

The complaint

Mrs M complains that Bank of Scotland plc trading as Halifax ("Halifax") incorrectly defaulted her loan account and sold the debt to a third party despite her being on a payment plan.

What happened

The background to this complaint is well known to both parties, so I won't go over it in great detail. However, in summary, Mrs M took out a loan with Halifax and maintained her monthly payment for a number of years. She then faced financial difficulties and a payment plan was agreed to run until 16 April 2021. However, Halifax defaulted the account in March and sold the debt to a third party, so Mrs M complained.

Halifax responded and accepted they'd made an error in defaulting Mrs M's account while she was still on a payment plan with them. Halifax apologised and paid £100 compensation. Halifax said they were prepared to remove the default recorded on the account but on the condition that Mrs M is able to clear the arrears of £837.85 by the end of June, while also paying her normal monthly instalments of £167.57.

Halifax explained when an account moves to their Recoveries team, it's automatically set to be sold – and that's why they sold the loan to a third party. Halifax said they were in the process of recalling the loan back. They agreed to remove the default from Mrs M's credit file but said, if the agreed repayments aren't made, the default will be re-applied. Mrs M then cleared the arrears and maintained her monthly repayment within the agreed timeframe. Mrs M has since cleared the loan balance. During our investigation Mrs M provided information showing defaults were continuing to show on her credit file and she also had missed payments showing with two credit reference agencies ("CRAs").

Our investigator looked into things for Mrs M. She agreed Halifax had made an error and recommended they increase the compensation to £300. Mrs M and Halifax haven't agreed to our investigator's recommendation so the matter has come to me for a 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.

Having done so, I've decided to uphold the complaint. And, I think the investigator's recommendation here is a fair way to resolve matters.

Firstly, I've looked at the service given to Mrs M. My role requires me to say how a complaint should be settled quickly and with minimal formality and so I'll focus on what I consider to be the crux of the complaint and the main areas of dispute. The key facts about the complaint aren't in dispute. Halifax have admitted they got things wrong when they defaulted Mrs M's account while she was still in an agreed payment plan. The only issue I have to decide is whether their offer to put things right is fair and reasonable.

I think it's right that Halifax should compensate Mrs M for the shock, upset and inconvenience caused by their poor service. To help decide what a fair and reasonable level of compensation should be, I've looked at the error by Halifax and what the impact of that error has been.

Mrs M was understandably shocked when she found out her account had been defaulted. She says the first time she found out there was a problem was when her loan account was no longer showing on her mobile app. I've looked at Halifax's call notes and the record of Mrs M's call to them in April 2021, when she finds out her account has been defaulted, shows she was very upset and worried about the impact on her credit file. Mrs M was further upset when she found out her account had been sold to a third party and her account had been closed. During a further call in April 2021, Mrs M asks if her loan account can be put back on her mobile app to allow her to monitor it, but the agent explains that's not possible. I think these events all follow the original error in Halifax defaulting the account.

Before I expand on my reasoning for the steps Halifax should take to put things right, I'll address the points raised by Halifax in response to our investigator's view.

I can see Halifax agreed to a payment holiday from March 2020 to May. Mrs M made a payment in June and Halifax then agreed a further payment holiday from July to September. In October, Halifax agreed to a payment plan until January 2021, and then a further payment plan until April. Halifax say Mrs M received the maximum amount of covid payment holidays, which is six – and these took place between March to September 2020. Halifax say, after this, as Mrs M couldn't meet her monthly repayments, they agreed a nil payment plan from October to January 2021. They say at the end of this plan Mrs M was in three months' arrears so, in line with guidelines issued by the Information Commissioners Office ("ICO"), they could've proceeded to default the account at this point. Halifax say, when they discussed Mrs M's circumstances at the end of this payment plan, they agreed a further three months nil payment plan which would run until April 2021. Halifax say the error was that they started default proceedings during the second nil payment plan but, by this point, Mrs M was in four months' arrears.

I think it's important to firstly clarify that the payment deferrals were measures introduced by the Financial Conduct Authority ("FCA") under temporary guidance due to the pandemic. The guidance said that lenders should offer consumers impacted by the pandemic up to six months payment deferrals (taken in two blocks of three months). And, that's what Halifax offered. So, I acknowledge why a further payment deferral wasn't an option. But, under normal regulations, when a consumer is in financial difficulty a lender is required to treat the consumer positively and sympathetically. And, I think Halifax met those obligations and took reasonable steps by offering two, three months' payment plans.

But one of the areas of dispute here relates to Halifax's actions during the payment plan period and the negative impact on Mrs M's credit file. And, as a result, this will affect her ability to borrow in the future. Mrs M has provided a copy of her credit report and, for two CRAs, it shows missed payments for some of the months she was on the payment plan. I've therefore given careful thought to whether Halifax did enough to make Mrs M aware of the impact the payment plan would have.

I do acknowledge that taking everything in would've been difficult for Mrs M in what was clearly a very worrying and stressful time for her. But I've seen from the payment plan letters sent to Mrs M, both clearly set out – in the highlighted area under the heading 'Something to think about' that being behind with payments can affect a credit score, make it harder to borrow money and will remain on a credit file for six years. This is different to the information set out in the payment holiday letter sent to Mrs M in July 2020 which says a payment holiday won't impact her credit file. So, overall, I think Halifax did enough to let Mrs M know

that accepting the payment plan would impact her credit file. I know Mrs M feels like she is being punished - particularly, as she was on a payment plan. But lenders do have a duty to report factual information about credit accounts and how they are managed. So, it follows, I'm not going to ask Halifax to remove the information they recorded on Mrs M's credit file about the missed payments, as this is an accurate reflection of what happened.

That said, and while I've taken into account Halifax's point about the ICO guidelines and Mrs M being in arrears of three months at the end of the first payment plan, I'm not persuaded that, in the circumstances of this case, this means it would've been reasonable for them to have proceeded to default the account. I say this because, in all communication relating to the payment plan, Halifax haven't given any clear indication that they could still default the account. The letters don't suggest this option is still available to them and, during a phone call in December 2020, Mrs M asks Halifax about her payment plan as she has received letters regarding arrears. The note says the agent confirmed Mrs M only needs to contact them in January 2021 and can arrange a plan for the arrears. There's no mention of a default being a possibility.

Halifax say, had they not defaulted the account in March 2021, it appears likely a default was going to happen anyway. They say Mrs M only cleared the arrears balance in June 2021, so they believe she would've likely defaulted after the end of the second payment plan in April 2021. I do acknowledge Halifax's point here, but I'm not persuaded the situation would still have been the same had they not defaulted the account in March. Firstly, the letter sent to Mrs M in October 2020, agreeing the first payment plan, asks Mrs M to get back in touch with Halifax at the end of the plan so "...we can see what we can do for you next." Mrs M does get in touch with Halifax at the end of the plan and they agree a further three months' payment plan. This letter in January 2021 also asks Mrs M to get back in touch with Halifax at the end of the plan to see what they can do for her next. I've seen no evidence which persuades me Halifax at this point had decided Mrs M wouldn't be eligible for a further nil payment plan or that their next steps at the end of the plan would be to start default proceedings. Secondly, whether Mrs M might've still been in arrears beyond the end of the plan in April doesn't change the fact that Halifax have incorrectly defaulted the account before the end of the agreed payment plan – something they've accepted in their final response to the complaint.

I note Halifax say Mrs M hasn't paid interest since October 2020 and they could've reinstated the loan with interest and backdated it with interest owed but chose not to do so. They feel this, together with the compensation already paid, is fair. However, I don't agree this interest should be treated as part of Halifax's attempts to put things right. I say this because, in their payment plan letters, Halifax already agreed to stop charging interest over the payment plan period – which they say was down to Mrs M experiencing financial difficulties. Section 7 of the Consumer Credit sourcebook ("CONC") sets out how a business should deal with a customer in financial difficulties, and says lenders should consider customers in financial difficulty with forbearance and due consideration. It goes on to give examples of positive steps a lender should take and includes cancelling any further interest charges. I've seen Halifax's call notes where they discuss Mrs M's financial situation and this highlights her expenditure outweighed her income by over £1,100 each month. This shows Halifax were clearly aware Mrs M was in significant financial difficulty. So, I think Halifax dealt with Mrs M sympathetically and positively by cancelling the interest – but this is in response to her financial difficulty and falls in line with steps we would expect a lender to take in any event.

Halifax say, while Mrs M has been impacted by their default, she has benefitted financially from this error. They say Mrs M hasn't had to pay any interest since May 2021 and they would be within their rights to add the interest from May 2021 to completion. They say this is to reflect the position if the account had returned to normal conditions. I acknowledge

Halifax's point here, but I don't think it's fair in the circumstances for Halifax to treat this as an alternative form of redress. I say this because, firstly, the points I've made above about forbearance and due consideration apply similarly here. Secondly, Mrs M says she wanted Halifax to reinstate her account and return it to the position it was in before the error occurred. I can see from notes of a call Mrs M has with Halifax in April 2021, she asks the agent if the account can be put back in place but the agent explains it's not possible. So, this shows Mrs M was agreeable to this as a way forward but this doesn't appear to have been an available option for Halifax. So, I don't think it's fair in the circumstances now for Halifax to refer to this interest as being something they could've charged.

Turning now to the factors which I believe support a higher award of compensation than what Halifax have offered. The default has had an impact and this continued beyond the point Halifax removed it. Mrs M has provided a copy of her credit report and this shows, with one CRA, the default continued reappearing for several months even after it was originally removed. Halifax say this was down to a known issue involving accounts which were bought back and the defaults removed. I can see Halifax continued to monitor this and arranged for the default to be removed each time it reappeared. So, while I think this was a reasonable step to take, it did continue to upset Mrs M and was a consequence of the original error.

The other point I've taken into account relates to Halifax's actions when arranging settlement of the arrears. Section 7 of CONC says lenders shouldn't pressure borrowers to make unreasonably large payments where this will have an adverse impact on their financial position. I've already mentioned above that Mrs M was experiencing significant financial difficulties. So, in the particular circumstances of this case, I think the three-month period given to Mrs M to clear the arrears while maintaining her monthly payments to prevent her account being defaulted again did put pressure on her. Mrs M explains she had to borrow money to meet these payments. I acknowledge Halifax did allow Mrs M three months to clear the arrears. But, this position of Mrs M having to make these payments to avoid a particular consequence, was in response to the original error. As mentioned above, I haven't seen any compelling evidence to persuade me that a further payment plan beyond April 2021 was never an option here. In any event, Mrs M was put under pressure here to pay an amount which, when considering her financial circumstances, was significant. And, this was to remove a default or stop it from being reapplied in circumstances where the original error was made by Halifax.

Taking all the information into account, I think Halifax should increase their offer of compensation to £300 as this fairly reflects the impact on Mrs M.

I understand Mrs M remains concerned about the impact the payment plan reporting had on her credit file. It may be helpful for Mrs M to know that she can contact the CRAs directly and ask to record a 'notice of correction' – this means she has the opportunity to record her circumstances behind the missed payments. More information can be found here:

<https://www.experian.co.uk/consumer/guides/notice-of-correction.html>

I wish to reassure Mrs M and Halifax that I've read and considered everything they've sent in, but if I haven't mentioned a particular point or piece of evidence, it isn't because I haven't seen it or thought about it. It's just that I don't feel I need to reference it to explain my decision. This isn't intended as a discourtesy and is a reflection of the informal nature of our service.

Putting things right

I've taken the view that Halifax have made an error which has had a significant impact on Mrs M. So, in addition to the £100 already paid to Mrs M, they should pay an additional £200 for the shock, upset and inconvenience – bringing the total paid for this complaint to £300.

My final decision

My final decision is that I uphold the complaint. Bank of Scotland plc trading as Halifax have already paid £100 compensation – so they must pay Mrs M an additional £200 to bring the total amount of compensation paid to £300.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 6 February 2023.

Paviter Dhaddy
Ombudsman