

## **The complaint**

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Mr A complains that The Royal Bank of Scotland Plc, trading as First Active, keep sending him letters saying that he has missed mortgage payments and that his mortgage is in arrears, despite Mr A having made the payments due.

In order to put matters right Mr A wants First Active to:

- stop sending arrears letters;
- set his monthly payment date as the second day of each month;
- accept weekly standing order payments instead of a monthly direct debit mortgage payment;
- remove any adverse data from his credit file that has been reported from September 2022 onwards;
- credit any overpayments towards the following month's mortgage payment; and
- pay him £500 compensation for the trouble and upset this matter has caused him.

### **What happened**

Mr A holds a mortgage with First Active. I note that he has had a number of problems with this mortgage and has previously referred a complaint about the mortgage to this service. For the avoidance of any doubt, I have not considered issues that have been addressed by First Active in previous final response letters, or the issues that were previously referred to this service. This includes Mr A's complaint about wanting any overpayments to be used towards the following month's mortgage payment.

The terms and conditions for Mr A's mortgage set out that the monthly mortgage payment should be made by direct debit. Mr A has been paying his mortgage by weekly standing order. Mr A has explained that he is better able to manage his finances if he makes weekly payments, rather than a single monthly payment by direct debit.

As Mr A makes weekly payments towards his mortgage this means the full payment due for that month is not made on the 28<sup>th</sup> day of the month. As a result, letters are automatically generated by First Active's system that say Mr A's mortgage account is in arrears.

Mr A complained to First Active about this issue. It upheld his complaint in part. It apologised for the frustration this matter was causing Mr A, but it said it was 'powerless' to stop the arrears letters as they were generated automatically whenever the full mortgage payment due for that month was not made on the 28<sup>th</sup> day of the month. It also said it was not possible for it to change the payment due date to the second day of the following month as its system was set up to require the monthly mortgage payment due to be made on the 28<sup>th</sup> day of each month.

It acknowledged Mr A's concern about his credit file. It said it would review Mr A's file and would let him know if any adverse information had wrongly been recorded in relation to this issue and would arrange for it to be removed. It also said it would pay Mr A £150 for the distress and inconvenience this matter has caused him.

Mr A was not satisfied with First Active's response and referred his complaint to this service.

Having considered Mr A's complaint our investigator said he thought the offer First Active had made was fair in the circumstances of this complaint and he didn't think it needed to do any more to put matters right.

Mr A was not satisfied with our investigator's view and asked for this complaint to be considered by an ombudsman. He reiterated his view that First Active should allow him to *'...change the way I make my monthly mortgage payment, from direct debit to a variable weekly standing order to assist me in conveniently meeting my monthly mortgage payment.'* He also said that for the past 20 years his monthly mortgage payment had been made on the second day of each month, so he did not accept that First Active's system was set up to only accept direct debit payments on the 28<sup>th</sup> day of each month.

### 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.

#### Arrears letters

I am sympathetic to Mr A's position and I can understand why he is frustrated that, despite having made the full monthly payment due, he has received letters from First Active to say that his mortgage is in arrears.

As First Active explained to Mr A, the terms and conditions of his mortgage set out that the monthly payment should be made by direct debit. It appears that First Active is allowing Mr A to make weekly standing order payments towards his mortgage, instead of a monthly direct debit in order to assist him in managing his finances. However, as First Active explained, its system *'...is designed to expect the contractual monthly instalments to be paid via Direct Debit on the 28th of each month;...*

*...The fallout of this I'm afraid is that these letters will be automatically generated, and will purport that the arrears on your mortgage is equal to that of the expected payment- so therefore, these letters will be automatically generated as no payment was received on the 28th of the month.*

*This is unfortunately a consequence of the limitations of the Offset Mortgage system we use.'*

I do understand that it is frustrating for Mr A to receive letters saying that his mortgage is in arrears, but I must take into account that First Active confirmed to Mr A in December 2023:

*As we are aware however that you pay your mortgage via manually in instalments; **you can ignore these letters**; however, if you do have any concerns - please do not hesitate to contact us.*

(bold is my emphasis)

I do understand that this is not the solution Mr A is seeking, but as First Active has explained

that it cannot stop these letters and has confirmed that Mr A can ignore them in the months when he has paid enough to cover the required monthly payment, I cannot reasonably require it to do more in respect of this matter.

As Mr A may be aware, this service does not have the power to order a business to change its systems or internal processes. Nor do we have the power to take disciplinary action or fine a business for any failings on its part; that is the role of the Financial Conduct Authority (FCA). If Mr A wishes to pursue his concerns about the system First Active uses to monitor monthly mortgage payments and the automatic letters this system generates, he may wish to contact the FCA about his concerns.

#### Weekly standing orders

I note that Mr A has said he wants First Active to accept weekly standing order payments towards his mortgage. In the absence of anything to show that First Active hasn't accepted the standing order payments Mr A has made I cannot reasonably find that it is not accepting these payments. I therefore have not considered this aspect of Mr A's complaint any further.

#### Monthly payment date

Mr A says that for the past 20 years his monthly mortgage payment has been made on the second day of each month so he does not accept that First Active's system was set up to only accept direct debit payments on the 28<sup>th</sup> day of each month.

I do appreciate Mr A's position on this matter, but as First Active has said its system design means it won't be possible to change the mortgage payment date, I cannot reasonably require it to amend the payment due date to the second day of each month.

I do understand that this is not the decision Mr A was hoping for, but as I explained above, this service does not have the power to order a business to change its processes or systems.

#### Credit file

I note that First Active has confirmed it will review Mr A's credit file. If any adverse information has been incorrectly recorded (where the mortgage payment due for that month has been paid in full), it said it will notify Mr A in writing and amend his credit file.

I think this is fair and reasonable and I can't reasonably require First Active to do more to resolve this aspect of Mr A's complaint.

#### Use of overpayments towards the following month's mortgage payment

As I noted above, this aspect of Mr A's complaint has already been considered as part of a previous complaint. I have therefore not re-considered this matter. However, I note that First Active explained again in its final response letter dated 22 December 2023:

*I must also make you aware that overpayments will be classified as being ad-hoc and correctly moved to the capital balance of the mortgage as overpayments cannot be used to pay for upcoming mortgage payments. (The terms and conditions of the borrowing also stipulate that a payment is to be made every month for the contractually agreed amount).*

#### Compensation

Mr A says he wants First Active to pay him £500 for the ongoing trouble and upset these

matters have caused him. First Active has paid Mr A £150 in connection with this complaint. Like our investigator, I think the redress First Active has paid Mr A is fair in the circumstances of this complaint and I don't think it needs to pay more.

In reaching this view I have taken into account that although it must be frustrating for Mr A to receive the automatically generated arrears letters, there is nothing to show or suggest that they have had any financial impact on Mr A - and First Active has confirmed that Mr A can ignore these letters. It also confirmed to Mr A that:

*...as long as the entirety of the monthly instalment amount is fulfilled by the last day of each calendar month - we would classify that month's payment as being paid.*

I am also mindful that First Active has accepted the weekly standing order payments Mr A has made, despite the terms and conditions for his mortgage clearly setting out that the contractual monthly payment should be made by direct debit.

### **My final decision**

My decision is that, for the reasons I have set out above, I do not uphold this complaint as I think The Royal Bank of Scotland Plc, trading as First Active does not need to do any more than it has already done to put matters right.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 1 July 2024.

Suzannah Stuart  
**Ombudsman**