

The complaint

Mr and Mrs N complain that Bank of Scotland plc trading as Halifax threatened them with legal action over arrears on their mortgage, even though they were making their payments in full. And they say it wouldn't let them take a new interest rate until the arrears are cleared.

What happened

Mr and Mrs N have a mortgage with Halifax. Unfortunately they have experienced financial difficulty and the mortgage fell into arrears in around January 2019.

For most of 2019, Mr and Mrs N were unable to make any payments. They resumed making some payments in October 2019, but around the same time Halifax wrote to them saying it was starting the process of taking them to court.

In November 2019, the fixed rate on the mortgage came to an end and the mortgage moved on to the standard variable rate (SVR). Mr and Mrs N were able to make payments in November and December 2019.

Mr and Mrs N contacted Halifax and its solicitors. They explained that their circumstances had changed as Mr N now had a new job.

Mr and Mrs N also complained. They said that Halifax had not given them the chance to explain things before taking legal action, and had threatened to do so even though they had resumed payments. And they complained that it would not consider giving them a new interest rate until the arrears had been cleared – which they estimated would take five years to clear.

When Mr and Mrs N first complained, Halifax said it would consider their current circumstances in deciding whether to proceed with legal action. It said Mr and Mrs N had told it their property was on the market, and it didn't think it was appropriate to offer a new interest rate while it was up for sale or while the mortgage was in arrears.

In December 2019, Halifax agreed to the possession proceedings being adjourned indefinitely. But in January 2020, its solicitors told Mr and Mrs N they were taking the case back to court. Halifax then agreed to put further legal action on hold while we considered the complaint, as long as Mr and Mrs N continued to maintain the monthly payments.

Our investigator didn't recommend that the complaint was upheld, so Mr and Mrs N asked for it 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.

The mortgage was taken out in 2013, and unfortunately Mr and Mrs N have regularly experienced arrears since then. Arrears were capitalised in August 2018, and Mr and Mrs N then kept up with the mortgage for a few months.

But in 2019, Mr and Mrs N again began to experience financial problems. Mr N is self-employed and in February 2019 he got in touch with Halifax to say his contract had come to an end. He was looking for permanent work without success, and they were considering selling the property. Halifax agreed not to collect any payments for two months.

In April 2019, Mr N told Halifax that he hadn't had any luck finding work and the property was now up for sale – though they would take it off the market if he found a job. Halifax agreed to put further action on hold pending the sale.

In May 2019, Halifax agreed to hold action until August pending sale of the property.

In June 2019, Mr N told Halifax they'd turned down an offer for the property as they didn't think it was a good enough offer. Mr N was still looking for work.

In August, Halifax told Mr N it couldn't put another hold on action, and said Mr and Mrs N should pay what they could each month.

In September, Mr N told Halifax he was still looking for work and they had reduced the property's asking price.

In October 2019, Halifax reviewed the account. It noted the mortgage wasn't being paid and the arrears were increasing, and there was no sign either of a sale of the property or of Mr N returning to work. So it decided to begin legal action to take possession of the property.

In November, Mr N contacted Halifax to say he had now found work. Mr and Mrs N resumed making the monthly payments, but weren't able to contribute anything towards reducing the arrears.

In the circumstances, I don't think it was unreasonable that Halifax moved towards legal action in late 2019 and early 2020. In 2019, Mr and Mrs N hadn't made their mortgage payments for seven months. Mr N hadn't been able to find other employment, and they hadn't been able to sell the property. In September, Mr N had agreed that the mortgage was no longer affordable.

In light of what was known at the time, in October 2019, it's difficult to see what else could be done. Repossession should be a last resort. But no payment had been made for over six months and the arrears were over £20,000. Halifax had tried a payment arrangement to give Mr and Mrs N some breathing space but Mr and Mrs N hadn't been able to find a way to get things back on track. Mr N told Halifax that the most they could pay was £300 a month – though the monthly payment was over £2,500.

While taking possession proceedings was, I don't doubt, difficult and distressing for Mr and Mrs N, Halifax also has a responsibility to step in before things go beyond the point of recovery. At that time Mr and Mrs N couldn't afford the mortgage, had no way of making payments and no prospect of doing so – and the longer the arrears built up, the worse Mr and Mrs N's position would be. In all the circumstances, I don't think it was unfair for Halifax to take possession proceedings at that time – or to add the solicitors' charges to the mortgage balance.

As it turned out – though Halifax didn't know this until November – Mr N had found work and so their financial situation had improved. They resumed making the monthly payments in November 2019, and have continued to do so since.

However, Mr and Mrs N have not been able to contribute anything to the arrears, and so they remain at over £22,000. Mr and Mrs N say that's because the interest rate went up

when their fixed rate ended in November 2019, and so they had no spare money to pay towards the arrears. It's unfair Halifax wouldn't allow them a new rate.

Halifax's policy is generally that borrowers in arrears are not eligible for new interest rates. There are sound reasons for that – a borrower in arrears is much more likely to end their mortgage (either through sale or repossession) and if that happens there would be a significant early repayment charge, which could worsen the borrower's position. In this case, Mr and Mrs N's property was on the market around the time their fixed rate ended, and so I don't think it was unfair to refuse a new interest rate at this time.

Halifax allows borrowers who can maintain their mortgage payments to capitalise their arrears. As Mr and Mrs N had already done this in 2018, they weren't eligible to do so again until early 2021.

Halifax has now said that it will consider capitalising their arrears, and if it does so Mr and Mrs N will be eligible for a new interest rate. I think that's fair.

Mr and Mrs N say they haven't contacted Halifax to discuss this because they were advised not to contact Halifax while the complaint was with us. I've seen no evidence we ever told them that – indeed, we encourage borrowers in financial difficulties to keep engaging with their lender while also pursuing their complaints with us. In fact, Mr N told us in February 2021 that Halifax had contacted him to discuss capitalising the arrears now they were eligible to do so – but Mr and Mrs N said they were unwilling to discuss that with Halifax.

I'm not therefore persuaded that Halifax has acted unfairly here. It was reasonable to refuse Mr and Mrs N a new interest rate on the expiry of their old one in November 2019, in light of the situation at the time. It's now willing to discuss capitalising the arrears and looking at a new rate now Mr and Mrs N are eligible – but Mr and Mrs N were unwilling to proceed when contacted. However, now their complaint is at an end, Mr and Mrs N might want to get back in touch with Halifax to discuss their options.

My final decision

For the reasons I've given, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs N and Mr N to accept or reject my decision before 27 October 2021.

Simon Pugh
Ombudsman