

## **The complaint**

Miss S complains that Bank of Scotland plc was unfair to start recovery action when her mortgage account fell into arrears.

## **What happened**

Miss S lost her job during the Covid-19 pandemic. Bank of Scotland agreed six months of payment deferrals, in accordance with guidance issued by the regulator. Miss S wasn't able to resume monthly payments after this and her mortgage fell into arrears. In March 2022 Miss S received a letter saying Bank of Scotland was taking court action. Miss S says this was unfair as she'd been told she had options such as to make payments for six months and extend the mortgage term (which was due to expire in late 2022) or sell the property herself.

Our investigator said it wasn't unfair for Bank of Scotland to start recovery action, given Miss S hadn't made payments for some time. Miss S didn't provide income and expenditure information, which meant Bank of Scotland didn't have an opportunity to consider what support it could offer.

Miss S didn't agree, and asked that an ombudsman re-consider her complaint.

## **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.

Miss S has asked for a range of questions to be answered, such as what the implications of human rights legislation are for this service, and what the implications for her are of Bank of Scotland being part of the Lloyds group but with separate registrations. She asked for confirmation that we'd asked for and reviewed all necessary documents from both Bank of Scotland and Lloyds and listened to her calls over the previous six years with both banks. Miss S said a new law was expected which would be relevant to her situation. Miss S also asked for copies of Bank of Scotland's internal policies.

I should explain that we offer an informal dispute resolution service. I can ask Bank of Scotland for information and evidence to help me decide what's fair and reasonable in the circumstances of this complaint. I don't need to review every document or communication between Miss S and Bank of Scotland (or any other bank in the same group) or listen to every phone call over the previous six years. I need to explain why I reach my decision. But I don't need to respond to each question asked by Miss S. I'd add that Banks don't have to share their internal policies with customers, as these can be commercially sensitive.

The complaint Miss S brought to us was that Bank of Scotland offered her options, including to sell the property or to make payments for six months and then extend the term. She says Bank of Scotland then said it had misled her about these options. Miss S said she wanted to extend the mortgage term and port it, but that option wasn't offered to her.

Bank of Scotland recorded Miss S's complaint as being that she'd received a letter saying it

was taking court action. Miss S was upset by this because she said she was told on 14 March 2022 she'd be able to extend the term if she paid as much as she could over six months. She said she was told on 31 March 2022 not to worry about legal action while she sold her property.

I've listened carefully to Miss S's calls with Bank of Scotland on 2 April 2022 when she explained her complaint. I think Bank of Scotland made a fair summary of the complaint Miss S raised, and this is consistent with the complaint Miss S brought to us. This is the complaint that I will be looking into. I won't be addressing Miss S's other questions in this final decision.

*Did Bank of Scotland give Miss S incorrect information about her options?*

I've listened to Miss S's call with Bank of Scotland on 14 March 2022. Miss S said she was intending to start marketing the property for sale in summer or autumn. She'd started a new job but didn't know her salary.

Miss S asked for her arrears balance and about capitalisation. Miss S said she needed to work out what was best for her, for instance if she should extend the mortgage and then port it. Bank of Scotland said the fair assessment team would need to assess what arrangement would be affordable and if she could meet the contractual monthly payment and something towards the arrears. It said extending the term was an option it used to increase affordability. Bank of Scotland said it would need six months payments before considering capitalisation.

Bank of Scotland said the level of arrears met its litigation criteria, so it could start legal action. It said the next step was for Miss S to complete an income and expenditure to get an arrangement in place. Miss S said she needed to get back to work and would call later in March 2022.

Miss S spoke to Bank of Scotland on 31 March 2022, and I've listened to this call. She said someone was interested in buying the property and asked for a statement of the amount she owed. Bank of Scotland said once the property was on the market or she received an offer, Miss S could call and ask for a hold to be put on action while the sale went through. Miss S said she could pay about £400 per month until the sale completed (her contractual monthly payment was over £800).

Miss S was upset when she received a letter on 2 April 2022 about court action, which she said was inconsistent with the options offered to her in March 2022. I don't think though that Bank of Scotland misled Miss S or gave her incorrect information about her options.

Bank of Scotland told Miss S she needed to complete an income and expenditure to agree an arrangement and she hadn't done this. While Miss S says it was agreed she'd pay £400 that's not right. That's the amount Miss S said she could pay. I'd expect Bank of Scotland to complete an income and expenditure with Miss S before agreeing to an arrangement as it would need to check what amount was affordable.

Bank of Scotland told Miss S she should call back when she had an offer for the property or it was on the market so it could hold action. It didn't put action on hold because Miss S didn't confirm she had an offer for the property or that she'd put it on the market.

Bank of Scotland told Miss S that if she wanted it to consider porting or extending the mortgage term this would require her to complete the application process.

I think Bank of Scotland gave Miss S correct information about her options, and what steps she needed to take if she wanted to pursue one of these options.

Bank of Scotland said it should have told Miss S on 31 March 2022 that solicitors had been instructed, and sent a cheque for £100 as compensation for poor service. Miss S was made aware that solicitors had been instructed on 2 April 2022 when she received the letter that prompted this complaint. I think £100 is fair and reasonable compensation for any upset caused by the short delay in being informed about this.

*Was it fair for Bank of Scotland to instruct solicitors to start legal action?*

Miss S lost her job during the Covid-19 pandemic. In late 2021 Miss S told Bank of Scotland she intended to sell the property. It put a hold on action, to allow her time to arrange this. In early 2022 Miss S told Bank of Scotland she'd started a new job. In March 2022 she said she intended to sell the property.

Miss S says she wanted to make mortgage payments but Bank of Scotland didn't allow this, or ask her what she could afford. However, Bank of Scotland told Miss S she needed to complete an income and expenditure discussion so it could agree an affordable arrangement. Without this, it couldn't fairly explore what options might be available to her. Miss S didn't complete an income and expenditure with Bank of Scotland.

While Miss S told Bank of Scotland she intended to sell the property, she didn't confirm she had an offer or that she had put the property on the market. Miss S told Bank of Scotland in mid-May 2022 that she hadn't yet put the property on the market.

When Bank of Scotland wrote to Miss S in late March 2022, her account was 10 months in arrears. The term of her mortgage was due to expire in late 2022 with an unpaid balance. Miss S said she could make monthly payments of about £400 until the property was sold – this was less than half of her contractual monthly payment. All or part of the mortgage is on interest only terms, so even with these payments it's likely the mortgage balance would continue to increase.

Miss S lost her job during the pandemic, and I do appreciate that she doesn't want to lose her home. But because Miss S wasn't making payments, the amount she owed was increasing. Bank of Scotland had to consider whether it was fair to allow this to continue. In the circumstances, I don't think it was unfair for it to start legal action.

### **My final decision**

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 6 June 2023.

Ruth Stevenson  
**Ombudsman**