

The complaint

Mr S complains that Bank of Scotland plc, trading as Halifax, has defaulted his loan account.

What happened

Mr S took out a £17,000 loan from Halifax in September 2020. He didn't make the payment of £349.24 that was due in January 2022 so Halifax sent him an arrears letter. Mr S contacted Halifax and it was agreed that he would pay the arrears in February 2022. That was confirmed in a letter that was sent to him. Mr S made the loan repayment that was due in February 2022 but didn't pay the arrears so Halifax sent him two more arrears letters in March 2022. He made the loan repayment that was due in March 2022 but didn't pay the arrears so Halifax sent him a default notice which said that it would end the agreement if the arrears weren't paid. Mr S didn't make the payment of £349.24 that was due in April 2022 so the arrears on his account increased to £698.48. Halifax sent him an arrears letter for that amount which set out options for Mr S and said that if he didn't get in touch in the next 14 days, it would end his loan agreement. The loan agreement was ended in May 2022.

Mr S complained to Halifax about these events and he said that he hadn't missed three monthly payments for his loan so it didn't have the right to apply a default. Halifax declined his complaint. It said that Mr S's loan had been showing in arrears since January 2022, the arrears increased over the next four months with no response to the letters it was sending him and nor were any additional payments made during that time to reduce the arrears and that it was the combination of those which led to his loan being defaulted.

Mr S wasn't satisfied with its response so complained to this service. His complaint was looked at by one of this service's investigators who, having considered everything, didn't think that it should be upheld. He said that Mr S missed the January 2022 payment but made payments in February and March 2022 and then missed the April 2022 payment. He said that guidance issued by the Information Commissioner's Office (the "ICO") is for the period that an account is in arrears, not the number of payments missed. He said that Mr S's arrears lasted more than three months so Halifax could register a default in line with the ICO guidance.

Mr S didn't agree with the investigator's recommendation and asked for his complaint to be considered by an ombudsman. He has responded in detail to the investigator's recommendations and has described his circumstances that led to the missed payments. He also says that he asked Halifax for a settlement quote and it wrote to him in May 2022 and said that it was valid until June 2022 but when he tried to repay the loan it had been defaulted. He's also referred to information from the ICO and to decisions issued by this service which he says show that an account shouldn't be defaulted until it's three payments in arrears.

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 understand that the ICO says that a default may be registered when a consumer is at least three months behind with their payments, and that it would expect a default to be registered by the time the consumer is six months behind with their payments. Generally speaking, this service takes a similar view to the ICO whilst considering what was fair in the individual circumstances of the complaint. We think it wouldn't be fair if a business didn't record a default by the time the consumer was between three and six months in arrears, as by that point it'd be clear that they weren't able to make their contractual payments.

Mr S says that he missed his first ever payment on his Halifax loan in January 2022 but he says that he didn't contact Halifax at that time, partly due to uncertainty about its response and partly because he had no means to settle the debt. Halifax sent him an arrears letter and it says that Mr S requested a one-month plan online in February 2022 (which meant that he would pay the arrears and his usual monthly payment in February 2022, which he didn't do). Mr S made the loan repayment that was due in February 2022 but didn't pay the arrears so Halifax sent him two more arrears letters in March 2022. He made the loan repayment that was due in March 2022 but didn't pay the arrears so Halifax sent him another letter and a default notice.

The letter said: *"We've included a Default Notice with this letter, which is a legal document. This means we can end your agreement if we don't receive payment for £349.24 by 16 April 2022"*. The letter included sections which said: *"We want to avoid ending the agreement"*, *"It's not too late for us to help"*, and *"Help and advice is available"*.

Mr S says that he was working away from home and, when he opened the letter, the deadline of 16 April had passed so he understood that it was too late to take any action and that he needed to accept that the account would be closed. Mr S didn't make the payment of £349.24 that was due in April 2022 so the arrears on his account increased to £698.48. Halifax sent him an arrears letter. Mr S says that the letter said that he was two months in arrears and that he would be sent notice of this every six months. But the letter says: *"We recently sent you a Default Notice, as some of the repayments for your loan have been missed. The Default Notice explained if we didn't agree a plan together or receive payment, we'd end your loan agreement with us. There are still some ways to stop this from happening"*; and *"If you don't get in touch in the next 14 days, we'll end your loan agreement with us"*.

Mr S didn't contact Halifax during that period about the default notice but he did contact it to ask for a settlement quote. Halifax sent him a settlement quote in May 2022 (before the 14 day period had ended) and its letter said that the quote was valid until 1 June 2022. Mr S says that that led him to believe that he had an additional 28 days to settle the loan but when he tried to make payment the loan account had been ended.

When Mr S's loan agreement was ended in May 2022, it was more than three months in arrears and Mr S hadn't made the payment that was due in January 2022 nor the payment that was due in April 2022. Halifax had sent Mr S arrears letters, a default notice and other letters as it was required to do, but other than the online contact that he'd made in February 2022, he hadn't contacted it about the issues with his account. He did request a settlement figure but his account had been defaulted before he settled his loan. If Mr S had contacted Halifax about the issues with his account, a default may have been avoided. But he didn't contact Halifax about those issues and I consider that it was fair and reasonable in these circumstances for it to have defaulted his account.

This service issues decision on the individual merits of the case. I've explained above the ICO guidance and the approach that this service takes. I'm not persuaded that there's enough evidence to show that Halifax has acted incorrectly in these circumstances. It's clear that Mr S feels very strongly about his complaint and he's described the consequences that

the default has caused him. I appreciate that this will be disappointing for Mr S, but I find that it wouldn't be fair or reasonable for me to require Halifax to take any action in response to his complaint.

My final decision

For these reasons, my decision is that I don't uphold Mr S's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 6 November 2024.

Jarrold Hastings

Ombudsman