DRN-4423822

The complaint

Mr and Mrs R complain that Bank of Scotland plc trading as Halifax hasn't treated them fairly when they've experienced financial difficulties with their mortgage. They complain it threatened them with repossession and added legal fees to the balance. And they complain that Halifax has ended their fixed rate.

What happened

Mr and Mrs R have a mortgage with Halifax. Unfortunately they experienced some employment and health problems during the coronavirus pandemic – although they took a payment deferral, the mortgage then fell into arrears.

The payment deferral began in April 2020 and ran for the maximum six months, until October 2020. In December 2020 Halifax agreed a further nil payment arrangement for two months, later extended to March 2021.

After March 2021 Halifax says it tried to get in contact with Mr and Mrs R but they were unwilling to discuss the mortgage over the phone and wanted to have a face to face discussion in a branch. Halifax doesn't manage mortgages via its branch network – it has a central mortgage department which mainly works by phone. So no detailed discussions between Halifax and Mr and Mrs R took place.

In 2022, Halifax says it asked Mr and Mrs R to provide details of their income and expenditure so that it could see whether there were any further options available, without success. It sent field agents to their property in July and again in October 2022, without success.

Halifax says that by the end of October 2022 the mortgage was the equivalent of around six months' worth of payments in arrears. Because it hadn't been able to agree a way forward with Mr and Mrs R it instructed its solicitors to take further action.

In November 2022 Halifax agreed to pause action to allow Mr and Mrs R to investigate further sources of support. But when they didn't make further contact it sent a final warning that it would take legal action.

In January 2023 Mr and Mrs R's fixed rate – taken for five years in 2018 – came to an end and their mortgage reverted to the standard variable rate (SVR).

In February 2023 Halifax told Mr and Mrs R that it would be issuing court proceedings. Mr and Mrs R made a payment to reduce the arrears to under two months' payments, and Halifax agreed not to go ahead with legal action. However, it added the costs of legal action to date to the mortgage balance.

Mr and Mrs R complained. They said that Halifax had cancelled their direct debit so payments weren't taken. They said that they wanted to be able to discuss their mortgage with someone face to face but Halifax didn't make that available. They didn't think it was fair that Halifax took court action when the overall arrears were only around £2,000, and they didn't think it was fair to add legal fees to the balance. And they said that their monthly payments were increasing because Halifax had ended their fixed rate.

Our investigator didn't recommend upholding the complaint, so Mr and Mrs R asked for it to be reviewed by an ombudsman.

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'm sorry to hear of the difficulties Mr and Mrs R have experienced. They've explained that they both lost their jobs during the pandemic, which has caused them significant financial difficulties and meant they've struggled with their mortgage. They're unhappy that Halifax hasn't done more to help them.

During the pandemic, the regulator required lenders to offer payment deferrals of up to six months – this is a period during which no payments are made (though interest continues to be charged) and the mortgage is not treated as being in arrears. Mr and Mrs R had the maximum deferral, which came to an end in October 2020.

After that six months' period, Mr and Mrs R weren't entitled to a further payment deferral. But Halifax still had an obligation to offer forbearance and tailored support – meaning it should look at their individual circumstances and work with them to offer options to support them temporarily, with a view to giving them space to find a longer term solution to get the mortgage back on track. And the regulations are very clear that repossession should only be viewed as a last resort, after all other options have failed or where there's no prospect of getting the mortgage back on course.

Halifax therefore agreed to a further nil payment arrangement – it agreed that Mr and Mrs R didn't have to make any payments – for two and later four months. During this period it agreed not to collect any payments from Mr and Mrs R, but those payments were still due, and the mortgage went into arrears as a result. But this was arrears by arrangement, as Halifax had agreed that Mr and Mrs R wouldn't make payments and it wouldn't take action against them.

In December 2020, because of the arrangement, Halifax advised Mr and Mrs R to cancel their mortgage direct debit with their bank. This would prevent payments being taken or attempted if Halifax didn't update its systems by the due date. It reminded them that they would need to set up a new arrangement or resume making payments by other means at the end of the arrangement. Halifax also sent them letters to that effect. So I don't agree with Mr and Mrs R that Halifax cancelled their direct debit, which led to their arrears – this was done with their agreement to make sure they could benefit from the reduced payment arrangement. And it was made clear that Mr and Mrs R would need to set up another one before the end of the arrangement, or resume making payments in another way.

I think all this was fair and reasonable. Halifax offered Mr and Mrs R the maximum payment deferral, and then it also agreed to allow them not to make payments for a further four months beyond that. And it reminded them that they would need to resume making payments at the end of the arrangement. This allowed Mr and Mrs R almost a year of breathing space with no payments required, to allow them time and space to find a way of resolving their situation and getting things back on track.

At the end of the payment arrangement, Halifax tried to get in touch with Mr and Mrs R to discuss next steps. Because of the payment arrangement their mortgage was now in arrears by the equivalent of four months' payments – the payments they'd missed during the arrangement. Halifax wanted to understand more about their current situation to see whether Mr and Mrs R could resume making payment, to talk about how the arrears would be repaid, and if Mr and Mrs R still couldn't make payment to discuss what further options might be available.

Again, I think this was fair and reasonable. It's important that borrowers in financial difficulties stay in regular contact with their lender, explaining their situation. It's only when the lender knows what's happening that it can understand what options – if any – might be appropriate. So I would have expected Halifax to try and contact Mr and Mrs R and find out what their current circumstances were – and I would have expected Mr and Mrs R to try to work with Halifax to find a way forward.

Halifax manages its mortgages centrally, not through its branch network. Its central mortgage team operate mainly by phone. So it tried to call Mr and Mrs R to discuss their situation. But they made it clear they didn't want to talk over the phone, and wanted to be able to visit a branch and have a face to face conversation.

As I say, this isn't how Halifax operates. Branch staff don't deal with mortgages in financial difficulty and aren't trained to do so. If there was a particular reason why Mr and Mrs R couldn't discuss their mortgage over the phone – a disability or vulnerability which meant they couldn't communicate in that way, for example, then I'd expect Halifax to explore what adjustments it could make. But this wouldn't generally involve managing the account through a branch when that isn't something Halifax can offer.

During this period Mr and Mrs R resumed making their monthly payments, so the arrears didn't increase. But neither did they make any payments towards the arrears. I think it was reasonable for Halifax to try and contact them to find out more about their situation and ask about their income and expenditure to see if they could afford to start to pay off the arrears. Mr and Mrs R didn't go into details about their income and expenditure, but they did confirm that they were both still out of work and had been unwell. Mr R was on furlough and Mrs R was in receipt of benefits. Halifax therefore put the account on hold – meaning it agreed it wouldn't contact them again for a period.

From December 2021, Mr and Mrs R began to miss payments again. They made no payments until March 2022. In March they made a reduced payment, in April no payment, but made the full monthly payment in May. They made a reduced payment in June and overpayments in July and August but a reduced payment in September. From October to December they made their full monthly payments.

Because of the hold on the account, Halifax didn't contact Mr and Mrs R until March 2022 even though they'd been missing payments. In March 2022 Mr and Mrs R explained that both were now out of work and on benefits. They'd been relying on support from family and friends but that was no longer available. Halifax suggested they seek financial or debt advice and agreed a further hold of one month to allow them to do that.

In April 2022 Mrs R explained that she had been unwell though was in dispute with her doctors. Halifax agreed a further one month hold to allow Mr and Mrs R to collate details of their income and expenditure. It also ensured their account would be managed by its vulnerable customer team.

There was then no contact between Mr and Mrs R and Halifax for several months, so at the end of July Halifax sent a field agent to visit the property and try to discuss matters with Mr and Mrs R. The field agent visited the property in early August but couldn't make contact with Mr and Mrs R. As there was still no contact, Halifax sent another agent in October, but again the agent couldn't contact Mr and Mrs R when visiting the property.

In November 2022 Mr and Mrs R contacted Halifax. Mrs R explained that she was still not working because of her health. They were focussing on their mortgage and not paying other bills. Halifax gave her details of sources of advice. Again Mrs R was unwilling to discuss details of their income and expenditure, and Halifax agreed a further hold until 7 December. Mrs R agreed to call back by then.

In fact, there was no further contact until January 2023. Mrs R agreed to complete and return a budget form. Halifax agreed a further hold until February. When there was no further contact, and Mr and Mrs R missed their January payment, Halifax instructed solicitors to begin repossession action on 14 February. Mr and Mrs R also missed the February payment.

The solicitors issued proceedings on 17 February. Before a hearing could take place, Mr and Mrs R paid their March payment, and paid around £1,750 to reduce the arrears – this payment reduced the arrears from the equivalent of over six months' payment to just under one month's payment. As a result, the possession proceedings were adjourned generally – meaning Mr and Mrs R were no longer faced with repossession, but Halifax could reinstate the proceedings in future if it considered it necessary.

I've thought very carefully about this. I understand how difficult it was for Mr and Mrs R to be faced with the possibility of losing their home, particularly in light of the other problems they were experiencing. But on balance I don't think Halifax acted unreasonably. Mr and Mrs R had first gone into arrears in December 2020, over two years earlier, and the arrangement had ended in March 2021. In the meantime, Halifax had tried on many occasions to discuss their circumstances but Mr and Mrs R weren't willing to give information about their finances or agree a way forward.

Throughout most of 2022 Mr and Mrs R weren't making their full payments and the arrears were increasing. When Halifax was able to speak to Mr and Mrs R, it didn't seem that there was any prospect of them being able to resume full payments or start to clear the arrears. Although they resumed making full payments towards the end of 2022, they stopped again at the start of 2023. I think Halifax had tried to work with Mr and Mrs R for two years to get things back on track, and it was reasonable for it to conclude that there wasn't anything else that could be done.

In those circumstances, I don't think taking possession proceedings was unreasonable. Under the terms and conditions of the mortgage, Halifax is allowed to add costs to the mortgage balance. The specific sums charged in this case are reasonable in the context of the work the solicitors did. And therefore it's not unfair that it added the legal fees to the mortgage balance.

In January 2023 Mr and Mrs R's fixed interest rate came to an end. This wasn't because Halifax removed it when it took possession proceedings – it was because it was agreed for five years in 2018. So it was just coincidence that it ended around the same time as Halifax took legal action.

However, that did mean that Mr and Mrs R's monthly payment increased. I don't think that was unfair, as that was how the mortgage was supposed to work – reverting to the standard variable rate at the time the fixed rate ended. At that time Mr and Mrs R were in increasing arrears and subject to legal action. It wouldn't have been appropriate for Halifax to offer a new interest rate at that time, because if the property ended up being repossessed or sold, an early repayment charge would increase the balance.

Taking everything into account, I don’t think Halifax acted unfairly. But it still has obligations to treat Mr and Mrs R fairly now and into the future, offering forbearance as appropriate. Mr and Mrs R might want to discuss their options with Halifax – including whether it can offer them a new interest rate now, or offer other options to make the mortgage more affordable such as a term extension. In order to consider further options, Halifax will need Mr and Mrs R to be willing to discuss their finances and wider circumstances. I hope a way forward can be found.

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 Mrs R and Mr R to accept or reject my decision before 8 April 2024.

Simon Pugh
Ombudsman