

The complaint

Miss K complains Bank of Scotland plc (“Bank of Scotland”) insisted she spoke to it on the phone to arrange a repayment plan for her arrears, despite advising it she is hearing impaired. Miss K is also unhappy Bank of Scotland sent a field agent to her home during the coronavirus, Covid-19, pandemic (“the pandemic”).

What happened

Miss K held a mortgage with Bank of Scotland which was in arrears.

Miss K informed Bank of Scotland around October 2019 that she has a hearing impairment which makes it difficult for her to speak on the phone. She asked Bank of Scotland to communicate with her in writing instead. Miss K says she was surprised Bank of Scotland didn’t offer alternative methods such as email or web chat, but ultimately said she would prefer to communicate by letter.

Miss K says Bank of Scotland didn’t acknowledge a proposal she had made to repay her arrears, and that it continued to ask her to speak to it on the phone. She says all of the other methods of communication it suggested were not appropriate.

Miss K feels she incurred greater financial loss because Bank of Scotland refused to come to a repayment agreement by letter. She’s also unhappy because she discovered a card had been left at her home by a field agent Bank of Scotland asked to attend her home. She says Bank of Scotland broke the government’s guidelines for the pandemic at the time.

Bank of Scotland looked into Miss K’s complaint, but it didn’t think it had done anything wrong. It said it had provided a number of alternative options to allow Miss K to discuss the account with it. That until Miss K discussed the account, she would continue to be chased for the arrears and her account was due to be reviewed by its legal team.

Our investigator thought Bank of Scotland had offered reasonable adjustments to Miss K and that the pandemic rules at the time permitted Bank of Scotland to send a field agent to her home. Miss K didn’t agree, so the complaint was referred to me for a decision. I issued a provisional decision on 18 January 2023. Below is an extract of what I said:

“Miss K describes herself as hearing impaired. It’s unclear to what extent Miss K’s hearing loss affects her day-to-day, but Bank of Scotland seemed to accept what Miss K said about this.

Under the Equality Act 2010, banks should make reasonable adjustments so that customers with disabilities can use their services. And considering what Miss K’s said about her hearing loss, I think there’s enough information to indicate Bank of Scotland would be expected to make reasonable adjustments for Miss K as soon as it was made aware of her hearing loss.

I’ve looked carefully at Bank of Scotland’s contact records and it appears Miss K told it about her disability in October 2019. So, I’m satisfied Bank of Scotland was aware of Miss K’s disability by then, and I would expect it to have made reasonable adjustments for her from then onwards.

Miss K informed Bank of Scotland that her preference would be to communicate by letter, and at the time, Bank of Scotland said communication would need to be by phone or letter. So, as Miss K had already explained she couldn’t speak on the phone, and letters were her preference, letters should then have been the most reasonable method of communication for both parties.

Bank of Scotland offered a number of alternative communication methods to Miss K in the various correspondence it sent. It offered her a Text Relay service, which she attempted to use. But Miss K reported that the numbers provided didn’t work. Bank of Scotland’s records show it tested the numbers it sent her and also found the numbers didn’t work. I understand it provided Miss K with a different number it had tested and that did work, but I haven’t seen where Bank of Scotland explained this to Miss K and she continued to believe she couldn’t use the service each time it was offered to her.

Miss K was also encouraged to go to her local branch. Miss K explained that her nearest branch had been closed and she didn’t have a car to access branches further afield. I’m not sure how difficult it would be for Miss K to attend a branch – it does appear there’s an open branch less than 20 minutes’ walk away. But Miss K had explained she didn’t feel comfortable going to a branch because of her hearing loss. She said it would be just as difficult to talk to someone face to face as it would be on the phone, particularly in a branch setting. Looking at her nearest branch, it appears it was in a central location and would more likely than not have been fairly busy. Miss K also mentioned that she was shielding due to the pandemic. So, I think it’s reasonable Miss K was concerned about discussing the arrears in a branch and that her preference to communicate by letter remained.

Miss K was also advised she could use a sign language service online. But Miss K said she doesn’t know how to sign, which isn’t surprising considering she seems to have lost her hearing fairly recently. I note Bank of Scotland also mentioned lip reading, but for the same reasons I think it’s understandable Miss K wouldn’t have been able to communicate in sign, I also think she may not have been able to lip read. So, while I think Bank of Scotland was right to offer all of the alternative options available, it seems to me that Miss K had some valid reasons for rejecting the alternative options offered to her and I can understand why she persisted in wanting to reach an agreement by letter.

Even though Bank of Scotland had previously said it could correspond by letter, it seemed reluctant to do so and I’ve seen correspondence where it says any repayment plan would need to be formed as part of a two-way conversation which can’t be had by letter. It suggested that this was a regulatory requirement. And it seems this is why Bank of Scotland continued to ask Miss K to use other methods which she had already explained weren’t accessible to her.

Our investigator, on my behalf, asked Bank of Scotland to confirm what regulatory requirement it was referring to. While Bank of Scotland explained why a two-way conversation would have allowed it to reach an agreement more easily, it hasn't been able to point to any regulation that says this couldn't have been done by letter.

I've thought about this carefully, and I can understand why a back and forth conversation would ordinarily be helpful to form a suitable arrangement. I also appreciate communicating by letter would more likely than not have slowed down the process. But I don't think persistently asking Miss K to phone Bank of Scotland, when she has already explained she can't, is fair. For example, the most recent final response letter sent in June 2021 said:

"please get in touch with our Customer Financial Assistance Team on (phone number) to discuss your options further... While the account has been in arrears, we have attempted to contact you via phone calls without success and have sent letters requesting contact and payment arrangements from you. I feel we have acted correctly in doing this, and although I appreciate you do not wish to speak to us over the phone, this is the easiest means for us to make plans with you for your accounts."

I appreciate that, on occasion, automatic letters may be issued that provide contact numbers for Miss K to call. But the final response letter is a tailored letter written specifically to address Miss K's concerns. And even in this letter, while mentioning Miss K's hearing loss, Bank of Scotland still advised her to make a phone call and said that this would be the easiest method of communication.

Given Miss K has declared her hearing loss multiple times and has said that speaking on the phone is no longer possible for her, I can understand why she would find responses like this distressing. Speaking on the phone will clearly not be the easiest means of communication for someone with hearing loss. And I'm not satisfied Bank of Scotland has handled the situation as well as it should have. Although it's necessary for Bank of Scotland to chase the arrears on the account, I'm not persuaded it has always understood or been considerate enough of Miss K's disability.

That said, I don't think the arrears would have been paid off any sooner than they were. I say this because Miss K explained she was waiting to receive inheritance from her late father and that she would use this to bring her account up to date. Miss K also said her other option was to sell the property. So, from what Miss K has said, I think it would have been difficult for her to have cleared the arrears any sooner than she did. So, for this reason, I don't intend to ask Bank of Scotland to refund any of the additional fees or charges Miss K incurred during the period she was unable to settle the arrears on her account. And, as Miss K was unable to immediately clear her arrears, I also think Bank of Scotland was entitled to send a field agent to the property.

I understand Miss K feels strongly it was inappropriate for a field agent to attend her home during the pandemic, but I'm satisfied that by April 2021 the restrictions in place allowed for this to be done. Bank of Scotland issued a letter dated 6 April 2021 to inform Miss K it had instructed a field agent, and on the same day, the Scottish Government updated guidance around the pandemic. The guidance I've read suggests the rules were loosening further, but from what I can gather, a field agent visit would have been allowed prior to 6 April 2021. So, I don't uphold this part of Miss K's complaint, but as I've said, I do understand why Miss K would have been alarmed about someone attending her home, particularly as she had mentioned she'd been shielding.

Based on everything I've seen, I think Bank of Scotland was right to offer Miss K alternative methods of communication, but when she explained why those methods weren't reasonable in her particular circumstances, I think it should have communicated with her by letter as it had previously offered to do.

I think Bank of Scotland caused avoidable upset to Miss K by continuing to ask her to phone, even in tailored letters, such as the final response letter. It's clear from what Miss K has told us that she has found this distressing. So, I think Miss K should receive some compensation for this and I provisionally consider £250 to be a fair award.

I don't uphold the other parts of Miss K's complaint as I don't think she could have cleared her arrears any sooner than she did. And I think Bank of Scotland was within its rights to send a field agent to her home when it did."

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.

Following my provisional decision, Bank of Scotland plc agreed to pay the £250 compensation I recommended and made no further comments.

Miss K also responded and raised the following points:

- If she'd been able to communicate by letter from the end of 2019, she would have been able to reach a repayment plan much sooner. Miss K says this would have reduced the demand letters and avoided any visits, which would have reduced the level of stress she went through.
- She had access to funds from her late father's estate with approval from the executor. So, she could have made monthly payments and did offer to pay a 20% lump sum, followed by a monthly amount. Miss K says Bank of Scotland didn't respond to this letter.
- Miss K wasn't able to set up a repayment plan until she was able to send an income and expenditure form to Bank of Scotland's solicitors by letter. Miss K then made regular payments for six months, after which she repaid the arrears in full. Miss K says if Bank of Scotland had allowed her to do this sooner, she could have avoided further stress, harm and costs would have been reduced.
- Miss K also says the £250 I recommended is extremely low and that Bank of Scotland wouldn't notice it. Miss K feels this isn't enough to ensure Bank of Scotland changes its behavior towards disabled customers.

I've thought carefully about what Miss K has said and I know she'll likely be disappointed, but my findings remain the same as my provisional decision. I'll explain why.

I saw the offer Miss K made by letter during my initial review of her complaint. I agree that Miss K was attempting to reach a solution with Bank of Scotland. And I know Bank of Scotland didn't acknowledge the offer, instead it continued to request alternative communication methods were used.

I've thought about this, and as I found in my provisional decision, Bank of Scotland should have eventually agreed to communicate by letter. But further exchanges and possibly proof of funds would have been necessary for Bank of Scotland to put an arrangement in place. And it's very difficult for me to say that a suitable arrangement would have been reached considering the funds weren't immediately accessible, even if the solicitors managed to reach an agreement later on.

Miss K has explained she was able to make monthly payments for six months and then eventually repaid the arrears in full after Bank of Scotland's solicitor got involved. I'm pleased Miss K was able to sort out an arrangement at this point, but I haven't seen enough to persuade me this would have been possible much earlier, especially given Miss K wasn't making regular contributions to her mortgage prior to this.

Miss K also accepts that she wouldn't have been able to make her full contractual monthly payments or pay off the arrears in full until her late Father's estate was settled. So, I think it's more likely than not Bank of Scotland would have continued to pursue her for the outstanding amount, including referring her case to its solicitors.

Miss K did ultimately owe a large sum, and I think this will have caused her significant stress regardless of how Bank of Scotland communicated with her. Of course, I still acknowledge that Bank of Scotland could have handled things better, but I don't think it's entirely responsible for all the stresses Miss K would have been under at the time.

When I'm considering a complaint like Miss K's, I need to think about what a fair amount of compensation to award for distress and inconvenience is, bearing in mind our awards aren't intended to fine or punish a business. I appreciate Miss K wants Bank of Scotland to learn from this, and I hope it does too. But the ombudsman service is an informal dispute resolution service, we don't regulate the financial services industry – that's the role of the Financial Conduct Authority. So, while I can recognise the impact any mistakes made by the business had on Miss K, I can't award significant sums in order to punish it. In addition, given our informal role, our awards are often lower than you might expect to receive from a more formal process, such as the courts.

I have reviewed all of the correspondence on file and as I explained in my provisional decision, I think Bank of Scotland was right to offer alternative methods of communication to Miss K, and I think some of those alternatives would have allowed other customers to reach an agreement more quickly. But, in Miss K's particular circumstances, I found that ultimately other communication methods weren't right for her. After this was established, I don't think Bank of Scotland should have persisted asking her to speak to it on the phone and so for that, I think £250 compensation for the distress and inconvenience caused is fair.

If Miss K accepts my final decision, Bank of Scotland should put things right as set out below.

Putting things right

Bank of Scotland plc should pay Miss K £250.

My final decision

For the reasons I've explained above, my final decision is that I uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss K to accept or reject my decision before 2 March 2023.

Hanna Johnson
Ombudsman