

complaint

This complaint is about a mortgage Ms V holds with Bank of Scotland plc trading as Halifax. Ms V is unhappy with the way Halifax explained an arrangement it agreed for her to make no mortgage payments for three months. She is also unhappy with the way Halifax dealt with her when the arrangement came to an end; in particular, the letters it sent chasing the arrears formed by the missed payments.

background

The circumstances of this complaint, briefly, are that in mid-2103, Ms V had a telephone conversation with Halifax regarding a period of financial pressure she was facing. After taking details of her income and expenditure, Halifax offered Ms V a “nil payment” arrangement lasting three months. Ms V agreed to this, and the arrangement was set to run between June and August 2013 inclusive, with payments resuming in September.

During August 2013, whilst the arrangement was still in force, Halifax began sending Ms V arrears letters. Ms V was unhappy because she believed she was on a payment holiday, and that the missed payments would not be treated as arrears, or reported as such on her credit file.

When she complained about this, Ms V says she encountered numerous problems with phone calls left on hold, return calls promised but not made, and unwillingness on Halifax’s part to correspond by email. Halifax paid her some compensation for the problems she had encountered, but said that as far as the operation of the mortgage was concerned, it had done nothing wrong. Ms V should, it said, make contact with its collections team to agree a plan for dealing with the arrears.

The adjudicator who considered the complaint did not recommend it should be upheld. Ms V remains unhappy and so the complaint comes to me to review and determine.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

The crux of Ms V’s complaint, if I have understood her correctly, is that she was under the impression that the “nil payment” agreement she entered into in 2013 was a payment holiday. She says the bank failed properly to explain the distinction between the two arrangements, and did not make it clear that the arrangement she had agreed to would have a detrimental effect on her credit file.

In deciding the complaint, the starting point, for me, is the telephone conversation during which the arrangement was offered, and accepted. I have listened carefully to a recording of that conversation. Having done so, I have come to broadly the same conclusions as the adjudicator, and for much the same overall reasons.

The first observation I would make is that at no time during the conversation does Halifax’s representative use the phrase “payment holiday”. The proposal is only mentioned for the first time after a long period of information-gathering about Ms V’s financial situation, and is only ever described as a “nil payment” arrangement. I appreciate Ms V believes that what she

agreed to was a payment holiday, but I cannot find that she did so as a result of anything Halifax said to her during the phone conversation.

Ms V has said that she realised in August 2013 that she had an incorrect product and was getting into debt. Addressing the latter point first, Ms V was getting into debt (or more accurately, getting further into debt). By not paying her mortgage, she was accumulating arrears (albeit they were pre-agreed, planned, arrears) and her outstanding mortgage balance was going up. But exactly the same thing would have happened if she had been placed on a payment holiday. The missed payments would have been added to her mortgage balance, and her debt would have gone up.

As to her comment about having an incorrect product, this was not a situation where alternatives were available to choose from, and the wrong option was offered. Ms V needed help, and Halifax offered it, in the form of the nil payment arrangement. It did not have to offer any alternatives (arguably, it did not have to offer anything at all), and Ms V accepted what the bank offered her. She then benefited from (or at least should have done) the breathing space the nil payment arrangement provided.

As far as the implications and consequences of the nil payment arrangement are concerned, I find that Halifax did explain, in some detail, what the arrangement would entail. Significantly, it told Ms V that the missed payments would be arrears, but that there would be no "chase" activity or charges associated with the arrears whilst the agreement was in place. I will return to this point shortly.

Crucially, however, the call handler went to some trouble to explain to Ms V that the nil payment arrangement would be recorded on her credit file, and could affect her future borrowing prospects. Ms V's response was that she was "quite comfortable with that". I have not seen in precisely what form Halifax reported the missed payments on Ms V's credit file (not least because Ms V has not provided her credit file for us to examine). But, given what Halifax told her, and her response to that, I should be slow to conclude that Ms V agreed to the nil payment arrangement without fully understanding the implications of doing so.

Halifax was also reasonably thorough in explaining what would happen when the agreement came to an end. Payments would have to resume in September 2013, and Ms V would have to contact the bank with a plan for repaying the arrears that had built up in the meantime. Unfortunately, before any of that could happen, the bank's standardised arrears recovery procedures appear to have been triggered, as Ms V started receiving precisely the sort of "chase" letter she had been promised at the outset would not be sent. This, in itself, was a mistake on Halifax's part, and from reading Ms V's submissions, it is apparent that her attempts to find out what was going on, and regularise matters, were met with difficulty.

But for all of the reasons I have mentioned already, I do not agree that she was misled about the arrangement that had been in place for the preceding months. Nor do I consider that Ms V should have been in any doubt about the need to resume making her regular payments and, if possible, agree a plan to deal with the arrears, starting in September 2013.

It is entirely appropriate that Halifax should compensate Ms V for "jumping the gun" by initiating its standard arrears recover process in August 2013. I do not consider that I should order that some or all of the arrears should be waived. The arrears are formed of the payments not made during the summer of 2013. Regardless of the how and whys, the money is legitimately owed to Halifax.

So it is for Ms V to agree with Halifax a plan to bring the arrears up to date. I understand an offer has been made to add the arrears to the balance to be repaid at the end of the mortgage term. I leave it to Ms V to go back to Halifax, either to accept this arrangement or propose an alternative if she prefers.

But I do think that a modest increase in compensation is warranted for the time, trouble and worry Ms V was put to by the bank's mishandling of the end of the arrangement. Even though I do not find the bank to have been the cause of Ms V's mistaken understanding about the nature of her arrangement, the fact remains that receiving letters telling you that you are in arrears and could face stringent sanction if they are not dealt with is stressful.

Ms V should not have received the letters that were sent to her in August 2013, or been forced to engage in the telephone calls and emails that followed. Rather, she should have received a tactful reminder that her arrangement was nearing its end and she needed to resume her payments and address the arrears that had accumulated by agreement.

Presently, Halifax has paid Ms V £120. Overall, I consider £250 to be a fairer sum in all the circumstances. My final decision reflects that

my final decision

My final decision, for the reasons set out, is that I do not uphold the main thrust of this complaint. However, I order Bank of Scotland plc trading as Halifax to pay Ms V a further £130 (making £250 in all) to compensate her for the distress and inconvenience I have alluded to above. This award is made in full and final settlement of the complaint, and I make no other order or award against Bank of Scotland plc trading as Halifax.

Jeff Parrington
ombudsman