

The complaint

Mrs C complains about the support offered by Bank of Scotland PLC, trading as Halifax when she experienced financial difficulty and the ultimate recording of a default.

What happened

The background to this complaint is very well known to both Mrs C and Halifax. I won't repeat in detail what is already known to both parties. In my decision I'll mainly focus on giving the reasons for reaching the outcome I have.

Mrs C experienced financial difficulty during the COVID-19 pandemic. Halifax agreed to a three month COVID-19 payment deferral in March 2020. This meant that no payment was required in April, May or June 2020. Mrs C was required to resume her contractual loan repayments in July 2020. Mrs C met her full repayments in July and September 2020.

In November 2020 she got in touch with Halifax again as she was behind on her repayments. Halifax's notes say that Mrs C explained that when her payment deferral period ended she felt she would be able to continue with her normal, agreed repayments - as her income had picked up again. However this didn't work out and she then fell behind on her repayments.

Halifax agreed to apply a 30 day hold to the loan account to allow Mrs C time to explore applying for a further payment deferral. Halifax told Mrs C to get back in touch by 6 December 2020.

Further repayments were missed and arrears continued to build up. Halifax sent Mrs C letters about the arrears, asking her to get in touch and outlining the possible consequences should no action be taken. A default notice was sent on 23 February 2021 and Mrs C did then get in touch with Halifax again on 29 March 2021. No way forward was agreed on this call and the loan account was ultimately recorded as defaulted.

Mrs C raised a complaint with Halifax. They didn't uphold the complaint and she referred it to our Service for an independent review. Our investigator considered the evidence but didn't recommend that the complaint be upheld. As Mrs C didn't accept this, the complaint has been referred to me for a final decision.

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.

Although a number of issues have been raised, this decision only addresses those issues I consider to be materially relevant to this complaint. This isn't meant as a discourtesy to either party – it simply reflects the informal nature of our Service. However, I've given careful consideration to all of the submissions made before arriving at my decision.

The support offered by Halifax

When Mrs C let Halifax know about her financial difficulties they approved a three month COVID-19 payment deferral. This was positive and in line with the Financial Conduct Authority ('FCA') guidance at that time.

When Mrs C experienced further financial difficulties around November 2020 it was positive and supportive that Halifax applied a 30 day interest freeze. This allowed Mrs C some breathing space to evaluate her circumstances and apply for a further 3 month payment deferral if she felt that was appropriate. However the evidence shows that Mrs C didn't engage with Halifax after the call in November 2020 for a number of months, didn't apply for a further payment deferral and arrears began to build up.

Halifax continued to send Mrs C communication letting her know she was behind on her repayments (11 December 2020, 22 December 2020, 2 February 2021, 13 February 2021). I note the tone of these letters was very positive and strongly encouraged Mrs C to make contact with Halifax to discuss an agreed way forward.

Overall, I find the support offered by Halifax to be positive, sympathetic and supportive.

The recording of the default

Given that arrears had continued to build up and there was no communication from Mrs C to indicate her intention to resume her repayments or clear the arrears, I don't find it unreasonable that Halifax sent a notice of default on 23 February 2021. This gave her until 13 March 2021 to clear the arrears and made it clear what the consequences would be should she fail to do so.

Mrs C was given an additional opportunity to avoid the default scenario on 23 March 2021. Halifax wrote to her to ask again that she either clear the arrears or get in touch with them to carry out an affordability assessment.

The call in March 2021

Mrs C did call Halifax on 29 March 2021. There is a difference in both parties recollections of this call - so I've listened to the call recording. This call took place some time ago and I accept that memories can fade over time.

Mrs C has told us she advised Halifax that she wanted to pay the arrears and bring her account up to date, but Halifax still insisted on completing an affordability assessment. Having listened to the call, Mrs C offered to pay £250 - but this wouldn't have cleared the arrears. So whilst I've no doubt it was her intention to ultimately clear the arrears and bring the account back into good standing, it wasn't unreasonable of Halifax to request the assessment be completed.

I'm satisfied that Halifax have acted within the relevant FCA guidance in response to the COVID-19 pandemic in place in March 2021. For conciseness, I've only added the relevant parts below, but the full guidance can be found on the FCA website:

"5.20. Firms should only put in place arrangements that are sustainable. A sustainable repayment arrangement is one that does not adversely affect the ability of the customer to meet their essential living expenses and priority debts. In determining what is sustainable, firms should consider the customer's circumstances and any expected changes in those circumstances" and;

“5.25. If a customer makes a repayment proposal, we would only expect a firm to refuse that proposal where it can demonstrate that the customer can afford to make a higher repayment that is sustainable based on an objective assessment of income and expenditure in accordance with the section on “Income and expenditure assessments”, or where the customer has failed to engage with the firm in a reasonable way to enable the firm to make this assessment. [bold added for emphasis by Ombudsman]” and;

“5.32. The purpose of the income and expenditure assessment should be to assess the customer’s level of disposable income in order to enable the firm to assess whether a customer’s proposal is unsustainable, or whether the firm’s proposed level of payments is sustainable.”

In my opinion, the adviser used a supportive and sympathetic tone and tried his best to explain why an affordability assessment was needed. Throughout this call Mrs C repeated that her income couldn’t be predicted month to month and she was willing to make a payment on that day towards the arrears – but this was over £100 less than the agreed contractual repayment. I’m also satisfied that the adviser gave correct information to Mrs C.

Mrs C said during the call that she’d previously been told by Halifax in November that she could make whatever payment she could afford. This was possibly right, but only during the 30 day freeze period.

The adviser clearly explained that Halifax would possibly be open to the idea of a payment plan, but first an affordability assessment must be completed. Mrs C was seemingly (my opinion) unwilling to engage fully with the adviser and the call ended without this being fully completed.

Whilst I have sympathy for Mrs C, she entered into a loan agreement with Halifax and had an obligation to make her repayments as agreed. Halifax - at their discretion, could allow deviations to the agreed repayment terms. But crucially, this had to be agreed with Mrs C and supported by evidence that what was being agreed was affordable and sustainable. Mrs C chose not to complete what Halifax asked of her and I can’t hold Halifax accountable for that.

It wasn’t unreasonable that they wouldn’t accept Mrs C’s proposal that she’d make a repayment and possibly the next month - but she couldn’t commit to how much she could regularly pay. I’m also satisfied that during this call the adviser explained that should arrears continue to build - even with the payment Mrs C wanted to make, then a default would likely be recorded.

I acknowledge that my decision will disappoint Mrs C, but it brings to an end what our Service - in trying to informally resolve her dispute with Halifax - can do for her.

My final decision

I don’t uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs C to accept or reject my decision before 8 September 2022.

Daniel O’Shea
Ombudsman