

The complaint

Mr D's complaint relates to a mortgage he has with Bank of Scotland plc trading as Halifax (BoS). In 2023 he complained because BoS was not abiding by a payment agreement he believed was entered into in October 2022 and so it should not be taking action to repossess his property.

What happened

In 2004 Mr D took out a mortgage with BoS to purchase his property. He borrowed further funds in 2006. Most of the borrowing was on an interest-only basis.

In early 2020 Mr D stopped making mortgage payments due to BoS agreeing Covid-19 payment deferrals. However, when the deferrals ended at the beginning of 2021, Mr D didn't start making payments to the mortgage again. BoS looked at whether it was able to assist him at that time, but due to him having such a low income, it wasn't able to do so. Despite Mr D contacting BoS on several occasions at the beginning of 2021, his financial position hadn't improved to the point where BoS believed he could afford to make any payments to the mortgage. However, because Mr D was so adamant he could, it agreed an arrangement of £100 for March 2021 only. Three more payments of £100 were made in May 2021, but then payments stopped again. As Mr D was not responding to its requests for contact, BoS started legal action in June 2021.

Mr D raised a complaint in July 2021 about BoS not sticking to an agreement about a payment arrangement made in January 2021. The complaint couldn't be resolved between Mr D and BoS and so he referred it to this Service.

A possession order was granted by the Courts in December 2021. However, BoS didn't immediately move to have the order enforced because of the complaint with this Service.

On 26 July 2022 I issued a decision on the complaint Mr D raised in 2021. I didn't uphold the complaint as there was no evidence that BoS had entered into a long-term payment arrangement with Mr D. As Mr D had stopped interacting with BoS after March 2021, I didn't consider it was unreasonable for BoS to have pursued a legal remedy.

It was not until October 2022 that any further payments were made to the mortgage, at which time Mr D started making monthly payments of £5. By that point the arrears on the account were in the region of £15,000. That figure subsequently increased to over £34,000 by the beginning of 2024.

On 26 May 2023 BoS contacted Mr D to ask him to contact it to discuss his mortgage and look into finding a solution to the situation it was in. Mr D responded a couple of days later to say that he believed there has been a payment arrangement in place since 4 October 2022, whereby he paid £5 per month. He also confirmed that an elderly and unwell relative was living in the property with a formal tenancy agreement.

The following month BoS wrote to Mr D thanking him for providing information about his tenant. It went on to say that it had no record of a payment arrangement being set up and asked Mr D to provide any evidence he had of the arrangement. Mr D didn't respond.

Following this BoS informed Mr D that if he was unable to start paying the monthly payments again, it would move to have a warrant of possession issued to it so that it could repossess the property. Mr D referred his complaint to this service two days later. When he did so he confirmed he didn't live in the property and had not done since 2007. Since then, his relative had rented the property from him.

BoS issued its final response to the complaint on 4 December 2023. It said that it had declined a payment arrangement proposal from Mr D in July 2021 and explained that it needed to review his income and expenditure if he wanted an arrangement. Mr D had not responded, but had in October 2022 started making £5 monthly payments to the mortgage. BoS said no agreement was made for that amount or any other. It asked to speak to Mr D to discuss his intentions regarding the mortgage. In relation to there being a tenant in the property, it highlighted that for him to be able to rent the property out, it had to ask him for its consent before renting started – he hadn't done so and so he needed to speak to it about that too.

In January 2024 BoS applied to the Courts for a warrant of possession. It was issued and an eviction date was set for 17 January 2024. This was then cancelled following BoS becoming aware that Mr D's complaint was with this Service.

One of our Investigators considered Mr D's complaint, but he didn't recommend that it be upheld. He said there was no evidence of the payment arrangement Mr D had said had been agreed. Furthermore, given the level of arrears on the account and Mr D's lack of response to BoS' requests for contact to discuss the situation, the Investigator didn't think BoS had acted inappropriately.

Mr D asked that the complaint be referred to an Ombudsman. He said that he considered that BoS 'accepted' his payments by not refunding them, it had by default entered into an agreement with him and BoS was bound to continue with the arrangement.

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.

A payment arrangement is something that both parties to a mortgage contract have to actively agree to. I have reviewed the contact history for the account in the months prior to Mr D starting to make the £5 monthly payments. The only discussions that took place were with Mr D's elderly relative as his representative. There is no mention of a payment arrangement, indeed, that individual committed to trying to get Mr D to pay the mortgage as he was required to under the mortgage contract. No mention was made of payments of less than the contractual monthly payment. As such, I am satisfied that a payment arrangement was not put in place in October 2020 or at any point thereafter.

Mr D has said BoS not returning the money he has been paying it should be deemed as it agreeing to a payment arrangement of that amount. I don't agree. If BoS had refunded the money Mr D had been paying it, that would have placed his mortgage in a worse position, which a mortgage lender is not going to do under its duty of care to its customer. As I have said above, a payment arrangement required both parties to actively agree to it, and it would be entirely inappropriate for BoS not rejecting payments from Mr D to be taken as agreement to those payments being the only ones made. Furthermore, given BoS was continuing to

discuss the mortgage and payments with Mr D's representative, that would belie his claimed belief that BoS was satisfied with, and agreed to, the payments he was making.

While I can understand the concern for Mr D's elderly relative, given the amount of the arrears on the account and the fact that he has declined to interact with BoS in recent years, I don't consider BoS' decision to continue its pursuit of legal action was inappropriate. That said, BoS has said that it is still willing to speak to Mr D to attempt to put in place a plan that will prevent the repossession of his property. I can only encourage Mr D to do so.

I think it is also important to explain here that lenders will generally agree to put recovery action on hold whilst we look at a complaint, but they don't have to, and we can't force them to. If the Financial Ombudsman Service had that power it would undermine our impartiality between the parties to a complaint. It would also create the potential risk of consumers using our service to bring complaints with the intention of obstructing businesses that were trying to take legitimate action through the courts to recover money owed to them. I do not wish to alarm Mr D, but I would not want him to be under any misunderstanding that we would tell BoS that it must suspend any recovery action in the event of a new complaint being raised.

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 Mr D to accept or reject my decision before 22 April 2024.

Derry Baxter

Ombudsman