

The complaint

Mr M complains that Bank of Scotland plc has not offered him appropriate support or treated him fairly while he experienced financial difficulty.

What happened

In 2007, Mr M took out a mortgage with Bank of Scotland on an interest only basis over a term of 20 years. He has experienced financial difficulties and the mortgage has been in arrears for some time. Mr M has entered into a debt arrangement scheme (DAS).

Mr M complains that Bank of Scotland has not treated him fairly:

1. It has not offered him support while he experienced financial difficulty.
2. It has not applied the DAS properly and has charged interest on his arrears.
3. It rejected his application for a payment holiday.

I issued a jurisdiction decision that for complaints 1 and 2 we could only consider events after 9 September 2021, when Bank of Scotland issued its final response, up to 17 August 2023, when he referred this complaint to us.

I also issued a provisional decision. My provisional findings, which form part of this decision were:

Support in financial difficulty

I'm looking back slightly further than the investigator. But overall, I agree that Bank of Scotland has treated Mr M fairly between 9 September 2021 and 17 August 2023. I will explain why.

Under the relevant rules, Bank of Scotland is required to treat Mr M fairly while his mortgage is in arrears. It must consider whether given the individual circumstances of Mr M it should agree payment arrangements, extend the term, switch to interest only, defer interest or capitalise the arrears.

Extending the term would make no difference to the level of payments that Mr M would have to pay. As the mortgage was already interest only, the bank couldn't switch Mr M to interest only.

Bank of Scotland has told us that the only way it would defer interest was by way of a payment holiday (that is different to a Covid payment holiday) and it does not offer that to customers in arrears. But MCOB is clear that is something that the bank must consider where a customer is in arrears. So it may not be fair for it not to offer such a concession. But I don't think it would have helped Mr M in this case – interest was already not being charged on the arrears that formed part of the DAS and even if further interest was deferred, it would have to be paid eventually. Looking at Mr M's individual circumstances I don't consider it would really help him.

If Bank of Scotland capitalised the arrears, that would mean that the arrears are added to the balance of the mortgage and the payments recalculated over the remaining term. That would result in a significantly higher payment for Mr M – so again, it's not clear how this would have helped him. I note Bank of Scotland said that it has previously capitalised arrears on Mr M's mortgage and it said that Mr M complained about that in 2018.

That leaves a formal payment arrangement. To reach such an arrangement – indeed to meaningfully progress things for both parties – both sides need to maintain a constructive dialogue. That will usually involve the lender taking details of the borrower's income, expenditure and circumstances, and deciding what is a reasonable amount that the borrower can pay towards the mortgage. That can also give a lender information about whether the mortgage remains sustainable and affordable.

In this case, the difficulty is that Mr M told Bank of Scotland that its contact was causing him a significant amount of distress. As a result of that, the bank made the decision not to contact Mr M. It said that he was maintaining the contractual monthly payment and making an additional payment towards the arrears. I don't consider that was unreasonable in the individual circumstances of this complaint. Bank of Scotland said it invited Mr M to contact it, if he wished, in the quarterly arrears statement.

The next contact was in June 2022 – that was regarding how Bank of Scotland administered the DAS. I will deal with that below. The next contact after that was in April 2023, when Mr M told the bank that he could not afford to make any more payments. It appears that the bank attempted to discuss Mr M's situation but the calls were difficult. That is not to blame Mr M for that – I understand how hard he finds discussing this matter and his view that the bank is responsible for the situation he found himself in. But looking at the evidence we have, I can't see what practical help Bank of Scotland could reasonably have offered Mr M.

As I said, to progress things in a positive way there requires both sides to engage with each other. In the circumstances, I don't consider that the failure to do so here was a result of any unfairness or because the bank did not act reasonably. And in any event, in view of the evidence I have, I can't see that there was any practical help it could have offered Mr M in the circumstances.

When contact was established, I understand that Bank of Scotland was able to offer Mr M a new interest rate product. In the circumstances of this complaint, I can't see that there was an earlier point where Mr M had engaged sufficiently with the bank for it to be able to offer this. And at the time in question, there was no obligation for it to proactively do so.

In the individual circumstances of this complaint. I can't see that there was anything more that Bank of Scotland could have done to help Mr M.

DAS

Bank of Scotland said that in April 2022, it discovered that the DAS was not being administered properly. It said it took steps to remediate the account as if the DAS had been in place properly. It has provided evidence that it refunded the interest that Mr M had incorrectly been charged and applied it as a credit to his mortgage.

Since April 2022, Bank of Scotland said that the arrears on the account while the DAS was in place do not have any interest charged against them. It said that it created a new sub account for the arrears that does not attract any interest. Each month when it received a payment through the DAS scheme it carries out a manual adjustment and applied the payment to the sub account. It said it also applies a credit to cover any fees applied by the DAS administrator.

I can see why Mr M found this confusing – and I know he does not trust Bank of Scotland. It is not a straightforward way to administer the mortgage. And the bank has struggled to explain what has happened. But I have challenged the bank on this and the above explanation is supported by the evidence we have. I think it is fair and reasonable. I can't see that the bank has applied any interest to the arrears while the DAS was in place since April 2022 – and it has provided evidence that it has remediated when it had done so in error. The bank had also not started any legal action.

The bank points out that the main mortgage debt and any arrears incurred since the DAS was in place still continued to attract interest. That is in line with my understanding of how the DAS works.

I don't consider that Bank of Scotland has administered the DAS unfairly once it had recognised that it was not administering it properly.

In saying that, Bank of Scotland has now recognised that Mr M had complained about the issue with the DAS in June 2022, April 2023 and October 2023 and it did not issue a final response to those matters or provide an adequate explanation of what happened. So I can understand why Mr M did not know what was happening with the DAS. It has offered him £500. I consider that is a fair amount to reflect any distress and inconvenience bank of Scotland has cause din respect of how it has administered the DAS. I will explain why.

I agree that the lack of a response to the matters surrounding the DAS will have added to, but were not the only source of, the distress and inconvenience Mr M suffered. I'm not persuaded that if Bank of Scotland had responded that Mr M would not have pursued the other parts of his complaint to the same extent – he may even have continued to pursue this part of the complaint. But he has had the inconvenience of raising the same point with Bank of Scotland without receiving a response. I can see that his belief that the bank was effectively ignoring the DAS has added to the distress he's suffered. But overall, I consider that £500 is a fair amount to reflect that and its failure to administer the DAS properly in the first place – bearing in mind I can only consider events from 9 September 2021.

Payment holiday

Bank of Scotland has applied its policy correctly – it does not offer payment holidays when a customer is in arrears. As I explained above, I don't consider it is fair or reasonable for the bank to operate a blanket policy where it will not allow customers in arrears to defer interest. But as I explained I don't consider a payment holiday or deferral would really have helped Mr M – it would only be short term and his payments would go up at the end of it.

While Bank of Scotland did offer Mr M a payment holiday, that was under the FCA Covid guidance. It did not create any obligation for the bank to offer similar concessions in the future.

Bank of Scotland accepted my provisional conclusions. Mr M did not. He made a number of points, including:

- The provisional decision does not address a number of other complaints that have arisen as a result of this matter – such as the sale of the property in negative equity, the product transfer, the delay in providing a data subject access request and the failure to provide an accurate settlement figure.
- While the DAS might have been corrected, it does not address that no explanation was given to him or his money adviser.

- The significant impact on him as a result of this matter, particularly on his mental health, has not been addressed.

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 was sorry to hear about the ongoing impact of this matter on Mr M. But I am not able to consider many of the points that Mr M has raised in his responses to my provisional decision. That is because, as I explained in my jurisdiction decision, I only have the power to consider events from 9 September 2021 (the date of a previous final response) to 17 August 2023, when Mr M referred his complaint to us.

I can only consider the complaints that Mr M referred to us in August 2023 where Bank of Scotland had been given the opportunity to respond to those complaints. So I am unable to make a decision on anything that happened after 17 August 2023 or on complaints that Mr M had not referred to us at that time – that includes any complaint about how the product transfer was sold or set up and any issues connected with sale of his home.

Mr M would need to make a complaint to the bank and then refer the complaints to us within the relevant time limits if he wants us to consider them. That is not to say whether Mr M has valid complaints about those things or not – but rather that under our rules I do not have the power to consider those complaints here.

I accept that Bank of Scotland did not tell Mr M or his money adviser that it had not been administering the DAS correctly – it had incorrectly applied interest up until April 2022. I am satisfied it took steps to put that right. But I agree that it did not tell Mr M or his money adviser that a) it had made a mistake in applying interest or b) that it had identified that and had put it right. I accept that will have added to Mr M's distress and inconvenience and I consider that bank of Scotland should compensate him for that.

The compensation award I am making is not intended to compensate Mr M for any distress or inconvenience he has suffered as a result of his mortgage. I don't doubt the significant impact on his mental health dealing with the mortgage has caused him. But I am only awarding compensation for the impact on him of not being told that the bank had made a mistake with the DAS (as Mr M had said all along) and of not being told that it had identified that and put it right. That is clearly not the only source of distress to Mr M in regard to his mortgage and his perception of how Bank of Scotland has treated him. And as I explained in my jurisdiction decision, I can only consider the impact on him from 9 September 2021.

In view of that, and after carefully reconsidering everything Mr M has said, I still consider £500 is a fair amount to reflect any distress and inconvenience caused solely by the issues relating to the DAS and the failure of the bank to keep him properly informed about that.

I am sorry to disappoint Mr M but I see no reason to reach a different conclusion on the other parts of his complaint.

My final decision

My final decision is that Bank of Scotland Plc should pay Mr M £500.

Ken Rose
Ombudsman

