

The complaint

Ms S' complaint is about a buy-to-let mortgage she holds with Bank of Scotland plc trading as Birmingham Midshires (BoS). She is unhappy that some payments were not collected on the mortgage in early 2021 because BoS didn't restart the direct debit that paid it following a payment deferral in 2020.

In settlement of the complaint, Ms S would like the late payment markers on her credit file removed and to be redressed for the financial losses that have resulted. She also wants to be compensated for the inconvenience she experienced.

What happened

Ms S took out an interest-only buy-to-let mortgage over 25 years with BoS on one of her rental properties in 2017. As Ms S has three mortgages with BoS, I will refer to this one as No. 42.

In 2020 Ms S was granted payment deferrals, which covered the period March to December 2020. When the deferral was arranged, the direct debit mandate (DDM) was cancelled. Ms S was told in September 2020 when the last deferral was agreed that she would need to contact it at the end of the deferral to set up the DDM again. The call handler asked her which bank her paying account was with and when that was confirmed, it was explained that some banks, including Ms S' bank, would not allow the same reference number to be used again on a DDM. As the mortgage account number was the reference number, it had to remain the same, so Ms S needed to speak to her bank before calling to set up the new DDM to make sure the bank had adjusted its system to allow a new DDM to go ahead.

On 22 October 2020 Ms S called BoS about another of her mortgage accounts, but as part of the discussion the direct debit on for No. 42 was raised. Ms S was told to speak to her bank account provider and make sure it removed any indicators and then to call back to set the DDM up. While Ms S called to set up a DDM on the other mortgage when the deferral ended, she did not do so on the No. 42 mortgage.

So when the payment deferral ended for No. 42, there was no direct debit in place to make the monthly payments. This meant that the payments due on 19 January and 19 February 2021 were not collected. Ms S was sent a letter relating to each of the missed payments, but she has reported that she was not living at her home address at the time of the first letter, and so it was not opened at the time.

Ms S called BoS on 4 March 2021 about the arrears letter she'd received – the second one was not sent until the following day. It was explained that there was no DDM in place to collect the payments and before one could be set up, she needed to contact her bank to make sure it removed the previous instruction, as it could prevent a new DDM from working. Ms S was then to call back. She was also given details to allow her to make a manual payment to bring the account up to date. Payments for January and February 2021 were credited to the account on 10 March 2021.

The next payment was due on 19 March 2021 and this was again missed. A letter was sent and this elicited Ms S to call again on 9 April 2021. It was again confirmed that there was no DDM in place. A new DDM was set up at Ms S' insistence, but she was told that it might not work as she hadn't contacted her bank as previously explained. In addition, if it did work, it would not go through in time to collect the April 2021 payment, and Ms S would need to make a manual payment again. It was confirmed in writing that the direct debit would collect the payments from 19 May 2021. Ms S made a manual payment for March 2021 at that point.

Ms S didn't subsequently make a payment for April 2021 and two days later she was sent a letter telling her the account was in arrears. She subsequently called on 18 May 2021 to discuss the situation. Ms S was reminded that she'd been told the DDM wouldn't start collecting payments until the May 2021 payment. Ms S subsequently cleared the arrears later that month.

Ms S complained about what BoS had recorded on her credit file. It responded to the complaint in a letter of 12 June 2021. It set out the conversations between it and Ms S, in which she had been made aware that a direct debit mandate was not in place for the mortgage on No. 42. It had also highlighted what she had needed to do to have the payments made by direct debit, but she hadn't done that until March 2021. Following that, she hadn't made the manual payment for April 2021 she'd been told would be necessary. BoS didn't consider it had done anything wrong and it rejected the complaint.

Ms S was not satisfied with BoS' response and asked this service to consider her complaint. When she did she explained she was a property investor and so the late payment markers had caused her severe hardship and had 'crippled her financially'. The financial problems had spiralled out of control to the point where BoS had instructed field agents to visit the properties and it had started legal action to repossess. We explained that any new issues would need to be raised as a new complaint.

One of our Investigators considered the complaint, but he didn't recommend that it be upheld. He was satisfied there was no DDM in place to collect the payments after the payment deferral ended in December 2020, and Ms S would have been aware of this. In addition, she had been made aware of the issues with her bank regarding starting payments by DDM and had been asked to speak to her bank and then call back to set up a DDM. She hadn't done this and didn't ensure the payments were made as was her responsibility.

Ms S didn't accept the Investigator's opinion. She stated that once the payment deferral period had ended it was BoS' responsibility to ensure the DDM was reactivated and payments were taken. In addition, Ms S said she didn't believe a block could be placed on DDMs by paying banks and she had informed BoS of this on several occasions. She went on to say that it was only when she threatened to apply for compensation the DDM was put back in place, but BoS refused to resolve the matter. Ms S said the late payments registered by BoS were not a true reflection of the events that took place and reiterated they had caused significant financial hardship to herself, her family and her business. She asked that the complaint be passed 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.

I would firstly confirm that while a DDM is under the control of the lender to collect payments if it is active, that does not negate a borrower's responsibility to ensure the payments are

made to the mortgage on time. This is especially so when the mortgage is a commercial one as the one being complained about here is.

Ms S has told us that she doesn't believe the paying bank could cause problems with a DDM being set up. Initially I would explain that a paying bank can stop payments under a DDM if it doesn't believe it is valid or thinks there is something wrong with it. In addition, I am aware that following payment deferrals during 2020 there were problems caused by some banks' systems, and Ms S' paying bank was one of them. If the DDM had been inactive for a period of six months or more, it could not be reactivated and a new DDM had to be set up. However, problems then occurred when a lender wanted to use the same reference number for the new DDM – which in most cases it couldn't change as it was the mortgage number - the bank's systems would not accept the DDM and rejected it. This was explained to Ms S in September and October 2020 and March 2021. She was told what she needed to do in relation to her paying bank and she was told she then needed to call BoS back to set up a DDM.

I am satisfied that Ms S was made aware that there was no DDM attached to the mortgage account for No. 42 and what she needed to do in order for one to be set up in both September and October 2020, before there were any missed payments. Ms S didn't complete the actions BoS told her were necessary and that was why no DDM was in place when the payment deferral ended. As such, it was Ms S' responsibility to ensure the payments were made manually. That was still the case with the March and April 2021 payments. I can't find that BoS was responsible for the payments being missed.

In the circumstances, I can only conclude that Ms S should reasonably have known that she needed to make manual payments to the account from January 2021 onwards, until she had spoken to her paying bank and gone back to BoS to set up a new DDM. It is reasonable that she would also have been aware that payments were not leaving her account, especially given she was having to supplement her income from savings. Added to this, BoS wrote to Ms S when the payments were missed, to highlight the issue. It is unfortunate that Ms S wasn't living at home and so didn't read the first letter when it was delivered, but that was through no fault of BoS.

When a lender reports to credit reference agencies it is required to provide them with accurate information. As payments were missed/paid late, BoS was not wrong to report that fact when it reported to credit reference agencies. In light of this, it would not be appropriate for BoS to remove the missed/late payment markers from Ms S' credit report.

My final decision

My final decision is that I do not uphold this complaint. Under the rules of the Financial Ombudsman Service, I am required to ask Ms S to accept or reject my decision before 19 February 2024.

Derry Baxter
Ombudsman