

The complaint

Mr L complains that Hinckley and Rugby Building Society has unfairly recorded a marker on his credit file for a missed payment on his mortgage.

What happened

Mr L has a buy-to-let (“BTL”) mortgage with Hinckley and Rugby Building Society (“H&R”).

Mr L makes manual payments towards his mortgage. The payment for May 2024 was not received. H&R wrote to Mr L on 31 May 2024 to let him know that his mortgage had entered into arrears and that the arrears would be reported to the credit reference agencies until cleared.

Mr L made two payments towards his mortgage on 7 June 2024 to cover the contractual payments for May and June 2024, bringing his account up to date.

Mr L complained to H&R about how the missed payment had been registered with the credit reference agencies. In summary he says that May’s missed payment was an honest isolated one-off oversight. Aside from this, the account has remained on track. The reporting to the credit reference agencies is not a true reflection of his financial circumstances and he feels he’s been treated unfairly. Mr L says that H&R failed to provide sufficient notice of its intention to report the missed payment to the credit reference agencies. May’s payment was made promptly and within the timeframe stated in H&R’s letter of 31 May 2024. As the account is now up to date, Mr L feels that record of the arrears should be removed from his credit file and showed as paid.

Mr L has explained that as a result of the marker on his credit file, his ability to obtain credit from other lenders has been impacted and he’s been subject to higher lending costs.

H&R didn’t uphold the complaint. It said that the mortgage payment for the month of May was not made in line with the terms and conditions of Mr L’s account and therefore it is obliged under regulatory practice to report this to the necessary credit reference agencies.

Mr L remained unhappy, so he brought his complaint to the Financial Ombudsman Service. An investigator looked into things. He didn’t think that H&R had acted unfairly in the circumstances, so he didn’t recommend that the complaint be upheld.

Mr L didn’t agree and asked for an Ombudsman’s final decision.

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 appreciate how strongly Mr L feels about this complaint. I’ve given careful consideration to all the submissions made by both parties, but I won’t address each and every point that has been raised. I’ll focus on the matters that I consider most relevant to how I’ve reached a fair outcome – in keeping with the informal nature of our service.

Although I've read and considered the whole file, I'll keep my comments to what I think is relevant. If I don't comment on any specific point, it's not because I've not considered it but because I don't think I need to comment on it in order to reach the right outcome.

Having done all that, I don't think this complaint should be upheld. I realise this will be disappointing for Mr L. But I hope the reasons I have set out below will help him to understand why I have come to this conclusion.

Mr L has a BTL mortgage. BTL mortgages are not Financial Conduct Authority (FCA) regulated mortgage contracts and so are not subject to the rules set out in the Mortgage Conduct of Business (MCOB) that lenders have obligations under. There are some exceptions to this but none that apply in Mr L's case.

That said, even though Mr L's mortgage is not FCA regulated, H&R is still expected to follow fair treatment principles, such as informing him about missed payments and potential consequences.

The terms of Mr L's mortgage as set out in his mortgage offer say:

"The contractual mortgage payment day is the 1st of each month for which payment is due. However, mortgage payments will be collected by Direct Debit in accordance with the mandate provided by you with your mortgage application form".

It appears that Mr L originally had his direct debit set up for the 15th of each month. However, there were three occasions in 2022 when his direct debits were returned as unpaid by his bank. This happened in June, November and December 2022. On each occasion H&R wrote to Mr L the following day after the direct debit was returned to explain that payment is expected by the last day of the respective month to ensure the account does not enter arrears.

Each of the letters sent to Mr L provided important information about the payments due on the mortgage and the consequences of his account entering arrears. The relevant sections said the following:

"Important information about paying less than your Contractual Monthly Payment

It is important to understand that:

- *the difference between the payment we receive by the last day of the month and your Contractual Monthly Payment due for that month will be added to the Arrears Balance on your account...*

Consequences of your account entering Arrears

There are serious consequences of your account entering Arrears. These include:

- *if the Arrears Balance on your account is equivalent to the amount of one or more months Contractual Monthly Payments:*
- *the account will be reported to Credit Reference Agencies, this may affect your ability to obtain credit in the future".*

The letter sent to Mr L on 16 December 2022 included additional information as follows:

“Unfortunately, due to there being two consecutive rejected payments on your account, we have had to cancel any future Direct Debit requests in relation to your mortgage. Therefore, you will be responsible for making your Contractual Monthly Payment of £851.14 each month by an alternative payment method.”

Having considered all the above, I'm satisfied that H&R has given Mr L enough information over time to understand that his payments must be made by the end of each month to avoid the account entering arrears and the consequences of not making his monthly payments.

Following the returned direct debits in 2022, Mr L made his monthly payments in time by the end of each respective month so, in accordance with the terms of his mortgage, his account did not enter arrears.

It appears that since Mr L's direct debit instruction was cancelled in December 2022, he's been making manual payments monthly. This means that in the absence of a direct debit in place, Mr L could make a payment at any time in any given month to remain within the agreed payment terms of his mortgage.

On 31 May 2024 H&R wrote to Mr L to advise him that his account was in arrears. The letter specifically said:

“We would advise that after allowing for payments received from you up to 31st May 2024 the Society's records show that there is an Arrears balance of £1,956.67 on your mortgage, at the date of this letter...”

This Arrears balance is currently being reported to Credit Reference Agencies and will continue to be reported until your mortgage is brought up to date.

To avoid the need for further correspondence, we would ask that you repay your Arrears Balance of £1,956.67 by 19th June 2024. This will resolve the Arrears on your account.”

Mr L has questioned the fairness of H&R's actions in May 2024. He complains that no advance warning was given about the risk of arrears which he says is inconsistent with its actions in 2022.

In the absence of a direct debit instruction in place, Mr L was responsible for making his monthly payments each month (by the last day of the month), using an alternative payment method.

I think it's helpful to explain that H&R is under no obligation to remind its customers about upcoming payments due. On each occasion H&R has written to Mr L when a payment was missed. The difference here is that the payments in 2022 were due to be made by direct debit on the 15th of each month, so once the direct debit was returned as unpaid, it was considered a missed payment and so H&R wrote to Mr L as expected. I can understand why Mr L considered this a useful reminder that allowed him to make a payment in time by the end of the month. But as I've explained, the intentions of those letters were not to act as a reminder of any upcoming payment but rather to let Mr L know that his payments had been missed. For the reasons I've explained this is consistent with the action H&R took in May 2024 when Mr L failed to make a manual payment by the last day of the month.

So, for these reasons I don't think H&R acted unfairly in the way it communicated with Mr L about his missed payment in May 2024.

That leads me to consider the main issue here – that being whether arrears have been fairly reported to the credit reference agencies.

Because no payment was made in May 2024, the payment for that month is considered as being missed. And the missed payment has been classed as arrears – in line with the terms of Mr L's mortgage contract. H&R has an obligation to report accurate and timely information to the credit reference agencies. And so I don't consider that H&R has unfairly reported arrears for that month.

I appreciate that Mr L feels that because he made the payment on 7 June 2024, this was in time to '*resolve the arrears*' as stated by H&R in its letter on 31 May 2024. And as such, he believes that the arrears should no longer be reported as a 'missed payment' on his credit file and should now show as 'payment made'.

I've considered Mr L's point, but I think he has misinterpreted the context of H&R's letter. The letter explains that arrears have been reported as a result of the missed payment and arrears will continue to be reported until the account is brought up to date. That is what has happened here. Because the account was brought up to date on 7 June 2024, no further arrears were reported in subsequent months. The significance of the date given (that being 19 June 2024) was to allow Mr L time to repay the arrears to '*avoid the need for further correspondence*'. I appreciate the letter says that by making a payment by this date that would '*resolve the arrears*' but that does not mean the arrears would be reversed. Just because a customer repays the arrears on their account, it does not mean that all previous entries related to those arrears are removed from their credit file – instead it means no further arrears will be reported once the arrears balance has been cleared.

So, having considered everything I don't consider that H&R has acted unfairly in the way that it has reported information about Mr L's mortgage to the credit reference agencies. Mr L missed his payment in May 2024 and so H&R has correctly reported a missed payment for that month – in line with its obligation to report accurately to the credit reference agencies.

I've considered everything Mr L has said about this being a genuine isolated one-off oversight and I can understand why he's concerned about the lasting impact this will have on his credit file. I do empathise with his circumstances, but I can only reasonably direct a lender to amend a credit file in circumstances where I think the entry is incorrect or where I consider it has been unfairly applied taking into account the circumstances. Neither of which I believe apply in this case.

Mr L may want to consider whether to apply to add a Notice of Correction (NOC) to his credit file. A NOC is a short statement that can be added to a customer's credit file to explain specific information relating to a particular entry. It helps lenders understand the context behind negative markers on the credit report. Whilst lenders are obliged to read the NOC before making a lending decision, it's up to them whether to take it into account when approving or rejecting credit. Information about how to submit a request for a NOC can be found on the website for each of the main credit reference agencies.

My final decision

My final decision is that I don't uphold Mr L's complaint against Hinckley and Rugby Building Society.

This final decision concludes the Financial Ombudsman Service's review of this complaint. This means that we are unable to consider the complaint any further, nor enter into any correspondence about the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 14 April 2025.

Arazu Eid
Ombudsman