DRN-5331150

Financial Ombudsman Service

The complaint

Mr and Mrs E complain that Bank of Scotland plc trading as Halifax hasn't treated them fairly in relation to arrears on their mortgage. In particular, they dispute that Halifax is acting fairly in treating them as having missed payments, when it sought repossession of their property, and how it has engaged with them.

What happened

Mr and Mrs E have a residential mortgage with Halifax, originally taken out in 2008. They've struggled to maintain the monthly payments over the years, and by 2019 the arrears were such that Halifax went to court and obtained a suspended possession order (SPO).

An SPO says that Halifax is entitled to repossess the property – unless Mr and Mrs E comply with the conditions set out in the order.

The court order said that possession would be suspended

> "upon payment of the contractual monthly payment (currently £2,034.59 but this may vary) plus £609.36 each month towards the arrears of £96,278 by the 1st of each month commencing 1 March 2019."

In this complaint, Mr and Mrs E say:

- The 2019 SPO included "no order for costs", but Halifax tried to add over £7,000 of legal fees to the balance (the fees were later removed when Mr and Mrs E complained to Halifax's solicitor).

- In 2020, Halifax wrote to Mr and Mrs E following changes in the mortgage interest rate. It told them what their new "total" monthly payment was, so that was what Mr and Mrs E paid. But this didn't in fact include the extra £609.36 directed by the SPO, which meant that Mr and Mrs E began to breach the SPO. Halifax should have told them the correct amount to pay, should have told them when the SPO element was no longer being paid, and should have replied to their various emails and letters.

- Halifax took no action until June 2021, when it told them it was considering enforcing the possession order because Mr and Mrs E were in breach of the SPO.

- Halifax agreed an arrangement of around £2,700 in October 2021. This resolved the situation with the missed SPO payments.

- Mr and Mrs E asked Halifax to consent to a second charge over the property in favour of their son. Halifax initially said a request had to come from a solicitor, and only agreed when the Financial Ombudsman Service got involved.

- Halifax have since changed the contractual monthly payment again, but the changes don't reflect changes in the interest rate. Halifax has refused to explain or provide the formula for its calculations.

- From September 2023, and despite Mr and Mrs E not having missed any payments for several years, Halifax began threatening them with field agent visits and repossession. It also misled Mr and Mrs E's member of Parliament, who had intervened on their behalf.

- In January 2024, Halifax sent a field agent to visit Mr and Mrs E. It sent further false and threatening letters in June 2024, and another field agent in July.

- In May 2024 Halifax re-calculated – substantially increasing – their monthly payment without explaining why.

- In August 2024, Halifax said it was taking repossession action, explaining in September 2024 that this was because the 2019 SPO was not being complied with. It required immediate payment of £6,500, the amount left of the missed SPO payments from 2020 and 2021. Halifax failed to give reasonable notice of its intentions.

- Since the SPO, Mr and Mrs E have reduced the mortgage balance from £345,600 to £247,000 and reduced the arrears from £96,300 to £59,200. They are complying with the SPO, and with the arrangement agreed in October 2021.

- Taking possession proceedings when Mr and Mrs E are making their payments, have not missed a payment for years, and are meeting the requirements of the SPO, is unfair. Repossession is not a last resort. Halifax has also not complied with the pre-action protocol. It has given them misleading and contradictory information or has not communicated with them at all.

- In September 2024, Halifax's solicitors said that the possession action was because of the SPO amount missed between 2020 and 2021, and the amount Mr and Mrs E were paying was not enough to clear the arrears and the balance by the end of the mortgage term. If true, then the October 2021 arrangement was wrongly set – but that is Halifax's mistake. By setting the arrangement in October 2021 for the rest of the term, and also requiring payment of £6,500 now, Halifax is double-counting.

- The solicitors' letter is contradicted by a letter from a Halifax complaint manager in May 2024, who confirmed that Mr and Mrs E's expected monthly payment was £3,344.47 – being the monthly payment of £2,735.11 plus the £609.36 SPO element.

- Mr and Mrs E are vulnerable, as is their son who lives with them. This situation has had a severe impact on them. Both have hearing difficulties which makes talking on the phone difficult, and when they have phoned, they have spent long periods on the phone and not been able to talk to anyone who knows about their mortgage.

Halifax said it had acted fairly. Mr and Mrs E have not kept to the SPO, because they missed payments in 2020 and 2021. While they have recently being paying the amount set out in the SPO, that's no longer enough to clear the mortgage balance and arrears by the end of the term – because of increases in interest rates in the meantime, because of the period of missed SPO payments, and because Mr and Mrs E generally pay late each month, so extra interest is being added to the balance.

Halifax said it needs Mr and Mrs E to agree a new payment arrangement. It's written to them many times asking them to call to discuss options – it's willing to consider capitalising the arrears and / or offering a new interest rate – but Mr and Mrs E haven't done so. Instead they've been emailing to make complaints or dispute what Halifax have said to them.

Because there is no payment arrangement in place, the mortgage is not on track to be repaid on time and much of the SPO shortfall remains outstanding, Halifax has gone back to court to enforce the possession order. But it remains willing to work with Mr and Mrs E to agree a way forward it they are prepared to call its financial assistance team and come to an arrangement.

Mr and Mrs E have made a number of complaints to Halifax over the years, to which it has responded. They've also made three previous complaints to the Financial Ombudsman Service:

- In January 2018, an ombudsman issued a final decision. She said that Halifax hadn't acted unfairly in not waiting for the outcome of an unrelated court case, and Mr and Mrs E's application for welfare benefits, before taking recovery action, and that it wasn't unreasonable for Halifax to want to discuss payment arrangements by phone rather than in writing. She said Halifax didn't need to make a specific named member of staff available to speak to Mr and Mrs E. She said that in the absence of realistic payment proposals, it was reasonable for Halifax to consider legal action.

- In April 2019, another ombudsman issued a final decision. He said that Halifax hadn't agreed a payment arrangement in August 2018 – and even if it had, Mr and Mrs E hadn't kept to it by not making payments after September 2018. In those circumstances, it wasn't unreasonable that Halifax had gone to court to obtain a possession order.

- In June 2022, another ombudsman issued a final decision. Mr and Mrs E had complained that when Halifax told them their monthly payment was reducing following a fall in interest rates, it only told them the contractual monthly payment and not the full amount required to comply with the SPO (monthly payment plus £609.36). As a result, they only paid the new monthly payment and not the SPO amount, leading to them falling behind on the SPO between March 2020, when rates first fell, and August 2021 when Halifax told them they weren't paying enough. They also complained about what Halifax was reporting to their credit files, and that it wanted to review their income and expenditure before agreeing to accept the monthly payment plus SPO amount again. The ombudsman said that the court order made clear that Mr and Mrs E needed to pay the SPO amount on top of the contractual monthly payment, and that they ought to have understood that Halifax had only told them the new contractual monthly payment not the total amount they would need to pay each month.

  The ombudsman said that Halifax had made clear in a series of letters that the arrears repayment element wasn't included in the contractual monthly payment. While Halifax has since amended its standard rate change letters to include the arrears element as well as the revised contractual monthly payment going forward, that doesn't mean it was unfair it hadn't done so before. Halifax had now agreed a new payment arrangement including the revised contractual monthly payment plus the SPO element. The ombudsman said that was fair, and he didn't uphold the complaint.

I've issued a jurisdiction decision, in which I explained that I wouldn't be considering complaints Mr and Mrs E made to Halifax but which were not referred to us in time, and I wouldn't be re-considering any matters decided by the previous ombudsmen. I include the above summary of their decisions by way of context and to help set out the factual background. I said that I would consider the following issues:

- How Halifax has dealt with the arrears and payments made, including calculations of the amounts due and the amounts needed to clear the arrears, as well as communications about missed payments, since 21 March 2022.

- Halifax not agreeing to Mr and Mrs E's requests to discuss arrangements by email rather than phone.

- More recent matters, including the fairness of seeking to enforce the SPO in 2024.

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.

It seems to me that the issues in this complaint stem from the SPO in 2019, and what happened with Mr and Mrs E's payments between 2020 and 2021 when the interest rate and the contractual monthly payment changed.

As I've said, another ombudsman found that Halifax had not acted unfairly at that time, and I'm not going to revisit those conclusions. But the fact that the SPO payments were missed was one of the reasons why the amount set out in the SPO is no longer enough to clear the mortgage balance by the end of the term.

When the SPO was issued, it was done on the basis that Mr and Mrs E needed to pay £609.36 per month, on top of their regular monthly payments, to repay the mortgage – including the arrears – in full by the end of the term.

At the time of the SPO, the arrears were over £96,000. The SPO payment was the amount required to repay the arrears, as long as payment was made every month, by the end of the term.

Arrears don't form part of the mortgage balance used to calculate the contractual monthly payment, and I've not seen any evidence that Halifax has treated the arrears in this way. Arrears are the sum total of the payments Mr and Mrs E have missed to date.

But the effect of being in arrears – of not having made those payments – is that the mortgage balance is higher than it would otherwise be. As a result, more interest is charged than would have been the case had the missed payments been made in full and on time. That interest is included in the calculation of monthly payments even though the arrears themselves aren't.

And when Mr and Mrs E missed the SPO payments between 2020 and 2021, that meant that more interest was incurred, because the total amount outstanding didn't reduce at the rate expected at the time of the SPO, or at the time the monthly payments were set in 2020 following the changes in interest rates. Even though the arrears themselves weren't included in the monthly payment calculation, interest on arrears was. The monthly payment was calculated in 2020 on the assumption that Mr and Mrs E would keep up with the SPO payments, and that the total amount owed – and interest charged – would reduce accordingly.

As a result, when Mr and Mrs E didn't make the payments between 2020 and 2021, that had two effects. Firstly, they were in breach of the SPO – and when they did start making the SPO payments again, £609 per month was no longer enough to clear the arrears by the end of the term, because the arrears hadn't reduced during that period and there were now fewer months left to repay them. Secondly, because the arrears hadn't reduced, more interest had been charged than expected and the balance was higher than expected, so the monthly payments set in 2020 were no longer enough to repay the main balance (excluding the arrears) either.

There was another issue too. Mr and Mrs E's mortgage payments are due at the start of the month. But they were not making the payments until the end of each month. For example, their own payment schedule (on page 8 of their third document bundle) shows that while the SPO said the first payment had to be made on 1 March 2019, Mr and Mrs E didn't make that payment until 25 March. As a result, the mortgage balance was higher than expected for the whole of March 2019 – meaning more interest was charged than had been factored into the calculations for the monthly payments. Because Mr and Mrs E weren't paying by direct debit, in some cases when they made payments at the end of a month they weren't received by Halifax until the start of the following month.

Mr and Mrs E say that they have in fact been paying early – so they made the payment due on 1 March in late February, for example. But that's not actually the case. Both Halifax's records and Mr and Mrs E's payment schedule show that they regularly make the payment due at the start of each month only at the end.

That's why Halifax has often written to them about missed payments – because payments are never made on (or even shortly after) the due date, but only at the end of the month, after the arrears letters are sent. And sometimes payments aren't actually received until the start of the following month.

Halifax re-calculates the monthly payment when the interest rate changes, as it has done relatively frequently in recent years. All of this is why, when the rate has changed, Mr and Mrs E's monthly payment has not changed in the way they expected. The combination of higher than expected arrears and late payments following each change of monthly payment means that more interest was charged than had been expected when the monthly payment was set. The monthly payment is therefore not enough to pay off the interest actually charged each month in full.

That in turn means the balance is higher than expected by the time of the next payment change. There are also now fewer months left to repay the mortgage. So when the monthly payment is changed, the change not only reflects the change in interest rate but also the additional interest charged as a result of how Mr and Mrs E have managed their mortgage – and the monthly payment is reset to the amount now required to repay the balance by the end of the term over a shorter remaining term. This generally results in the monthly payment going up by more (or going down by less) than could be expected because of the change in interest rate alone.

I don't think Halifax has misled Mr and Mrs E about any of this. It has explained several times how the payments have changed. It's told them what they need to pay under the SPO – the monthly payment plus £609 – but it's also told them that paying that amount is no longer enough to repay the mortgage by the end of the term and it's told them what amount they actually need to repay.

I've reviewed all the correspondence and records both Mr and Mrs E and Halifax have given us. I'm not persuaded Halifax has acted unfairly. I think it's tried many times to engage with Mr and Mrs E to explain that they're not on track to repay their mortgage, and it's repeatedly asked them to engage with it to agree an arrangement to get things back on track.

Mr and Mrs E say there is an arrangement in place – the SPO, as confirmed by conversations they had in August and October 2021, and a letter in May 2024 confirming they needed to pay the monthly payment plus the SPO amount.

But I don't think that's right. While Mr and Mrs E did come to an arrangement in 2021, that was not a permanent arrangement for the rest of the mortgage term. It was for a short period, to be reviewed and amended where necessary. Halifax has made many attempts since to agree a new arrangement with Mr and Mrs E. And the May 2024 letter was in response to a specific question – how much in addition to the monthly payment would Mr and Mrs E need to pay to include the SPO payment – not an agreed arrangement for that amount or a confirmation that would be enough to repay the mortgage by the end of the term.

At the same time, Mr and Mrs E have been in regular contact with Halifax themselves. They've sent many emails, mostly to its complaints departments. But Halifax has said on many occasions that Mr and Mrs E need to speak to its mortgage financial assistance team – not its complaints team. It has also offered to support Mr and Mrs E in other ways, such as considering consolidating the remaining arrears, or offering a new lower interest rate. But Mr and Mrs E haven't wanted to consider consolidation and haven't wanted to discuss things with the mortgage financial assistance team, preferring to make a series of complaints.

Those complaints stem from the issues with the SPO payments in 2020-21 and disagreements about the mortgage balance and monthly payments that flow from that. But Mr and Mrs E had an ombudsman's decision about the 2020-21 SPO payments in 2022, and that can't be revisited now. And, for all the reasons I've given above, I'm satisfied that Halifax is correct in how it's treated the payments Mr and Mrs E have made and the amount it says they owe and need to pay. I'd therefore urge Mr and Mrs E to put those matters behind them and engage with their mortgage and situation as it is now.

Mr and Mrs E say they can't speak to the mortgage financial assistance team, because of issues including hearing difficulties. And Halifax says it can't discuss their mortgage or any arrangement via email and needs to speak to them. I think it's generally reasonable for a mortgage lender to want to have a conversation with its customers, to discuss their finances and wider circumstances, what assistance might be appropriate, and what – if any – arrangement can be reached. That's usually better done in a conversation rather than a series of letters or messages.

But sometimes a phone conversation isn't possible. I haven't seen medical evidence confirming that Mr and Mrs E can't use the phone. But they have said it's difficult for them, and I would expect Halifax to take that into account, making reasonable adjustments where necessary. I think it has. It has explained that it needs a discussion with them, and why. It has said it can speak to a third party – for example, their son – acting on their behalf. It has also sent agents to visit Mr and Mrs E in person, but Mr and Mrs E weren't willing to speak to the agents.

I think Halifax made reasonable efforts, over a substantial period, to engage with Mr and Mrs E and find a way of helping them get things back on track. But Mr and Mrs E weren't willing to engage with Halifax.

In those circumstances, I think it was reasonable for Halifax to conclude that it needed to go back to court. The mortgage wasn't on track to be repaid by the end of the term, and there seemed to be no prospect of reaching agreement on a way it would be. Mr and Mrs E were in breach of the SPO – because, while they had resumed making the SPO payments from 2021, they hadn't made up the ones missed between 2020 and 2021 and hadn't engaged with Halifax to discuss how that would be done. Continuing to pay the SPO payments alone – without making up the shortfall – was no longer enough to clear the arrears by the end of the term. Halifax's solicitors said that Mr and Mrs E would need to discuss paying the £6,500 SPO payments missed between 2020 and 2021. I don't agree that's double counting; it's payments Mr and Mrs E agreed to make but didn't and which remained outstanding.

I also don't agree that Halifax acted in breach of the pre-action protocol – though ultimately it's for the court, not the Financial Ombudsman Service, to manage compliance with court procedures, it's my understanding that the protocol applies to new possession proceedings, not to returning to court to enforce an existing possession order. The regulator does say that repossession should only be a last resort – but that means a last resort when all other attempts to get the mortgage back on track have failed and there is no prospect of doing so.

I have considered everything very carefully. I'm sorry to hear of the circumstances Mr and Mrs E find themselves in. I understand that my decision will be very disappointing for them, given how strongly they feel about what has happened. But I'm afraid I can't agree that Halifax has breached the SPO or an arrangement, that it is has mis-calculated what it is asking Mr and Mrs E to pay, or that is has treated them unfairly in asking them to pay it or how it has gone about doing so. I would urge Mr and Mrs E to put the past behind them, and to engage with Halifax to agree a way forward which allows them to remain in their home and clear their mortgage balance by the end of the term. For all the reasons I've given, I don't uphold their complaint.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E and Mrs E to accept or reject my decision before 7 April 2025.

Simon Pugh
Ombudsman