

The complaint

Mr and Mrs M complained about how Bank of Scotland plc (trading as Halifax) handled their request for a Covid-19 payment deferral on their mortgage account in April 2020. They're unhappy with how Halifax has reported adverse information to the credit reference agencies from that point onwards.

What happened

Mr and Mrs M have a mortgage with Halifax. They were maintaining their monthly payments until December 2018 after which their account fell into arrears.

In April 2020 Mr and Mrs M applied for a payment deferral under recently released guidance from the Financial Conduct Authority (FCA). This guidance was put in place given the financial effects that the covid-19 pandemic was having on many people. Halifax initially declined Mr and Mrs M's request due to their account already being in arrears. Mr and Mrs M didn't make any payments to their account between April and July 2020 and more arrears accrued.

Following our involvement Halifax agreed to backdate a payment deferral (commonly referred to as a payment holiday) for April to July 2020. Our investigator also recommended that Halifax pay a further £200 compensation in addition to the £100 Halifax already paid Mr and Mrs M in response to a linked complaint about how a data subject access request was handled.

Both parties accepted our investigator's opinion and the original complaint was closed. However, Mr and Mrs M have brought a new complaint which is linked to the first, but focusses on the impact the payment deferrals have had on their credit file. In summary, Mr and Mrs M disagree that Halifax has properly amended their credit files to reflect the payment deferral as agreed. They further complained about how Halifax has reported data to the credit reference agencies (CRAs) in subsequent months. Mr and Mrs M say that as a result of Halifax's incorrect reporting they've been unable to obtain various forms of credit.

Halifax provided more information so our service could consider the additional issues raised. Our investigator explained why she was satisfied with Halifax's overall reporting and didn't think the complaint should be upheld. Mr and Mrs M remained unhappy and asked for the case to be decided by an ombudsman.

I issued a provisional decision on 27 September 2022 and an extract of my provisional findings is below.

"...The key facts about the initial complaint raised by Mr and Mrs M aren't in dispute. Halifax has agreed to amend Mr and Mrs M's account to reflect a payment deferral for the period in question. So, the only issue I have to decide, in relation to this matter, is whether what Halifax has recorded on their credit files is correct and, if not, whether compensation is due for this mistake. I've carefully considered everything Mr and Mrs M have said about how they've been impacted as a result and how they should be fairly compensated in the circumstances.

When making an award for compensation, I must decide what's fair and reasonable to both sides involved giving careful consideration to all the circumstances of this case. I also think it's important to explain that, as a service, our awards are designed to compensate consumers - not punish organisations.

In their response to our investigator's assessment, Mr and Mrs M made it clear that they're not contesting anything prior to April 2020. They disagree with how data has been reported by Halifax to the CRAs from April 2020 to November 2021. At which point the outstanding arrears on their account were capitalised.

Mr and Mrs M have provided a copy of their credit report and a detailed breakdown of what they think their credit file data should show against what's been reported by Halifax during this period. When considering all the information available to me, I do believe there are some inaccuracies with how data has been reported. I'll explain why.

I'll begin by considering the main issue of concern here. That being whether Halifax has correctly amended Mr and Mrs M's credit files to reflect the true position of their mortgage account following the (now) agreed payment deferral period.

In response to the 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. No adverse information should be reported to the CRAs as a result.

That means in situations where a customer's account wasn't previously in arrears their account would continue to show as 'OK' on their credit report for the duration of the payment deferral period. But Mr and Mrs M's situation was different. They were in arrears beforehand. I think Halifax's literal interpretation of the guidance which relates to not reporting any adverse information during the payment deferral period has in fact disadvantaged Mr and Mrs M. I'll explain why.

In a situation of no prior arrears, an 'arrangement' would not be reported during the deferral period. This is because, for a customer with a clear payment history, this would appear as adverse information against their account.

In Mr and Mrs M's case, they say, an arrangement would appear more favourably to them as opposed to what Halifax says it has reported as 'sustained arrears', which I've seen, reflects on their credit file as missed payments.

Halifax says it has reconstructed the account accordingly to remove any arrears that were originally accrued between April and July 2020. It says that the reason it has continued to report sustained arrears during that period is because, even after reconstructing the account, as of March 2020, Mr and Mrs M were in more than three months' worth of arrears (£3,565.15). It says the arrears would continue to be reported in this way until the arrears balance is cleared or capitalised.

Whilst in theory that appears reasonable, that's not consistent with how Halifax has reported arrangements in subsequent months. It appears from comparing Mr and Mrs M's account transaction history against Halifax's reporting to the CRAs, there were subsequent months where the arrears balance exceeded three months and an arrangement was still reported - for example, in the months of March 2021 and from August 2021 to October 2021.

So, it's unclear to me why Halifax's reporting should disadvantage Mr and Mrs M in those months where a payment deferral was in place. As explained, in these particular

circumstances it would be favourable to report an arrangement over missed payments - as they were in no worse situation than in the other months where an arrangement was reported. I believe Mr and Mrs M's credit files should be amended to reflect that.

I don't agree their credit file should be amended to reflect a 'payment holiday' as Mr and Mrs M have suggested. This option is used to reflect the contractual option of taking payment holidays during the mortgage term. If a consumer has an entitlement to have, or apply for, a payment holiday, this will usually be set out in the mortgage offer. This is different to the payment deferral option widely available to most mortgage customers as directed by the FCA, in response to the pandemic, irrespective of whether their mortgage terms allow for such an agreement. So, the reporting of a payment holiday does not apply here.

I'll now turn my attention to how data has been reported from August 2020 through to October 2021.

Mr and Mrs M say that had arrangements in place for this duration and that should be reflected on their credit files. Based on the evidence I've seen I don't completely agree with what they've said. But I have noticed some discrepancies that I invite Halifax to comment on in response to my provisional decision if it disagrees with what I've found.

Between August 2020 and December 2020, Mr and Mrs M say they had an arrangement in place to pay £1,000 which they maintained. Whilst I don't dispute they did pay £1,000 each month (which was more than their contractual payment), I can't see any arrangement was agreed during those months. And as their prior arrears remained outstanding (which exceeded more than 3 months of missed payments) it's not unreasonable for Halifax to report sustained arrears during that time.

I appreciate from Mr and Mrs M's perspective they were making more than their contractual payment during those months so they can't understand why their credit report shows 'X' for missed payments. I'm satisfied Halifax has reported their account correctly during those months as 'sustained arrears'. How the data is interpreted by the CRAs is a separate matter which they may wish to take up directly with the CRAs. But from considering the other reporting options available I can't see their circumstances would fall into any other category. 'OK' means the account is up to date, which it wasn't. For reasons I've explained there was no arrangement (or payment holiday) in place. And for obvious reasons none of the other options such as 'defaulted' or 'no data' would apply either.

So, based on the information available, I can't say Halifax has incorrectly reported data to the CRAs during this time.

From August 2021 to October 2021 Mr and Mrs M met their agreed payments of £1,260. That's been reflected on their credit file accordingly. And, Mr and Mrs M agree with how data was reported in January 2021. So, I've specifically considered what happened between February 2021 to July 2021, as the remaining period in question.

From looking at Mr and Mrs M's account history, it appears the arrangements during this period weren't always met, but it also appears Mr and Mrs M were doing what they could to keep up with the agreed payment plans. I say this because when considering all the payments made during this time, despite them not always being in line with the payment arrangement terms, they did, through some agreed payments and ad hoc payments, pay the agreed amount in total.

The combined payment plans from February 2021 to July 2021 required Mr and Mrs M to pay a total of £6,420. They paid a combined total of £6,430 during that time. It wasn't clear

for me to always see how payments have been allocated to Mr and Mrs M's accounts. But when considering the payments made during this period, I do think in fairness an arrangement should show for the period and Mr and Mrs M not penalised in the circumstances.

So, to summarise, I do find that Halifax needs to amend how it has reported data to the CRAs in relation to Mr and Mrs M's account. An arrangement instead of sustained arrears/missed payments should be reported during the payment deferral period (April 2020 to July 2020) and subsequently between February 2021 to July 2021. When considering everything I think this is a fair resolution.

I also agree that the compensation award for the distress and inconvenience caused, as recommended by our Investigator, is fair and reasonable in the circumstances. I say this because whilst I do think Halifax should amend how some data has been reported to the CRAs, I'm not persuaded the extent to which Mr and Mrs M say they've been impacted is a direct result of any incorrect reporting. Despite the amendments, their credit file would still show arrears which remain on their credit files for six years - visible to credit providers and other mortgage lenders. This arrears information along with evidence of payment arrangements being in place is enough to impact any form of lending decision. So, I can't say they have been declined credit purely because of mistakes Halifax has made. As such, I won't be asking Halifax to increase its compensation award.

Mr and Mrs M have made reference to a notice of correction being applied to their credit files. It is their understanding that this should be added by Halifax. I can confirm that a notice of correction is a short explanatory note that is for a consumer to add to their credit file, if they chose to do so. It explains why certain information is on their file. Lenders must take into account the information contained in the notice of correction when a consumer applies for credit. But a lender doesn't have to agree to lend just because the notice is there. The lender is entitled to make its own decision on whether to lend. If Mr and Mrs M want a notice of correction to be placed on their file, they will need to do this themselves.

Putting things right

To fairly settle this complaint, Halifax should do the following:

1. amend Mr and Mrs M's credit file to show an arrangement instead of missed payments during the periods:

- April 2020 to July 2020; and*
- February 2021 to July 2021.*

2. Increase its compensation award to £300."

Both parties responded to my provisional decision. In Summary Mr and Mrs M disagreed with my finding that no amendment should be made to their credit files for the period August 2020 and December 2020. And, Halifax didn't agree that Mr and Mrs M's credit files should be amended at all.

I re-considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint, including those in response to my provisional findings. Having done so, I issued a second provisional decision on 10 October 2022 explaining why I was minded to reach different conclusions as set out in my previous provisional decision.

An extract of my revised provisional findings is below:

“...I understand Mr and Mrs M have strong views about this matter. I want to assure them I’ve read and carefully considered everything they’ve provided. However, I’ve focused on what I consider to be the central issues, and not all the points raised. This isn’t meant as a discourtesy. The purpose of my decision isn’t to address every single point the parties have raised or to answer every question asked. My role is to consider the evidence presented by the parties, and address the crux of the complaint, to reach what I think is a fair and reasonable decision based on the facts of the case. Taking into account the relevant regulation that applies here. This simply reflects the informal nature of this service.

In response to my provisional decision, Mr and Mrs M said that they received misleading information from Halifax in April 2020. At that time, they were both in full time employment and could comfortably afford to make their contractual monthly payments and pay extra towards reducing their arrears. As such, the arrears that accrued thereafter were a consequence of Halifax’s actions and they shouldn’t be penalised for that.

Mr and Mrs M have expressed their thoughts and opinions on lender forbearance protocols, in particular how payment arrangements work, and also wider credit reporting practices. I’ve considered these points, but I don’t agree that their understanding of these various points is entirely correct.

Lenders are obliged to report true and accurate information to the CRA’s in a fair and timely manner. It’s worth pointing out here that Mr and Mrs M were in financial difficulty before the pandemic. Their account had been in arrears since January 2019 and by April 2020 their arrears balance stood at £3,565.15. As such, data relating to the arrears was reported on Mr and Mrs M’s credit files throughout 2019 as either missed payments, or arrangements, where applicable. Their account subsequently remained in arrears until November 2021, when Halifax agreed to capitalise the arrears balance due to them maintaining their monthly mortgage payments for at least the previous six months. As such Halifax was required to continue reporting accurate data throughout that period, which based on the information available to me, I’m satisfied it did for most of the time, as I’ll proceed to explain.

It’s not in dispute that a payment deferral should have been agreed in April 2020 when Mr and Mrs M asked for help during the pandemic. I think it’s important to explain that in response to the pandemic, the FCA released swift guidance to allow payment deferrals to be taken with minimal formality – meaning the process should be quick, light touch and designed to support borrowers. The guidance, released on 20 March 2020, was new to lenders and published just over a week before Mr and Mrs M called Halifax to discuss their options during the pandemic. So, in fairness, I can understand why it’s likely Halifax was still adapting to things at that time. It has since agreed to put things right by backdating the payment deferral for the period in question.

I’m not satisfied though, that Mr and Mrs M have been impacted to the extent they say, because of anything that Halifax did.

Mr and Mrs M say that if Halifax explained how a nil payment arrangement or a payment deferral would impact their credit files, they would have made their monthly mortgage payments, and more, to reduce their arrears, instead of taking either option. They’d have been able to get their account back on track sooner and it’s due to Halifax’s failing that their account remained in arrears until November 2021. I’m not persuaded that is the case, I’ll explain why.

On 1 April 2020, Mrs M called Halifax specifically asking for a payment deferral due to anticipated financial difficulty during the pandemic. During the call, Mrs M said they could possibly make a small contribution towards their contractual mortgage payments. Halifax, at

the time, agreed a nil payment arrangement for two months. It said that for the months of May and June 2020 it wouldn't expect any payments towards the mortgage, but if Mr and Mrs M could pay something towards the mortgage they should do, to help keep the arrears balance down. So, I'm satisfied they were aware that they could make additional payments. But Mr and Mrs M paid nothing at all towards their mortgage until 14 August 2020, even though the agreement was only in place until 1 June 2020. Furthermore, given that they proactively called Halifax for assistance, I'm not persuaded that they could in fact have made their payments in full as well as further overpayments to reduce their arrears.

When considering everything, it's clear Mr and Mrs M were in financial difficulty prior to the pandemic. I'm not convinced their circumstances were any better in April 2020, otherwise it's unlikely they would have called asking for further help at that time. I think it's reasonable to assume that if Mr and Mrs M were able to make payments towards their mortgage they would have done so to get their account back on track and to help reduce their arrears on their priority secured debt, which they didn't do, for some months. So, when considering everything I don't agree that Halifax was responsible for Mr and Mrs M's arrears situation not improving. I think had Halifax agreed the payment deferral that Mr and Mrs M asked for at the time, they would have gone ahead with that option and their account would be in broadly the same situation as it is now.

How data has been reported to the CRA's since April 2020

April 2020 – July 2020

In my proceeding provisional decision, I explained why I thought during the (now agreed) payment deferral period, Mr and Mrs M's credit files should show as an arrangement instead of 'sustained arrears'. Halifax has provided further information and, having reviewed this, it's changed my mind.

Halifax has explained why an 'arrangement' would only be reported in situations where the customer has adhered to an agreed arrangement to repay arrears on top of their contractual monthly payment. During the months of April to July 2020, Mr and Mrs M didn't make any payments towards their mortgage, so I can understand why Halifax isn't obliged to report an arrangement during that time. And as such, its rationale (as set out previously) around why 'sustained arrears' would continue to show during that time is therefore logical and appropriate in the circumstances. So, I won't be directing Halifax to make any changes here.

The covid-19 guidance for lenders said an account shouldn't be reported as being in a worse position. Mr and Mrs M were already in arrears and this is all that Halifax has continued to report. I'm satisfied this is correctly reported.

August 2020 – December 2020

I've considered everything Halifax and Mr and Mrs M have said in response to my findings on how data should be reported from August 2020 onwards, but my opinion remains the same.

Mr and Mrs M say that during this time, they did have an arrangement in place to pay £1,000 per month. They disagree with 'sustained arrears' being reported. They say 'X' for missed payments indicates no payments were made at all during that time. A 'payment arrangement' should be reported during this time. Not doing so is impacting their ability to obtain credit including mortgage deals with other lenders.

Halifax's contact notes don't show any calls taking place where it was agreed by Halifax that Mr And Mrs M were to pay £1,000 in those months. I accept Mr and Mrs M were paying

around £30 more than their monthly contractual payments during those months, but in order for their credit file to reflect an 'arrangement' there would need to be an agreed arrangement, in place by Halifax, as previously explained. Which I can't see there was.

As such sustained arrears have been correctly reported. I've already explained why the other available reporting options would not apply in the circumstances.

February 2021 - July 2021

Halifax says that during this period, there was only an agreed arrangement in place for March 2021. During the other months Mr and Mrs M made proposals to pay, which is different to an agreed arrangement and therefore reported differently. On 15 May 2022 Halifax emailed our service with a list of the arrangements in place between 2019 and September 2021. According to this information several arrangements were in place during this time, except to cover the month of May when the usual contractual payment was due.

As previously explained through various payments, Mr and Mrs M paid more than what was agreed during this period – through either the agreed amounts or ad hoc payments. But overall, they did pay what was they agreed to. As such it's only fair Halifax amends it's reporting to show an arrangement for that period, based on its own definition.

I appreciate Mr and Mrs M feel strongly about how the data reported by Halifax can be interpreted by other creditors. However, my understanding is that mortgage arrears being reported, as opposed to, an arrangement to pay those arrears, has less impact than they think. Either way, creditors can see that the customer is in arrears on their secured debt. As a secured mortgage is considered a priority debt, any adverse information suggesting the account is in arrears is enough to impact any form of lending decision. I appreciate in their opinion, an arrangement shows more favourably, when considering the overall position of their account over the years, I'm not persuaded this would make as significant a difference as they assume.

I understand Mr and Mrs M are concerned that Halifax's reporting of sustained arrears reflects on their credit files as missed payments. Halifax is not responsible for how the data it sends to the CRA's is interpreted and reflected on their credit file. If Mr and Mrs M are unhappy about that they need to take that up with the relevant CRA's. I'm satisfied Halifax has reported data correctly between April 2020 and December 2020, so I won't be directing otherwise. For information I can tell Mr and Mrs M that Halifax, under no circumstances, would be expected to report that their account was 'OK' from April 2020 through to November 2021, because that type of reporting options suggests their account was up-to-date, which it wasn't as at point during that time, as they remained in arrears for the duration...

Putting things right

To fairly settle this complaint, Halifax should do the following:

- amend Mr and Mrs M's credit file to show an arrangement instead of missed payments during the period February 2021 to July 2021; and*
- Increase its compensation award to £300."*

Both parties responded, ultimately saying that they accept the revised provisional 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.

I note that neither party has made any further arguments, or provided any further evidence, that leads me to change my findings. I've carefully considered again what I said.

Having done so, I've reached the same conclusions as set out in my most recent provisional decision and for the same reasons.

Putting things right

To fairly settle this complaint, Halifax should do the following:

- amend Mr and Mrs M's credit file to show an arrangement instead of missed payments during the period February 2021 to July 2021; and
- increase its compensation award to £300.

My final decision

My final decision is that I uphold this complaint and direct Bank of Scotland plc (trading as Halifax) to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and Mrs M to accept or reject my decision before 21 November 2022.

Arazu Eid
Ombudsman