

The complaint

Mr and Mrs K's complaint is about the administration of their mortgage with Bank of Scotland plc trading as Halifax (BoS). The complaint they referred to us was about:

- incorrect information they were given in 2019 when they were told that if they paid a certain amount off the arrears on the mortgage, the legal process (including a court hearing) would be cancelled. They are also unhappy that they weren't provided with a copy of the relevant calls in a timely manner after they asked for them; and
- the agreement to capitalise the arrears into their mortgage balance was withdrawn the following day because of an error by the call handler. They then became concerned about the suggestion BoS then made to allow consolidation to happen in the future; and

Mr and Mrs K also raised an issue about BoS not notifying them when the fixed interest rate product linked to the mortgage was coming to an end in 2012 and the move to a variable interest rate. This they put forward, caused them to miss payments meaning they were trapped in the mortgage and their credit ratings destroyed. However, after discussing the matter with our investigator, they decided not to pursue this complaint point.

What happened

There is a long and detailed history to Mr and Mrs K's mortgage account from 2012. There have been several complaints in addition to the above issues that have been referred to us. I don't intend to detail everything that happened here, but rather I have documented the key events on which the different aspects of this complaint turn.

Mr and Mrs K have a capital and repayment mortgage with BoS. It appears that the first missed payment was in late 2012. Arrears built and were reduced on an ongoing basis thereafter, with payment arrangements made – sometimes maintained, but sometimes broken – and litigation was considered on occasions. It was not until the spring of 2019 that litigation was pursued to the point where a court date was set for a possession hearing. The date set was 4 September 2019.

Discussions about the mortgage arrears took place throughout 2019, including the possibility of capitalising them onto the mortgage. At the beginning of August 2019 Mr and Mrs K were given three options for how to deal with the arrears, in order to stop the legal action progressing further. This included the option of paying a little over £8,600 off the arrears, thereby reducing the amount below BoS' litigation level. It was also confirmed that once this had happened, if the monthly payments were maintained, BoS would look at potentially capitalising the arrears or making an arrangement to clear them. This was confirmed in two telephone calls and a letter.

Mr and Mrs K also looked into the option of consolidating/capitalising the arrears into the mortgage. It was explained to them that they needed to have made six months' payments in full and on time. As their payment in March 2019 had been made late, they'd only made five payments on time at that point.

Mr and Mrs K made two payments to reduce the arrears by the c.£8,600. At this point, they were informed that the litigation and the hearing on 4 September 2019 wouldn't be cancelled until after the mortgage payment due on 1 September 2019 was received. This was because if Mr and Mrs K didn't make that payment, the arrears would again be over the litigation limit and it would be appropriate to continue with the possession hearing. Mr and Mrs K complained that they'd been misled.

Due to the short timescale between the mortgage payment being made and the hearing date, it was not possible for BoS' solicitors to cancel the hearing in advance. As such, it was cancelled by the judge at the beginning of the scheduled hearing time. Mr and Mrs K spoke to BoS about the hearing on the day, but it wasn't able to confirm that the hearing had been adjourned, and so they felt the need to attend, in case the judge didn't agree.

BoS sent a final response letter about the subject of the possession process and other matters at the beginning of September 2019. It didn't uphold the complaint but didn't set out its reasons for rejecting the complaint about the communication surrounding the cessation of litigation during August and September 2019.

Other than requests (which were accepted) to set up a direct debit mandate to pay the mortgage and a change to the payment date, there was no further substantive contact between Mr and Mrs K and BoS for the remainder of 2019. In early 2020 BoS started to attempt to speak to them again about the arrears on the account. Various conversations were held about payment arrangements, but due to the Covid-19 pandemic and illness Mr and Mrs K's income reduced significantly. They told BoS that they were maintaining their mortgage payments from savings. Following Mr K returning to work, the payments were made, but not always on the due date.

In late August 2020 BoS contacted Mr and Mrs K about the possibility of capitalising the arrears to their mortgage debt. They said they were interested in doing so and would call back the following week. They didn't call back until the middle of December 2020. BoS made a mistake at that time, as the individual spoken to thought the late payments Mr and Mrs K had been making over the previous months, were actually them paying the following month's payments early. They were told that their application would be accepted, and it was put forward for processing. The following day the mistake was discovered by BoS and Mr and Mrs K were told that they weren't eligible to capitalise their arrears.

BoS suggested that if they wanted to do so, it would allocate the payments made toward the end of October and November as November and December's payments respectively. This would mean that two monthly payments had been made on time, and so Mr and Mrs K only needed to maintain payments for a further four months to allow consolidation. Mr and Mrs K were concerned that BoS was doing something inappropriate and complained about both having been given misinformation and the proposal for going forward.

BoS responded in its letter of 17 December 2020. It offered Mr and Mrs K £250 for the poor service in that it had raised their expectations by giving them incorrect information in the first conversation in December 2020 about their ability to capitalise the arrears. It explained the mistake its member of staff had made and offered to treat the payments for Oct and Nov as early for the following months. If it moved forward on that basis, which it was willing to do, they would only need to continue to make payments as they were for four months to show consistency and qualify for consolidation.

Mr and Mrs K weren't satisfied with BoS' responses and asked us to consider the complaint. They explained how upset they were because half the neighbourhood was aware that they had been taken to court, which is something they'd wanted to avoid. Mr and Mrs K said that

had BoS told them that they needed to pay more to the mortgage, they could have got the additional funds needed.

One of our investigators considered the complaint. In her initial conversation with Mr K she explained that in 2012 there had been no requirement for a lender to highlight that an interest rate product was coming to an end. Mr K confirmed that as this was the case, they didn't want to pursue that part of their complaint.

The investigator went on to review the remainder of the complaint and set out her conclusions. She acknowledged the worry the matter of the court hearing had caused Mr and Mrs K, which wasn't helped by the unclear information they received from BoS. In addition, the investigator didn't think they had been treated fairly in relation to the capitalisation of arrears in 2020. She recommended that BoS:

- Capitalise the amount of arrears that had been outstanding as at 10 December 2020.
- Re-work the account balance taking into account any payments made and adjusting the interest accordingly from December 2020 onwards.
- Pay £500 for the distress and inconvenience caused by BoS providing misleading information about the payment of the arrears, for Mr and Mrs K being placed in the position where they felt they had to attend a court hearing in 2019 and the loss of expectation in relation to the capitalisation matter.
- Contact Mr and Mrs K to discuss what to do with the mortgage moving forwards.
- Review the payment date, to ensure that it suited Mr and Mrs K's current employment arrangements.

BoS accepted the investigator's recommendations and provided detail of the calculations for Mr and Mrs K's information. It also commented that Mr and Mrs K hadn't made any payments to the mortgage since January 2021 (as at April 2022) and they had been reluctant to engage with its collections team while the complaint was ongoing. It recommended that such conversations started as soon as possible so that it could do what it could to help them back to financial health.

Our investigator forwarded the offer to Mr and Mrs K, including a recommendation that BoS pass the matter to the relevant team as soon as the complaint was resolved in order to be able to move things forward.

Mr and Mrs K weren't satisfied with the offer, as they thought the £500 didn't cover the loss of reputation they had suffered due to the court hearing. They said they wanted a letter of apology for the mistakes BoS made. Mr and Mrs K said that they felt they'd been treated badly and that BoS shouldn't get away with it.

BoS agreed to issue a letter of apology to Mr and Mrs K and also provided an income and expenditure form for their use, in order to facilitate the discussions about the way forward after the complaint was resolved.

The form was forwarded to Mr and Mrs K and they subsequently told our investigator that they would consider accepting the offer, once they'd had received the apology from BoS. Mr and Mrs K weren't satisfied with the apology letter when it arrived, as they said that it felt hollow because it didn't offer reasons for what had gone wrong and information on how the same mistakes would be avoided in the future. As such, Mr and Mrs K asked that the complaint be referred to 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.

BoS accepted that mistakes had been made, and the service Mr and Mrs K received in relation to the consolidation of the arrears in 2020 was not what it should have been. While it didn't initially accept that it had done anything wrong in relation to the cessation of litigation action in August and September 2019, following our investigator's involvement, it accepted that this service had also not been what it should have been. It wrote to Mr and Mrs K to apologise for its mistakes and the effects they'd had on them. As such, I don't need to reach any conclusions about whether mistakes were made, as this has been accepted, and I simply need to consider what the appropriate redress should be.

When Mr and Mrs K were informed, following them having made the payment they'd been told to, that the court hearing wouldn't be cancelled it was clearly upsetting, disappointing and concerning for Mr and Mrs K. Due to the short timescales involved, it was then not possible for the hearing to be cancelled in advance. While they didn't have to attend the hearing, and they were aware that BoS' solicitors wouldn't be so it wouldn't go ahead, they didn't feel they were able not to attend, just in case, and had the inconvenience of doing so. I am satisfied that it would be appropriate for them to receive a compensation payment in relation to this issue. I will comment further on the amount below.

In relation to the consolidation issue, BoS has agreed that it should have been more pragmatic about the matter of consolidation when Mr and Mrs K applied, in that it should have taken account of the fact that Mr and Mrs K had been maintaining their payments in the month they were due, despite the financial strain they had been under. I agree with our investigator's conclusions in this regard and with the proposed redress – to place Mr and Mrs K in the position as though their application had gone through in December 2020. This issue will also have caused Mr and Mrs K upset, especially when their application was rejected only a day after they'd been told it would go through.

I note that Mr K has said that he blames BoS for the onset of a medical condition, due to the stress the events caused him. He has provided no medical evidence that this was the case, and so I can't agree with him on this point. I would also comment that some of the stress Mr and Mrs K will have experienced since 2019 will in all likelihood be linked to their general situation, but I accept that BoS' mistakes and actions will have increased that stress.

Mr and Mrs K said that the compensation amount our investigator recommended wasn't enough to compensate them for the damage to their reputation the court hearing caused them. I have thought about this carefully and while the hearing would have been listed where it could be accessed by the public, it would only have been listed under their surname, so unless their neighbours were aware of their financial difficulties for other reasons, I am not persuaded if they accessed the court listings, they would have known it related to Mr and Mrs K. In addition, the information would have only been available for very short period before the hearing date and only to those registered to access the hearing lists.

As I have said above, it's clear that the situation and mistakes made in relation to their mortgage caused Mr and Mrs K upset and inconvenience, on top of the worry they would already have been suffering because of their financial difficulties. I have thought carefully about this and I am satisfied that £500 is the appropriate amount of compensation for BoS to pay Mr and Mrs K.

Mr and Mrs K asked for an apology, but they aren't satisfied with what they received because it didn't explain why the errors happened and promised that similar things won't happen again. How an apology is taken is always a matter of personal perception. While I consider that BoS' apology would seem adequate, the fact that Mr and Mrs K needed to ask

for it, is likely to make anything that they received seem, as they've described it, hollow. In the circumstances, I don't propose to ask BoS to do anything more.

Putting things right

In full and final settlement of this complaint I require Bank of Scotland Plc trading as Halifax to:

- Capitalise the amount of arrears that was outstanding as at 10 December 2020.
- Re-work the account balance taking into account any payments made and adjusting the interest accordingly from December 2020 onwards.
- Pay £500 for the distress and inconvenience caused by BoS providing misleading information about the payment of the arrears, for Mr and Mrs K being placed in the position that they felt they had to attend a court hearing in 2019 and upset caused in relation to the capitalisation of the arrears.
- Review the payment date, to ensure that it suits Mr and Mrs K's current employment arrangements.

BoS has highlighted that Mr and Mrs K haven't been willing to interact about the mortgage and the increasing arrears while the complaint has been ongoing. Now that our complaint process has ended, I would encourage Mr and Mrs K to speak to BoS to explore how it can help them with their mortgage and financial difficulties going forward.

My final decision

My final decision is that I uphold this complaint. In full and final settlement Bank of Scotland plc should settle the complaint as detailed in 'putting things right' above.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs K to accept or reject my decision before 17 August 2022.

Derry Baxter
Ombudsman