

complaint

Ms F's complaint is about the way Bank of Scotland plc (trading as Halifax) handled her mortgage account while she was in some financial difficulty.

background

Ms F took out her mortgage with Halifax in 2006, with further borrowing taken out in 2007 and 2008.

The account fell into arrears in 2009, and as they accumulated over the years that followed Halifax instructed legal action. This led to the matter being referred to court in 2011, with a payment arrangement agreed thereafter in October 2011. This required Ms F to make the contractual monthly payment (CMP) due on the account together with £77 towards the arrears balance. At that time, the arrears amounted to around £8,500.

As the payment arrangement was being maintained, a further hearing in 2012 deemed no further action necessary. And in the intervening period, Halifax credited a refund of interest to the account – significantly reducing the outstanding arrears balance, which was down to around £4,300 in February 2012.

The account fell further into arrears in 2013 and 2014 as payments were either missed or significantly below the minimum amount required.

Ms F sold the property and redeemed the mortgage in November 2014.

Ms F subsequently complained about how Halifax had handled her mortgage over this period. She said that it had put her under excessive pressure through its communication and the charges it added to the mortgage – even though it was aware of her circumstances and that she was actively trying to sell the property.

One of our investigators reviewed Ms F's complaint, but didn't think Halifax had responded to her situation unfairly. In summary, he said:

- Halifax had made reasonable attempts to contact Ms F about the account when payments were missed – and while this may have been stressful, it wasn't unfair in light of the outstanding amounts. This contact correctly stopped when arrangements were in place and being maintained.
- While Halifax hadn't been able to accommodate Ms F's request for a face-to-face meeting to discuss the account, it had sent a field agent but this visit hadn't been successful. So that only left the option of contact by phone.
- Halifax had been entitled to apply charges to the account in light of the additional work it had been required to carry out.
- Ms F had previously made some complaints to Halifax about administration of the account which we couldn't fairly consider again now. Those had resulted in a refund of a number of the arrears charges that had been applied.
- Halifax had assisted Ms F in agreeing payment holidays and a number of payment arrangements over the years, often accepting significantly reduced amounts.
- It wasn't unreasonable for Halifax to have declined Ms F's request to capitalise the arrears on the account, as that would've increased the CMP at a time when she wasn't able to afford the current one.

- Halifax had allowed Ms F a reasonable period of time to sell the property in order to repay the mortgage – and had only started legal action as a last resort.

Ms F didn't accept our investigator's view. She responded to say, again in summary, that:

- Her mortgage was on a fixed rate, so she queried whether Halifax could've looked at other options to help reduce her payments.
- The extent to which she had been proactively trying both to deal with the mortgage and improve her own circumstances had been downplayed. This included successfully negotiating a sale of the property in 2012, only for it to fall through at the last minute and leave her in an even worse position. In fact, a sale was agreed on six occasions before one was eventually completed in November 2014.
- The effect of her dyslexia on this situation hadn't been fully recognised, and having to deal with the matter over the phone had compounded the problem.
- Little had been made of administrative errors made by Halifax, which she thought spoke to its wider conduct and lack of care.

So Ms F asked for an ombudsman to review her complaint, and it was passed to me.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so – and while I'm sorry to disappoint Ms F as I understand how strongly she feels about what's happened – I've reached broadly the same conclusions as our investigator and for similar reasons. I'll explain why.

I should say that while I've taken into account everything Ms F has told us, I won't necessarily address each and every point she's made. Rather, I'll focus on those matters that I consider most relevant to the decision I've reached – which I hope she won't find discourteous. And while I've noted her comments about the administrative errors made by Halifax over the course of the mortgage, these were raised – and addressed by Halifax – as and when they arose, with Ms F accepting the compensation offered at the time. So I don't think it would be fair for us to revisit each of those matters afresh now, some considerable time later – so I won't be commenting on these any further here.

I can also confirm to Ms F that there is nothing unusual in her being asked to provide her response to our investigator's view directly to him – that is in line with our process, and I've reviewed everything she's sent us.

Ms F began having some difficulty in maintaining her mortgage payments in early 2009 and, for the most part, the account has been in arrears since then. Looking at the records of contact between Halifax and Ms F, I can see that she was proactive in discussing the situation with the bank.

In turn, given its awareness of Ms F's circumstances, I'd expect Halifax to have looked at ways it could help her and to ensure that it continued to treat her fairly. And looking over how Halifax responded to Ms F's situation, I'm satisfied that it did.

Initially, Halifax agreed a three-month payment holiday for Ms F – so she wasn't required to make any payments between May and July 2009. This seems a reasonable step to take, giving Ms F some breathing space and allowing her to consider her options. And from what I've seen, I understand that Ms F resolved to sell the property around that time – and she subsequently informed Halifax of that.

But while Ms F was making efforts to sell the property over the years that followed, she wasn't able to do so until 2014. Over the course of that period, I can see that Halifax looked at her circumstances – taking details of her income and expenditure – to see what it could do to help. This included agreeing a number of payment arrangements under which it accepted significantly reduced payments – for example, in 2010 it agreed £50 a month when the CMP due was around £470.

There are other options that I'd expect a lender to consider when a customer falls into arrears – such as looking at switching the mortgage to an interest only basis or extending the mortgage term, even temporarily, to reduce the payments. But Ms F's mortgage was initially taken out on an interest only basis – so changing the repayment type wasn't possible, and a term extension wouldn't have made a difference to the monthly payments.

While Ms F points out that perhaps Halifax could've looked at other interest rate options, looking at her financial circumstances it seems highly unlikely that a lower rate would've made the mortgage affordable for her. And as she was looking to sell the home, it may not have been appropriate to fix her into a new deal in any event – as when she came to repay the mortgage, she'd likely have to pay an early repayment charge.

In some cases it may be helpful to capitalise the arrears on a mortgage account – that is, to add the outstanding amount to the mortgage balance and increase the CMP to cover it. But here, Ms F was already unable to make the CMP that was due – so I don't think Halifax unreasonably discounted this option.

I'd expect Halifax to treat legal action (with a view to taking possession of the property) as a last resort – and I think it did so in Ms F's case. I think this was only considered when all other options for getting the mortgage account back on track had been exhausted, and at a time when there was no level of certainty that Ms F's circumstances were likely to improve. Despite the arrears reaching substantial levels, Halifax continued to allow Ms F time to arrange a sale. And ultimately this took around six years to complete. So I think it showed a significant level of forbearance in allowing Ms F to arrange a sale of the property herself, which also avoided the further costs that would be incurred should Halifax have pursued this option itself.

I appreciate that regular contact from Halifax would've been distressing for Ms F. And from her side, I can see that she felt she was doing all she could to address the situation – paying what she could afford, while trying to sell the property. And in terms of the sale, I can see that Ms F agreed a sale on a number of occasions only to see them fall through. But as difficult as this time would doubtlessly have been for Ms F, I don't think Halifax was doing anything wrong in seeking, initially, her proposals for repayment – and subsequently updates on both her circumstances and the progress of the sale.

Likewise, I'm sure that the additional charges added to the account will have felt like an extra burden for Ms F when she was already having difficulty making the minimum payments due. But lenders are entitled to charge for the additional work they carry out. And in light of the amount of work that Halifax was required to conduct on Ms F's account while it remained in arrears over a sustained period, I don't think the amount of charges it applied was unfair or unreasonable.

I know Ms F feels that much of the hardship she suffered over this period could've been avoided if Halifax had agreed a face-to-face meeting to discuss matters. But I don't agree. As I've set out above, I think Halifax fairly explored the options I'd expect it to have considered. And Ms F seems to have been paying as much as she could afford at any given time, and doing her best to progress the sale of the property. So while Ms F may have preferred a face-to-face meeting to contact by phone or post, I don't think it would've yielded a different outcome – particularly as when an external field agent was sent, this didn't lead to a more productive discussion.

my final decision

For the reasons set out above, I don't uphold Ms F's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms F to accept or reject my decision before 19 February 2018.

Ben Jennings
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