

The complaint

Mr and Mrs H complain about various aspects of a second charge mortgage (secured loan) they took out with Norton Home Loans Limited ('Norton') in May 2017.

What happened

Mr and Mrs H took out a loan of £33,000 secured on their property in May 2017 to be repaid over 16 years. They complain that Norton has failed to provide them with statements which accurately portray their secured loan account and that there are errors on the statements. They say that fees, charges and additional interest have been added to the account and that there is no explanation for why these have been incurred. Mr and Mrs H also complain that direct debits weren't taken on the agreed date which resulted in the direct debit being returned and charges being placed on the account. In respect of the direct debit for June 2021, they say that they did not cancel this as suggested by Norton.

Mr and Mrs H say they fell into arrears in February 2019 due to financial difficulties but Norton then nearly doubled the direct debit amount to try and catch up with the arrears. They say that they find it incredible that it would be an acceptable solution to increase a monthly payment for someone already in financial hardship as it would only place them in further hardship. Mr and Mrs H say that Norton eventually agreed to reduce the direct debit to around £430 a month, which was the contractual monthly payment ("CMP") of around £380 plus £50 on top of this towards the arrears.

Mr and Mrs H say that this carried on for some time until Norton called to discuss the capitalisation of the arrears, which it said it had to offer to help customers struggling financially to get back on track. Mr and Mrs H questioned why this had taken two years and were told that customers must make six months' continuous payments towards arrears before they would offer this facility. Mr and Mrs H have questioned why Norton didn't offer this earlier and why they made 22 months of payments towards the arrears before they were offered help. They say that the arrears were cleared before the case was due to be heard in court, yet the court hearing still went ahead, therefore they should not have to pay the legal costs and the amount of £1,082.80 charged for this is not fair and just.

Mr and Mrs H say that the lack of correct information on the statement has led to severe confusion and placed them into arrears. They say Norton's poor practices have placed them in severe financial hardship to ensure the loan repayments were paid. The threatening letters from Norton regarding repossession have caused mental stress especially when Mr and Mrs H feel that this has been caused by mistakes on Norton's part. They would therefore like all interest and charges to be refunded and for the arrears to be cleared since the capitalisation as these have not been payable due to incorrect figures. They would also like financial compensation for bounced direct debits and bank charges incurred throughout the period of the loan.

Norton says that any interest or charges to the account are in accordance with the terms and conditions of Mr and Mrs H's agreement and its Tariff of Charges. It says that the figures are correct and that it has provided a full breakdown of these to Mr and Mrs H. Norton also says that it believes it has treated Mr and Mrs H fairly at all times and remains keen to help them.

Norton says that Mr and Mrs H have continued to dispute various charges despite these being explained to them. Norton says that a software issue caused an anomalous figure to be displayed for 1 May 2020 on a partial statement sent to Mr and Mrs H. However, it says this didn't impact the balance or correct figures.

In relation to the capitalisation, Norton said that capitalisation wasn't offered earlier due to an oversight as this would normally be offered following six consecutive payments being made on time.

Norton says that Mr and Mrs H have subsequently stated that they are unwilling to pay as they believe all of their statements are incorrect. However, it says the account was already in arrears prior to this issue. Norton says that Mr and Mrs H have refused to make payments on various occasions citing various reasons. It says that this has resulted in additional charges being incurred and further action as Mr H has refused to engage with it.

Our investigator looked into this complaint and found that Norton had generally not treated Mr and Mrs H unfairly. However, he found that a clerical error on one of the statements had caused sufficient concern for Mr and Mrs H to question the accuracy of the statement transactions. The investigator also found that Norton failed to offer capitalisation after the sixth consecutive payment and that Mr and Mrs H continued to make the payments for a further 11 months before capitalisation was offered. This meant they paid additional interest on the arrears and paid higher repayments over that period.

In order to put things right, the investigator recommended that Norton should review whether Mr and Mrs H would have been better off if the arrears had been capitalised after the sixth consecutive payment and, if so, refund the difference. He also thought Norton should pay Mr and Mrs H £200 for distress and inconvenience caused for failing to offer capitalisation when it should along with the impact the clerical error had on their view of the accuracy of their statements.

Mr and Mrs H disagreed with this so the case has come to me to make a decision. They say that the legal costs are not fair or just as the reason the case was heard in court after the arrears were paid was down to Norton and not them. So they say they should be refunded the payments they have made towards the legal costs. They also ask for £150 in costs for loss of earnings, fuel and parking for Mr H having to attend court.

Mr and Mrs H also say that the two clerical errors found by the investigator show wrongdoing on Norton's part so they have little confidence that any refund will be calculated correctly. Mr and Mrs H question why Norton didn't offer the redress recommended by the investigator when providing its final response and say that, had it been more understanding and reasonable at the time of the complaint, Mr H wouldn't have felt the need to withhold payment and a lot of financial and emotional stress could have been avoided. Mr and Mrs H say that Norton also signed the terms of the agreement and they feel that the clerical errors mean that it has failed to abide by these. They therefore say that it would be fair for Norton to charge no interest, charges or fees on the loan.

Norton has also responded to the view. In relation to the capitalisation, it says that Mr and Mrs H hadn't made 17 consecutive payments to the account at the time of capitalisation as the payment due in March 2020 wasn't made until 14 April 2020 which meant that capitalisation wasn't an option at that stage as six months' payments hadn't been made consecutively. Therefore, the six-month period had to re-set. It says that this policy is set by its funders and it isn't able to deviate from this.

For the sake of clarity, I should say that the complaint relating to Mrs H's bank details being passed to Mr H was dealt with in separate complaint by this service so I won't be considering it here. Likewise, although our investigator dealt with whether the loan had been mis-sold, Mr and Mrs H haven't asked this service to look into this against Norton. They were advised when making an additional complaint to Norton about this aspect that this should be directed

to the broker who sold the loan as Norton wasn't responsible for the sale. Therefore I won't be considering any complaint about mis-sale in this decision.

I set out in my provisional decision dated 2 August 2023 (reproduced below) why I was minded to partially uphold the complaint and direct that Norton should remove from Mr and Mrs H's account each of the 'unpaid payment fees' of £15 for 4 August, 1 September, 1 October and 1 November 2021, the LPC Agent fee of £120 and the fee for the Consent order of £108 and recalculate the account as if these had not been charged.

I invited both parties to let me have any further comments and evidence by 30 August 2023. Norton responded to say that it accepted the provisional decision. Mr and Mrs H made no further submissions.

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 considered the responses to my provisional decision dated 2 August 2023, I remain of the view that Norton should remove the fees specified above from Mr and Mrs H's account.

In my provisional decision I set out the following:

"Having looked at the evidence I disagree with the investigator's view and I've explained my reasons further below in respect of the individual issues raised. I have not commented on each individual point raised in this decision and have dealt with the broad concerns raised by Mr and Mrs H. However, I would like to reassure them that I have considered all of the issues they have raised when reaching my decision.

Errors in statements

Mr and Mrs H have complained about a number of the figures contained on the statement of transactions and how the balance and arrears have been calculated at various times, which they say are errors. I have addressed some of the specific points raised below but I don't intend to address each incorrect figure they have mentioned separately here. However, I want to reassure Mr and Mrs H that I have considered all of their submissions and the statement as a whole in determining whether it is accurate.

Mr and Mrs H say that the account has shown on the statement as being in arrears even though payments were made on the agreed date. They refer to the entry of 1 June 2017 which shows interest of £308.96 but then shows £380.37 arrears despite the payment being made on time.

In relation to the interest charged on 1 June 2017, I can see that the first transaction on that date (at the outset of the loan) was a debit of £308.96 for interest. This increases the balance by that amount and shows a figure of £380.37 in the 'Arrears' column of the statement. The second transaction of the same date shows a payment received of £380.37. This reduces the balance by that amount and the figure in the 'Arrears' column then reverts to zero.

These two transactions are essentially simultaneous, so monthly interest is added to the account at the same time the CMP is made. So, although the arrears column contains a figure, this is balanced out when the CMP is made on the same date. By way of comparison, I can see that for the two transactions on 1 January 2018, they have been added to the statement the other way around, so it appears the mortgage

is in credit by £380.37 when the CMP is paid but this is again balanced out by the interest debited on the same date.

I don't think there is anything unusual or incorrect in the way this has been recorded in the transaction statements and I am satisfied that this is in accordance with the loan agreement and with standard mortgage practice.

The CMP is more than the interest charged each month as it covers some of the capital borrowed in addition to the interest. Due to the way this is calculated over the term of the loan, the proportion of interest making up the CMP will be higher at the beginning than the end of the loan, and I can see this is reflected in Mr and Mrs H's statement.

Mr and Mrs H have also complained that the entry on the statement of 1 May 2020 shows the arrears as £972.66 but on 31 May 2020 a payment of £430.37 was made which brought the arrears to £987.03. Mr and Mrs H spoke with someone from Norton to explain the discrepancies who explained that this was a clerical error which didn't affect the balance and that a new statement had been sent out with the incorrect entry missing. Mr and Mrs H explained that they would not agree to repay the arrears at that time due to the discrepancies.

Norton says that a software issue caused an anomalous figure to be displayed on a statement sent to Mr and Mrs H. However, it says that this was not included when calculating the balance and didn't affect the overall outstanding balance or correct figures.

I've looked at the statement which Mr and Mrs H refer to which starts on 1 May 2020 and shows that the arrears on that date were £972.66. On 31 May 2020, a direct debit of £430.37 was taken and the arrears shows as £987.03. The full statement of account shows the arrears to be £1,417.40 as of 30 April 2020 and the next entry after this shows that, once the payment is made on 31 May 2020, this reduces to £987.03.

Norton is unable to explain how the figure shown on the partial statement for 1 May 2020 was calculated, save that it was the result of a software issue. I can see from the full statement that no transactions actually took place on the account on 1 May 2020. So it seems possible that because this date was selected as the start date of the partial statement to be sent to Mr and Mrs H, the opening balance and arrears were somehow calculated taking into account daily interest as of that date and that this was simply a snapshot of the figure owed on that specific date.

In any event, whilst it is not clear how the figure on the partial statement has been calculated, I am satisfied that the full statement of transactions gives an accurate reflection of the balance and arrears. Further, I am satisfied that the balance and arrears were unaffected by the 'snapshot' figure provided as the amount of arrears owed on 1 May 2020.

More generally, Mr and Mrs H have said that the figures shown on the statements don't add up as the cumulative arrears balance shown does not accurately reflect the amounts which should have been added. For example, they say that on 4 August 2021, the arrears are stated as £822.60 and an amount of £274.16 was due on 31 August 2021 which should have given a cumulative arrears balance of £1,096.76 but this is shown as £1,211.40.

I can see that the figure of £274.16 debited on 31 August 2021 was for interest. But the CMP due on that date was £388.80. The CMP is made up of both some of the capital borrowed and interest, the amount for which is calculated at the start of the loan. As the CMP wasn't paid on 31 August 2021, the arrears increased by £388.80. This is why the arrears increased from £822.60 to £1,211.40 and I am satisfied this is

accurate. There are a number of other similar examples provided by Mr and Mrs H. As set out above, I do not intend to go through each of these separately but the same principle applies.

I can see that Mr H asked for someone to go through the fees with him and that Norton agreed to do this. I've listened to the calls where Norton explained some of the entries on the statements to Mr H at his request including various fees and the outstanding balance; the anomalous figure from 1 May 2020; the fact that where there were two transactions on the same day these balanced out and were correct; about what constituted arrears and the fact that the CMP becomes arrears if not paid in accordance with the contract; the costs added on top form part of the arrears as they are owed in line with the terms; that the arrears were not extra and were already included in the outstanding balance when the arrears were capitalised (and were just the part which should have been paid but hadn't been).

In light of the above, I am satisfied that the figures shown on the full statement of transactions are accurate and that the balance and arrears have been calculated correctly in line with the transactions which took place. Although it is unclear how the arrears figure in the partial statement for 1 May 2020 was calculated, this had no effect on the overall balance and arrears owed.

I accept that Mr H had queries about the figures, but I can see that Norton attempted to explain the statements to Mr H. Whilst I understand that Mr H didn't accept Norton's explanation, I don't think Norton treated him unfairly and I don't think Mr and Mrs H's concerns about the accuracy of the figures shown on the statements are made out. Likewise, I am satisfied that the fact Mr and Mrs H didn't accept Norton's explanation in relation to the figures didn't mean they were no longer liable to pay their CMP in line with the loan agreement. Therefore, I won't be asking Norton to do anything further in respect of this.

Payment date

Mr and Mrs H have also complained that the statement of account from 2 May 2017 to 30 November 2021 says that the payment due date for that period was 31st of the month. However, they say that some direct debits were taken out before 31st.

I can see from the offer documents that at the outset of the loan the payment date agreed was 1st of every month. The contact notes show that in February 2018 the direct debit was cancelled and Mr H indicated he wanted to set up the new direct debit for 10th of every month and that is reflected in the statement transactions from March 2018. On 9 January 2019, Mr H cancelled his direct debit and it was set back up again with the payment date being changed to 28th of every month. This is again reflected in the statement transactions from February 2019. On 4 June 2019, Mr H wanted the payment date to be changed to the last day of every month and I can see this was changed and reflected in the transaction statements from June 2019.

The statement of account referred to by Mr and Mrs H would have shown the payment date at that time, which was the last day of every month, and not what had been agreed prior to that. Having looked at the statement of transactions, I am satisfied that the direct debits were all taken on the date as agreed at that time.

Direct debit for June 2021

Norton says that the direct debit for the CMP due on 30 June 2021 was cancelled by Mr and Mrs H. It therefore charged a fee of £15 as the CMP was returned unpaid. Mr

and Mrs H have disputed this and said that they didn't cancel it; it also appears that they made enquiries with their bank about this.

I've seen documentation provided by Norton to show that they were advised by BACS that the direct debit for Mr and Mrs H's loan repayment had been cancelled by the payer on 29 June 2021.

I can see from the contact notes that Mr H spoke with Norton on 12 July 2021 and said that until proof was provided that they had cancelled the direct debit, he refused to make the payment. A copy of the BACS notification was sent to Mr H advising that this is what was received by Norton and that this was why the £15 fee had been charged.

On 14 July 2021 Norton contact Mr H again. He said he hadn't received the email with the evidence that the direct debit had been cancelled and said he would not pay anything until this was sorted. Norton asked if he could pay the CMP and then the fee could be discussed once he had spoken to the bank but Mr H said that he wasn't paying anything. He was advised that a further £15 fee would be due as the payment was over ten days' late and he reiterated that he wasn't paying anything. No payments were made after this until February 2022 when the arrears were cleared shortly before a court hearing for possession was listed.

I accept that Mr and Mrs H disputed that they had cancelled the direct debit in June 2021 and that they therefore should not have to pay the £15 fee in respect of this. However, Norton wasn't responsible for the cancellation and if there was any dispute about the direct debit being cancelled in error then this should have been directed to Mr and Mrs H's bank.

I can see that Norton was instructed by BACS that the direct debit had been cancelled by Mr and Mrs H. It was therefore acting on the information it had received, which it provided to Mr H when requested. I can also see that Norton suggested to Mr H that he pay the CMP and that the £15 fee could be discussed once he had spoken to the bank but he refused to pay anything, to set up a new direct debit or to pay the CMP by another method.

The £15 fee was applied in line with the terms and conditions (which I have dealt with in more detail below) based on the information received by Norton. I am therefore satisfied that Norton hasn't acted unreasonably in respect of this issue. And I am satisfied that the application of the £15 fee didn't mean that Mr and Mrs H were no longer liable to pay their CMP in line with the loan agreement.

Fees, charges and additional interest

Mr and Mrs H say that there are a number of transactions on the account which they don't feel are correct. They say that the terms and conditions provided by Norton don't offer any explanation for the charges incurred and there is no reference to any penalty interest in the terms and conditions or in the offer document.

I've seen the terms and conditions of the mortgage which formed part of Mr and Mrs H's loan agreement with Norton. These have been signed by Mr and Mrs H on 29 April 2017.

In relation to the additional interest, clause 2.6 of the terms sets out "*You shall pay interest at the Rate of Interest on any amount not paid by its due date*". Clause 3.5 states "*All charges and costs added to the account will have interest added at the Rate of Interest until such time as they are paid*".

The contractual monthly payment ("CMP") for Mr and Mrs H's loan was calculated on the basis that all of the payments were made on time and in accordance with the

agreement. As Mr and Mrs H didn't make the payments on time and were in arrears on their mortgage, additional interest has been charged on the amount they were in arrears over the period they were in arrears. Likewise, when other charges were added to the account, these would also attract interest.

I've looked at the statement of transactions on the account and I can see that the additional interest charges have only been added where Mr and Mrs H were in arrears. So I am satisfied that this is in accordance with the terms setting out that interest would be payable on any amount not paid by its due date and on charges and costs added to the account.

Mr and Mrs H say that other entries listed as 'costs' have been accrued for varying amounts with no explanation as to why they have been accrued. They say none of the 'costs' seem to match with the tariff of charges.

Clause 4.1 of the terms sets out "*If you fail to comply with any provisions of the Agreement between you and us, you will be liable to pay Default Charges. Missing your Monthly Payments could have severe consequences including potential repossession of your home... It can also make your credit more expensive as you may incur Default Charges which were not anticipated at the outset.*" The definition of a default charge is set out at clause 1.8 of the terms as being "*a charge payable by you if you default on your obligations under the Agreement as specified in the Binding Mortgage Offer and detailed in our Tariff of Charges...*"

I've also looked at the Tariff of Charges which was in place at the time Mr and Mrs H took the loan out in 2017 until June 2021. These charges include a "*Monthly Administration Fee*" of £49 which "*is payable each month you do not make your contractual monthly instalment within 10 calendar days of the regular due date, to cover the costs associated with collecting payment. This fee will not be charged if any payment arrangement is agreed and maintained. We do not charge an additional fee in the event of an unpaid cheque or direct debit.*"

I can see on the statement of transactions for Mr and Mrs H's account that a charge of £49 has been added to the account on a number of occasions over this period and I am satisfied that these have all been occasions where the CMP had not been paid within ten days of the contractual payment date and are therefore in accordance with the agreement.

The tariff also included a "*Payment Arrangement Fee*" of £35 which "*is payable if we discuss and arrange a new payment plan with you for repayment of your outstanding arrears*".

The statement shows that Mr and Mrs H were charged this fee on 6 March 2019. This was because Mr H agreed to split the arrears over the following four months at that stage following an income and expenditure assessment. Mr H was advised of the fee over the phone at the time and sent a letter. Another charge of £35 was applied on 10 September 2019 as an income and expenditure assessment ("I&E") was carried out with Mrs H and she agreed to pay the CMP with an additional £50 to reduce the arrears (which were around £1,800 at this point). On 13 April 2021 the £35 fee was charged again as the CMP was changed in order to capitalise the arrears. I am therefore satisfied that these fees were all charged in accordance with the agreement.

Norton amended its Tariff of Charges in June 2021. The updated tariff set out that there was a "*Monthly Administration Fee*" of £15 which "*is payable each month you do not make your contractual monthly instalment within 10 calendar days of the regular due date, to cover the costs associated with collecting payment. This fee will not be charged if any payment arrangement is agreed and maintained.*" There was also an "*Unpaid Payment Fee*" of £15 which "*is payable if your contractual monthly*

instalment is returned unpaid. We do not charge an additional fee if further claims for that months [sic] payment are subsequently returned unpaid."

I can see from the statement of transactions that a charge of £15 has been added to Mr and Mrs H's account on a number of occasions after June 2021 and I am satisfied that these have generally been occasions where the CMP had not been paid within ten days of the contractual payment date and/or a direct debit had been returned unpaid and are therefore in accordance with the terms.

However, there are four occasions where fees have been charged which don't appear to be in line with the tariff of charges. The notes indicate that the direct debit was cancelled prior to the June 2021 payment, so the payment for June 2021 was returned unpaid and therefore this attracted an unpaid payment fee of £15 on 1 July and a monthly administration fee of £15 on 16 July as the CMP hadn't been made within 10 days.

The contact notes for 2 August 2019 state '*looks like DD hasn't been set up and July DD hasn't been attempted*'. So, as the direct debit was never reinstated, it is unclear why further unpaid payment fees have been charged on 4 August, 1 September, 1 October and 1 November as a payment was never 'returned unpaid'. It is accepted that a monthly administration fee of £15 would have been due for these months as the CMP wasn't paid within 10 days of the due date but 10 days hadn't elapsed at the time of the payments noted above. It also appears that this monthly administration fee was charged separately on 10 September and 10 November.

Norton has been asked to comment on this and says that the unpaid payment fee is applied if the payment is unpaid and not only if it is *returned* unpaid. It says that the wording of the Tariff of Charges is in the process of being amended.

Whilst I have taken what Norton has said into account, the wording of the terms at the relevant time was that the unpaid payment fee would be charged if the CMP was 'returned unpaid.' I note that the monthly administration fee is payable where a customer did not make their CMP within 10 days and there is no reference in the definition of this fee to it needing to be *returned* unpaid. I also note that the definition of the monthly administration fee in the previous Tariff of Charges said "*We do not charge an additional fee in the event of an unpaid cheque or direct debit.*" So I think it is a reasonable interpretation of the latter term that it would only become payable where the payment was *returned* unpaid. In the instances set out above, the payments had not been returned unpaid as there was no direct debit attempted. Therefore I am minded to find that Norton should remove these four fees of £15 along with any interest they attracted.

The tariff also included a "*Default Notice Fee*" which "*is payable if we have to send a default notice or notice before proceedings to you*" and a "*Solicitors Fee*" of £200 which "*is payable for administration of your account after it has been necessary to refer your account to Solicitors for further action to recover the outstanding debt.*"

I can see from the statement of transactions that Mr and Mrs H were charged a default fee of £35 on 11 October 2021 for sending a default notice. On 10 November 2021 a warning letter was sent before solicitors became involved. A second warning letter was sent on 4 January 2022 advising that the account would be referred to solicitors in seven days if no payment was received. No further payments were made so solicitors were instructed to recover the arrears and a solicitors' fee of £200 was added to the account on 13 January 2022.

Given that no payments had been made since May 2021 and Mr H had indicated that he wouldn't be paying these until the dispute about the direct debit from June 2021 was resolved, I don't think it was unreasonable for Norton to send the default notice

or instruct solicitors. And I am satisfied that the fees charged were in accordance with the agreement.

Financial difficulties

I can see that Mr and Mrs H didn't make their CMP (of £380.37) in January or February 2019. Norton tried to call them on numerous occasions for the payment during January and February 2019 without success. Mrs H called Norton on 18 February to advise that Mr H had been in hospital and that she would call to clear the arrears on 22 February, however this didn't happen. On 26 February, Mrs H called again to say that Mr H would make a payment that day to clear the arrears and that the direct debit for 28 February should be fine. No payment was made on 26 February and the CMP for February was also not made on 28 February.

Mr H contacted Norton on 1 March 2019 to apologise for the lack of contact but said that he had been in and out of hospital. He said that he would get paid on 4 March so would clear the balance then if he could or, if not, would do an I&E to come to a payment arrangement.

Mr H (who was paying the CMP from his account at this time) first entered into an arrangement for arrears owed on the account on 6 March 2019. I've listened to the call from this date and Mr H explained that he had been unwell and that he would need surgery and would be off work for up to three months. He said that his sick pay was paid in arrears which had caused problems for the last couple of months so Mrs H had made the last couple of mortgage payments due to this. However, he said the sick pay would now catch up and would be the same amount as his salary. Mr H asked if he could come to an arrangement to pay the arrears and an I&E was completed based on the figures he gave which showed a surplus. Mr H agreed to split the arrears (of around £800) over his next four payments which meant he would be paying £591.65 a month commencing 28 March 2019. He was advised that if anything happened in relation to his wages to contact Norton and they could come to another arrangement.

Mr H didn't suggest that he was in financial difficulties at the time this arrangement was made (or previously) and completed an I&E indicating that it was affordable. Therefore, I don't think Norton treated him unfairly but putting the arrangement in place at this stage.

The March 2019 payment was made but the CMP was again not paid in April 2019. Mrs H rang Norton on 30 April 2019 returning a missed call and said that the funds should have been available but Mr H must have forgotten to transfer the funds and that she would get him to call and make payment. Following this, efforts were made to contact Mr and Mrs H for the payment during May 2019 without success.

The CMP again wasn't made on 28 May 2019 and Mr H sent an email on the same date advising that he was in hospital recovering from surgery and was likely to be discharged on 30 May. He said that he "had been in no state to manage my finances nor take any phone calls." He requested that the April and May payments be made on 31 May. Norton agreed to this but advised that it was too late to set up the direct debit for 31 May so he would have to pay by card or by the payment link email it sent. Although Mr H indicated that he would make the payment on 31 May, this didn't happen.

On 4 June 2019, Mr H called in and said that he hadn't been able to get to the bank to transfer funds but that he hoped to do so by 7 June. However, this didn't happen and the June 2019 CMP was also missed. Mr H called on 8 July 2019 and paid £900 off the arrears (leaving an arrears balance of around £970) and said he would pay

the rest at the end of July 2019 along with the July CMP. This didn't happen and the CMP wasn't paid in July or August 2019 and a number of attempts to contact Mr and Mrs H were unsuccessful over this period.

Mrs H rang in on 9 September 2019 to come to an arrangement. At this point the arrears were £1,817.40. Mrs H said she had thought that Mr H was making the payments but he was still having health issues so she was taking over the payments. She said that Mr H's income was reduced as he did overtime when he was working.

I've listened to the call and Mrs H said that she couldn't afford to pay £591.96 (which was what Mr H had agreed to in March 2019). After completing an I&E Mrs H was told that she would only have to pay the CMP of £380.37. However, Mrs H indicated that she would rather reduce her other outgoings and pay more towards this loan as she didn't want to stay in arrears. She offered to pay an extra £50 a month of the arrears. She was advised by Norton that if she found that did struggle in future to let them know and Mrs H said she just wanted to get the arrears paid off. As this stage the direct debit was changed into her name.

At no stage prior to this did Mr or Mrs H mention that they were in financial difficulties and struggling to make their payments for that reason. Norton tried to contact them repeatedly when payments weren't made and this was largely unsuccessful. When they did manage to speak to Mr or Mrs H, they said that the arrears would be paid and didn't suggest that they were in financial difficulties, rather that the delay in payments was due to practical issues caused by Mr H being in hospital.

Mrs H didn't suggest that she was in financial difficulties at the time the second arrangement was made (or previously) and completed an I&E indicating that it was affordable. In fact Mrs H asked to pay an extra £50 towards the arrears during this call and Norton agreed to this but said to contact it again if this was unaffordable. Therefore, I don't think Norton treated Mrs H unfairly by putting the arrangement in place at this stage.

Save for a returned direct debit on 31 March 2020 (with the CMP being paid by card on 14 April 2020) the payments were maintained between September 2019 to March 2021.

Capitalisation of arrears

Mr and Mrs H say that they were told on 23 March 2021 that the figures would be calculated to amend the account before the March 2021 payment date and that the arrears would be added to the balance with a £35 fee. However, they complain that the balance did not increase by any amount on the statement of 31 March 2021. They also complain that they weren't given the opportunity to capitalise the arrears earlier.

On 23 March 2021, Norton spoke with Mr H about capitalising the arrears. I've listened to this call where it was explained that capitalisation was better for him and that it was being offered now as Mr and Mrs H had been paying increased payments for six months so it wanted to work with them. Norton said that this would mean a slight increase in the CMP but that this would still be less than they were paying now. Norton explained that if they acted quickly they might get this in place for the March payment but that it couldn't guarantee this.

Mr H indicated that he wanted to read through paperwork and this was sent out to him. I've seen the letter from Norton to Mr and Mrs H dated 23 March 2021 in relation to capitalisation of the arrears and amending the repayments. The letter states that the figures have been recalculated to amend the account before the next payment was due on 31 March 2021. It also states that once the enclosed authority had been

returned, the arrears would be added to the balance along with a £35 fee for capitalisation and the loan would be rescheduled at the same interest rate over 147 payments.

I have seen Mr and Mrs H's acceptance form for the capitalisation of arrears which has been signed and dated 11 April 2021. Norton has confirmed that it received the paperwork back on 13 April and the arrears were capitalised on that date along with a £35 fee. This meant that the new CMP was £388.80 and the account no longer showed in arrears.

Having listened to the call, it is clear that Norton didn't guarantee that the account would be amended before the March 2021 payment date, in fact it said it couldn't guarantee this. Given that Mr and Mrs H didn't return the acceptance form until after this payment was due, it would have been impossible for Norton to put this arrangement in place any earlier. The fee was charged and the account recalculated on the date that Norton received the signed acceptance form and this is in line with what I would expect.

In relation to Mr and Mrs H's complaint about the balance not changing on the statement, I am satisfied that this is accurate. As explained to Mr H on the phone by Norton previously, the arrears figure already forms part of the outstanding balance; it is simply the part of the balance which is overdue and hasn't been paid in line with the loan agreement. When the arrears are capitalised, this simply means that they have been spread out over the existing term so they now form part of what is owed under the CMP and are no longer reported as arrears. Therefore, I wouldn't expect the balance to change once the arrears have been capitalised.

In relation to when capitalisation should have been offered, Norton says that this would normally be offered following at least six consecutive payments under a payment arrangement being made on time. It has provided a copy of its policy in relation to this. I can see that, following the arrangement set up with Mrs H in September 2019, payments were made on time in September, October, November and December 2019 and January and February 2020. So it appears that six consecutive months of payments had been made as of 28 February 2020 and Norton now accepts that capitalisation was not offered in accordance with its policy.

I should say that capitalisation will not necessarily save the customers money, as the arrears will be spread over the full term of the loan which means extra interest will be payable as the borrowing is over a longer term. However, it will assist their credit profile as the account will no longer be showing in arrears and they would also not be paying any additional interest on the arrears each month.

Norton has calculated the difference in cost had capitalisation been agreed by Mr and Mrs H in March 2020. This has not significantly affected the account balance and in fact Mr and Mrs H have benefitted from a reduction in overall cost by virtue of the fact that the account was not capitalised then. In light of this, I won't be asking Norton to do anything further in respect of this.

Legal fees

Mr and Mrs H have said that the legal costs are unjust and could have been avoided. They say that the legal action began due to the account falling into arrears after non-payment over many months relating to disputes regarding errors in the statements and charges applied. Mr and Mrs H say that they cleared the amount in full before the court hearing but were told by Norton that its solicitors had said it was too late to suspend the hearing. They say they were told by the court that this was incorrect and

later signed a Consent Order agreeing that the hearing would be cancelled as payment had been made.

On the day of the hearing Mr and Mrs H say they received correspondence from the solicitors explaining that the application for cancellation of the hearing had been refused and the hearing would go ahead. This was as the judge did not agree that the legal costs should be added to the mortgage, albeit Norton would still chase for the legal costs. Mr H said in his complaint to Norton on 9 August 2022 that he attended the hearing which cost him loss of working hours to the value of £40 and travel costs of £18 which he would like reimbursed as he says that this was through no fault of his own. Following the view, Mr H says that these costs amounted to £150, albeit a further breakdown hasn't been provided. He says he would not have had to incur these costs if the solicitors had applied to have the hearing stopped earlier and not requested the legal costs to be placed against the security.

Whilst I have considered the issue of the legal fees, Mr and Mrs H have also complained about the way the solicitors handled the case and the service provided. They have previously been advised that these issues would need to be raised with the solicitors firm and are not something which this service can look into.

Following the capitalisation, payments were received in April and May 2021 but, as set out above, Norton received notification on 30 June 2021 that the June 2021 direct debit payment had been cancelled. As a result of the dispute about the direct debit and, subsequently, about Mrs H's bank details being provided to him, Mr H refused to make any payments until this was resolved. Norton asked if he could pay the CMP and then the fee could be discussed once he had spoken to the bank but Mr H said that he wasn't paying anything. He refused to provide bank details to set up a new direct debit and was advised he could pay by bank transfer. He maintained that he would not pay as he had referred his complaint to this service and would not pay until the dispute was resolved. No payments were made after this until February 2022 when the arrears were cleared shortly before a court hearing for possession was listed.

Mr H was contacted by Norton on a number of occasions and asked to make the CMP but refused. Norton called to discuss his account and explain the figures, it sent documents requested by Mr H including a statement of transactions and mortgage offer. He was told that he could do a bank transfer if he didn't want to provide his bank details to set up a new direct debit.

Mr H was advised on various occasions that if payments weren't made then charges would be applied and arrears procedures would continue. For example, he was told during the call on 4 August 2021 that if it got to the stage where Norton took him to court then solicitors' costs would be added to the account.

A default notice was sent on 11 October 2021 as no payments had been received since May 2021. On 10 November 2021 a warning letter was sent before solicitors became involved. Mr H called Norton on 12 November 2021 following receipt of the letter and said that it (Norton) had stopped collecting his payments and went on to allow the account to fall into arrears and attract interest and costs. He still denied that the direct debit in June 2021 had been cancelled.

Mr and Mrs H have said that the legal costs are unjust and could have been avoided. I disagree that it was Norton's fault that the account fell into arrears. As set out above, I am satisfied that the ongoing disputes Mr and Mrs H had with Norton about fees and statements didn't mean that Mr and Mrs H were no longer liable to pay their CMP in line with the loan agreement. The fact Mr H had an ongoing complaint about the cancellation of the direct debit and about Mrs H's bank details being provided to him didn't alter Mr and Mrs H's obligations to make their monthly repayments.

Likewise, the fact that they had made a complaint to this Service didn't mean that the CMP was no longer due.

The legal fees could have been avoided if Mr and Mrs H had made their contractual monthly payments. They were aware that the CMP was due even if they didn't accept other additional fees were due but the CMP still wasn't paid. I also note that they were in arrears prior to these disputes. Mr and Mrs H were given numerous warnings and made aware that they would incur legal fees if they continued to refuse to pay the CMP (and the increasing arrears). Therefore, I am satisfied that it was reasonable for Norton to charge Mr and Mrs H the legal fees associated with having to take them to court to recover the arrears.

I've gone on to consider the amount of fees charged.

There were a number of calls which took place between this service, Norton and Mr and Mrs H and their son in early February 2022 in relation to making arrangements for the arrears to be paid before the court hearing was listed on 18 February 2022. Norton agreed to stand the court action down if payment was made and I can see that the arrears were paid on 10 February 2022.

During a call between Norton and this service on 16 February 2022, Norton said it had tried to stand down the court hearing as Mr and Mrs H had paid the arrears but that it had been advised by its solicitors that it was too late to do this. I have listened to this call and the agent is clear that other than the fees that were added to the account prior to the payment being made, no additional fees would be added to Mr and Mrs H's account for the court action.

I note that the arrears were only paid off shortly before the court hearing was listed on 18 February 2022. Therefore much of the costs for the legal action would already have been incurred before the arrears were cleared. I think it reasonable that Mr and Mrs H should be charged the costs incurred prior to the arrears being paid as these were only incurred due to them continuing to fail to make the payments due under the terms of the agreement.

Norton has provided a breakdown of the legal fees charged and I am satisfied that the majority of these were incurred in preparation for the court hearing and before the arrears were paid off. However, there is a fee of £120 (including VAT) for 'LPC Agent Fee', which Norton has confirmed was for an agent to attend court to have the Consent Order approved and a court fee for filing the Consent Order of £108.

Norton says that Mr and Mrs H signed the Consent Order including a clause stating that they agreed to the costs being added to the account. Whilst I accept this, the clause didn't specify the amount of costs.

I think the payment of the arrears eight days before the court hearing was listed should have provided sufficient time for the hearing to have been cancelled.

Additionally, once Norton was told that the hearing couldn't be cancelled, it agreed in its call to this service on 16 February 2022 (which was in turn relayed to Mr and Mrs H) that no additional fees would be added to Mr and Mrs H's account after the payment was made in relation to the court hearing. Given that the solicitors advised on 14 February 2022 that the hearing couldn't be stood down and the Consent Order was only signed on 17 February 2022 after it became apparent that the hearing couldn't be vacated, I am satisfied that the two fees mentioned above relate to the court hearing and were added to the account after the payment was made.

Therefore, I am minded to find that Norton should remove the fee of £120 for the LPC agent to attend court and the fee of £108 for the filing of the Consent Order along with any interest they have attracted."

As set out above, Mr and Mrs H have made no further representations in response to the provisional decision. Norton has confirmed that it accepts the provisional decision and the points made regarding the charges to be refunded to Mr and Mrs H's account and recalculation of the balance based on these revised figures. As there have been no further representations, I see no reason to change my provisional view.

Putting things right

In light of the above, I require Norton Home Loans Limited to do the following:

- Remove from Mr and Mrs H's account each of the 'unpaid payment fees' of £15 for 4 August, 1 September, 1 October and 1 November 2021 and recalculate the account as if these had not been charged.
- Remove from Mr and Mrs H's account the LPC Agent fee of £120 and fee for Consent order of £108 and recalculate the account as if these had not been charged.

My final decision

For the reasons I've explained in my provisional decision and above, my decision is that I uphold this complaint against Norton Home Loans Limited and require it to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H and Mrs H to accept or reject my decision before 29 September 2023.

Rachel Ellis
Ombudsman