

## **The complaint**

Miss M has complained that Bank of Scotland Plc trading as Halifax has refused to capitalise the arrears on her mortgage account. Miss M says this is unfair and she would like Halifax to capitalise the arrears.

Following an Ombudsman's decision dated 24 January 2024, consideration of the complaint is limited to events that occurred after 28 September 2022.

## **What happened**

I do not need to set out the full background to the complaint. This is because the history of the matter is set out in the correspondence between the parties and our service, so there is no need for me to repeat the details here. In addition, our decisions are published, so it's important I don't include any information that might lead to Miss M being identified.

So for these reasons, I will instead concentrate on giving a brief summary of the complaint, followed by the reasons for my decision. If I don't mention something, it won't be because I've ignored it; rather, it'll be because I didn't think it was material to the outcome of the complaint.

Miss M has a mortgage with Halifax which has been in arrears since about 2010. Over the years, there have been twelve payment arrangements in place, most of which have not been adhered to.

In December 2022 Halifax declined a request to consolidate the arrears, which were then about £16,000. This was because Halifax needed to see a consistent pattern of repayment over the previous twelve months, and unfortunately Miss M had missed a number of payments, or paid less than was due, over that period.

Halifax has explained that where a customer is asking for consolidation of arrears, the case goes for review and, as a result, there can be a delay in receiving a decision.

In October 2022 Miss M was told there was a payment shortfall of £190. She made two payments – of £185 and £5 – to make this up. On 5 October 2022 Miss M spoke to Halifax to put a payment arrangement in place.

At the time Miss M made the £190 payment in October 2022, her contractual monthly payment (CMP) was £768.26, and the payment arrangement was for a payment of £824.62. This was to match what is known as the threshold payment amount (TPA), which is calculated as the amount required to repay the mortgage and arrears in full by the end of the mortgage term.

Halifax's notes show that when this arrangement was made on 5 October 2022, Miss M was told that if Standard Variable Rate (SVR) increased, this would mean that the TPA would

also increase in line with future increases in CMP. Miss M's direct debit for £824.62 was reinstated, and this was to take effect from 28 October 2022 to 28 March 2023.

In November 2022 SVR increased, making CMP £840.03, just under the TPA amount of £824.62. SVR went up again in December 2022, making Miss M's CMP £945.81.

Every time SVR changed, Halifax sent out a letter about this. The letter also clarified the impact of the change on payment arrangements. It describes three scenarios:

- where the payment arrangement is for more than the new increased monthly repayment, it will take longer to pay off the arrears;
- where the payment arrangement is for the same amount as the new monthly repayment, the arrears will not reduce;
- where the new monthly repayment is less than the new monthly repayment, the arrears will not reduce.

In all three cases, Halifax invites customers to call the bank to discuss the position. Changes in SVR meant that the interest rate – and monthly repayments – on the mortgage increased.

In December 2022 Halifax declined the request to consolidate the arrears.

Miss M was transferred onto a new fixed rate product in June 2023, to stabilise her repayments, but the arrears have increased and are now around £24,000.

In April 2022 Miss M complained to our service that she thought Halifax hadn't treated her fairly. An Ombudsman decided that we could only consider the complaint in relation to issues that had taken place after 28 September 2022. That was the date Halifax had issued its final response letter, but Miss M hadn't brought the complaint to us within the six-month time limit specified in the letter.

An Investigator looked at what had happened, but he didn't think Halifax had treated Miss M unfairly. He thought Halifax had worked with Miss M to put payment arrangements in place. However, he thought Halifax's decision not to consolidate the arrears was reasonable in all the circumstances.

The Investigator explained that, after SVR increased, the monthly repayment also increased, which meant that Miss M would be required to increase her payment accordingly. He was satisfied this had been explained to Miss M by Halifax.

Miss M disagreed with the Investigator and asked for an Ombudsman to review the complaint. Miss M said she'd successfully completed the twelve month payment plan Halifax required. Miss M said that she was told in October 2022 that, following a payment shortfall, if she made this up, the capitalisation could proceed, so she paid the £190 shortfall.

Miss M said she was also having difficulty with claiming Support for Mortgage Interest (SMI) through the Department for Work & Pensions, and that there were implications in her finding short-term work. This was because SMI could only be claimed after nine months of unemployment.

Miss M also said that, after SVR increased, she received no notification from Halifax about changing her payments, because she was on a payment arrangement for a fixed amount each month.

Because the matter is unresolved, it falls to me to issue a 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 will explain first that the Financial Ombudsman Service is independent of both consumers and the businesses they are complaining about. This means that we don't act for consumers, nor do we take instructions either from consumers or businesses, or allow either party to direct the course of our investigations; were we to do so, it would compromise our independence and impartiality. It's up to us to determine what evidence we need in order to investigate a complaint.

I confirm I've read the jurisdiction decision issued in this complaint and I confirm I agree with the Ombudsman's decision. This means that I can only consider the events that took place after 28 September 2022.

The starting point is that lenders have a duty to treat all customers, but particularly those facing financial hardship, fairly. Balanced against that, one of the fundamental principles underpinning the mortgage contract is that a lender has the right to receive payment of the money owed to it.

The Mortgages and Home Finance: Conduct of Business Sourcebook (known as MCOB) sets out at MCOB 13 what lenders are required to do to help borrowers in arrears. The Council of Mortgage Lenders (CML) also has its own guidelines about what it expects lenders to do to comply with MCOB, which mirror closely the requirements of MCOB.

A lender is required to explore ways to resolve an arrears situation, especially if the problem that created the arrears to begin with is one that looks to be short-term and capable of being resolved.

For long-term difficulties, a lender must also look at other ways to help, such as transferring a mortgage from capital and interest repayment to interest-only, deferring interest for a period of time or capitalisation of arrears. Balanced against that is the lender's obligation to ensure that any arrangement is affordable and sustainable.

The crux of this complaint is that Miss M says she was assured by Halifax that if she made payments in full and in line with payment arrangements for a period of 12 months, the bank would then consolidate her arrears. By October 2022 Miss M had kept to this arrangement, and so she believes that, notwithstanding what happened after that, Halifax should keep to its promise and consolidate the arrears.

However, after looking at the payment history after October 2022, I'm not persuaded Halifax has acted unreasonably. The increases in SVR in November and December 2022 meant that Miss M's payments under the TPA were less than required to pay off the mortgage and arrears by the end of the mortgage term. I appreciate Miss M was having difficulties with claiming SMI, but I'm not persuaded this was the only reason payments were missed. It's also unlikely that Miss M never received any letters from Halifax advising her of the changes to SVR after 28 September 2022. These letters are system-generated, and even if one letter went astray in the post, it's unlikely they all did.

I've been provided with the payment history up to January 2024, and this shows that, after Miss M's direct debit was returned unpaid in December 2022, there wasn't a single month where the current monthly instalment was maintained – in some cases missed altogether, and in others not paid in full. The arrears have increased by 50%, from about £16,000 in October 2022 to almost £24,000 (as of January 2024).

In the circumstances, I'm not persuaded Halifax acted unreasonably in declining to consolidate the arrears in December 2022. This is because, as soon as SVR increased and Miss M started to miss payments, it became apparent that consolidation would be unaffordable. I'm satisfied that this was a decision Halifax was entitled to make, because increasing the mortgage debt in December 2022 by another £16,000 would not have been appropriate, given the payment history and Miss M's financial situation. I'm therefore unable to find that Halifax has done anything wrong in declining the request.

I note Miss M is now on a new fixed rate and that a new payment arrangement has been made to take effect from 31 January 2024, with Miss M paying £850 for six months. I am sure Miss M is fully aware of the gravity of the situation she is in, and so I hope that her circumstances eventually improve to the point where a longer-term solution can be reached in relation to clearing the mortgage arrears.

I know this isn't the outcome Miss M was hoping for. I can see from the bank's notes going back many years that Miss M has been through a lot. I won't give any details, in order to preserve her privacy, but I am sure that the personal and financial worries Miss M has had over the years have been very stressful for her. But I have to put aside my natural feelings of empathy and decide the case on the basis of the evidence. Having done so, I am unable to uphold this complaint.

### **My final decision**

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

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 discussion about it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 4 April 2024.

Jan O'Leary  
**Ombudsman**