have done more in the circumstances. She said, knowing what it did, it could have discussed the option of Mr F making the payments himself sooner to mitigate any effects of the payment deferral. She also said that Whistletree could have been in clearer about the provision for agreement by one party and that it caused unnecessary distress and inconvenience by not responding to Mr F's concerns sooner. She thought £150 fairly compensated Mr F.

I won't be awarding any more. I say this because I'm not persuaded Whistletree acting differently in relation to the first point would have made a difference in the circumstances, as Mr F wasn't willing to make the payments himself in any event. I do agree there was an element of trouble and upset caused in relation to the other points mentioned, leading to Mr F having to make unnecessary telephone calls to the FCA and Whistletree to follow up on the outcome of his complaint. When considering everything I agree £150 is fair and reasonable in the circumstances to reflect the impact on Mr F.

### **My final decision**

My final decision is that I uphold this complaint direct TSB Bank plc (trading as Whistletree) to pay £150 compensation to Mr F.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 5 July 2022.

Arazu Eid  
**Ombudsman**