

The complaint

Mr and Mrs D complain about the way Bank of Scotland plc, trading as Halifax (“Halifax”) has managed their mortgage in a time of financial difficulty.

What happened

Mr and Mrs D have a joint mortgage with Halifax. The mortgage began to fall into arrears in 2018. By late 2023, when this complaint was referred to the Financial Ombudsman Service, the mortgage was in significant arrears.

As things stand today, Mr and Mrs D’s mortgage balance is more than £421,000. They have nearly five and a half years remaining on their mortgage term. Their mortgage remains in significant arrears.

Mr D says Halifax hasn’t considered his proposals to pay the arrears fairly. In 2023 Halifax said it didn’t agree to Mr D’s payment proposal (“the 2022/2023 repayment proposal”). Instead, it said it was minded to re-possess the mortgaged property in line with a court order originally issued in March 2020. It had put that court order on hold for various reasons since then including the covid-19 pandemic and Mr D’s health. Halifax said it was sympathetic to the situation Mr and Mrs D were in, but it didn’t think it had done anything wrong.

Our investigator didn’t think Halifax had made a mistake in the way it has handled Mr and Mrs D’s mortgage. She said:

- she could see that Halifax attempted to contact Mr D on many occasions to establish his income and expenditure (“I&E”) so that it was in a position to agree payment arrangements with him. But Mr D refused to speak with Halifax on occasions. That was problematic as the relevant team at Halifax was phone based.
- The 2022/2023 repayment proposal was considerably less than the contractual monthly payment (“CMP”) Halifax required to clear the mortgage arrears.
- Mr D’s circumstances changed a number of times after the account fell into arrears. Our investigator was satisfied that each time those circumstances changed Halifax tried to assess Mr D’s I&E.

Overall, our investigator thought that Halifax had been supportive and helped where it could. She also said that Halifax had given Mr and Mrs D time to sell the mortgaged property so the money raised could be used to pay off the arrears.

Our investigator set out the reasons for coming to those conclusions in some detail.

Mr and Mrs D remained unhappy. Mr D asked for their complaint to be reviewed by an ombudsman. Mr D said (amongst other things) that he wanted the Financial Ombudsman Service to decide whether Halifax had complied with the relevant pre action protocols that are relevant to this complaint.

My provisional decision

In my provisional decision I said:

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

I'll start by making two general points.

First, I'm conscious that our investigator set out a considerable amount of detail about this complaint in her view. I've considered all the points in full. However, the Financial Ombudsman Service is an informal dispute resolution service. That means I'm not required to respond to each individual point raised during the investigation of this complaint. Instead, my role is to consider Mr and Mrs D's complaint as a whole and make a decision that I consider to be fair and reasonable. So, I trust Mr and Mrs D won't take it as a discourtesy that I've decided their complaint in the way that I have. I'd like to assure them that I've read and considered the whole file, however I'll keep my comments to what I believe is relevant. If I don't comment on any specific point, it's not because I've not considered it but because I don't need to comment on it in order to reach the right outcome in this complaint.

Second, I can see that Mr D hasn't disputed what our investigator said in her view or the conclusion she reached. However, he has made it clear that he thinks Halifax was wrong to try to try to take possession when he thinks he has made a plausible offer to repay the arrears. Mr D has said he wants me to make a decision on whether Halifax had complied with the Pre-Action Protocol for Possession Claims based on Mortgage or Home Purchase Plan Arrears in Respect of Residential Property.

In particular, Mr D wants me to consider:

- *Paragraph 3.1 (a) – that says the aim of the Protocol is to ensure that a lender and a borrower act fairly and reasonably with each other in resolving any matter concerning mortgage arrears*

- *Paragraph 5.6 – that says:*

“The lender must respond promptly to any proposal for payment made by the borrower. If the lender does not agree to such a proposal, it should give reasons in writing to the borrower within 10 business days of the proposal.”

- *Paragraph 7.1 – that says:*

“Starting a possession claim should be a last resort and must not normally be started unless all other reasonable attempts to resolve the situation have failed. The parties should consider whether, given the individual circumstances of the borrower and the form of the agreement, it is reasonable and appropriate to do one or more of the following–

(a) extend the term of the mortgage;

(b) change the type of mortgage;

(c) defer payment of interest due under the mortgage;

(d) capitalise the arrears; or

(e) make use of any Government forbearance initiatives in which the lender chooses to participate.”

As my role is to resolve a complaint in a fair and reasonable way I've taken the pre action protocol into account and considered it in my consideration of how Halifax has acted.

Events from 2018 until late 2022

As I said above, Mr and Mrs D's mortgage began to fall into arrears in 2018. Mr D said that happened as a result of his health.

In 2020 Halifax obtained a court order to possess the property if the arrears weren't repaid by 7 April 2020. The arrears weren't repaid by then. However, it put the possession on hold – initially in response to the covid-19 pandemic and later – in 2021 - as a result of Mr D's changing health concerns. However, that didn't mean that the court order didn't remain valid.

On 9 August 2021 Mr D told Halifax (on a phone call) that he'd secured a new job. Halifax said it needed to go through his I&E with him. Mr D said he didn't have time on that call, but he'd send his I&E to Halifax within the next two weeks and send it a proposal about clearing the arrears. Mr D wanted a response to his proposal in writing. On 19 August 2021, a letter was received from Mr D with his I&E. Mr D said he had a monthly surplus of around £3,000. Mr D enclosed a payment plan which Halifax said it was unable to set up without speaking to him. Halifax sent a contact letter sent for Mr D to call it and discuss his account.

On 6 September 2021, Mr D complained about Halifax's telephone calls. He wanted to only deal with Halifax in writing. A hold was put on the account while this was looked into. On 15 October 2021, another letter was sent to Mr D to ask him to contact Halifax.

On 28 October 2021, Mr D sent a further letter requesting no phone contact and confirming his previous proposals. He wanted to pay £2,500 each month until September 2022 – around 50% of the monthly repayments required at the time to clear the arrears within the mortgage term (£5,203.28). He said he'd go on to increase his monthly payments to £3,500 each month.

Halifax said that it couldn't accept the proposal due to the level of arrears. It said the proposal made would only increase the arrears, fees and interest payable. Halifax said it would carry out an enforcement review with a view to obtaining an eviction date. It said it wasn't in a position to accept any proposals for less than the monthly repayments required at the time to clear the arrears within the mortgage term (it referred to that as the CMP amount), as this wouldn't help Mr D in the long run.

On 15 November 2021, Mr D phoned Halifax and said that a family member had passed away. He intended to use his inheritance from that (available once the family member's property was sold) to clear the arrears.

Halifax continued with its action to repossess the mortgaged property. It said that all forbearance options and discussions had been exhausted and there wasn't going to be any change in circumstances in the foreseeable future. In coming to that conclusion, it considered the amount of time it would take Mr D to get probate in relation to the relative's estate and sell the property. Halifax said it felt it had no other option but to proceed with enforcement to avoid more arrears, interest and fees accruing. It set an eviction date of 16 January 2022. The eviction was suspended in late December 2021 after Mr D told Halifax about a recent health diagnosis. Halifax assigned a specialist team to be in contact with him and put the mortgage account on hold while Mr D had treatment for his health. A hold was put on the account until May 2022. During that time Halifax sent Mr D letters asking him to

complete an I&E form and a form giving a third-party authority to deal with his account for him while he was unwell.

In May 2022 Mr D paid £100,000 (two payments of £50,000) towards the mortgage. Mr D says he cleared the arrears on the mortgage when he did that. However, Halifax's records show that even after these payments were made, arrears of more than £22,000 remained. In the latter part of 2022 Mr D made monthly payments of £3,000 towards the mortgage, although the monthly payments required to clear the mortgage balance by the end of the term were more than £5,000 – so the arrears continued to grow.

Having considered Halifax's actions in this period I don't think it's fair to say that it made a mistake in the way that it treated him. Mr D's circumstances had changed a number of times after the account fell into arrears. Each time those circumstances changed Halifax tried to assess Mr D's I&E and to keep in contact with him. However, I think it's worth me saying here that each time Mr and Mrs D made a monthly payment that was less than the monthly payment required to clear the mortgage balance by the end of the term, the arrears on the mortgage grew, making their overall situation worse. So, I think Halifax was right to take that into consideration. That's because Halifax needs to ensure that any forbearance action it takes is in the consumer's best interest and wouldn't put them in a worse financial position.

The pre action protocol said that repossession should be a last resort and must not normally be started unless all other reasonable attempts to resolve the situation have failed. By late 2022/early 2023 Halifax had put repossession on hold a number of times and tried to support Mr D while he suffered from ill health and changed his employment on more than one occasion. However, it had reached the conclusion that there was no prospect of Mr D paying the monthly payments required to clear the mortgage balance by the end of the term in the foreseeable future.

The 2022/2023 repayment proposal

In November 2022 Mr D had proposed making monthly repayments of £3,500 and then selling a property (one they were letting at that time) in 2025 to clear the arrears. Mr D said that if that proposal wasn't acceptable, he wanted Halifax to consider switching the mortgage to an interest only mortgage until April 2025. At that point he said, equity in another property would become available to settle any arrears, repay some capital and revert to a repayment mortgage.

Mr D has complained that Halifax didn't respond within ten working days (paragraph 5.6 of the pre-action protocol) and didn't give detailed reasons for rejecting it.

Halifax said it didn't receive Mr D's November 2022 letter when it was initially sent, so that's why it didn't respond promptly.

Although Halifax didn't send him a formal response to his proposal in writing until August 2023, I can see from its notes of its contact with Mr D that it spoke to him a number of times on the phone about his proposal/his options from January to August 2023. In those phone calls Halifax asked Mr D questions about his circumstances and set out its position. In its August 2023 final response Halifax reiterated what it had told Mr D on the phone. It said it wasn't willing to accept monthly repayments of £3,500 because that was significantly short of

the monthly payments needed at that time to repay the arrears over the remaining term of the mortgage (the monthly payments at that point were £6,938.99). Nor was it willing to move the mortgage temporarily onto interest only terms. It said that if it agreed to the proposal Mr and Mrs D's arrears would continue to increase – something that wouldn't help them overall. It said that the 2020 court order remained valid enabling it to repossess the

property and that it wouldn't consider waiting until 2025 given the amount of the arrears. By that point the arrears on Mr and Mrs D's mortgage were more than £30,000.

Mr D has made it clear that he thinks Halifax should have set out its thoughts on the proposal he'd raised and all available options in detail and in writing – in line with paragraph 5.6 of the pre action protocol set out above. It didn't do that. I can appreciate his frustration about that, but I'm persuaded given what I've said above, that Halifax gave his circumstances and proposal its consideration as I would expect it to do. I think Mr D knew what Halifax's position was on the issues raised. By that point Halifax had been clear about its position (that it wasn't willing to accept monthly repayments below the monthly payments required to clear the mortgage balance by the end of the term as that would cause Mr and Mrs D's arrears to increase) for some time.

Mr D has referred to paragraph 7.1 of the pre action proposal. That says that starting a possession claim should be a last resort and must not normally be started unless all other reasonable attempts to resolve the situation have failed. It's clear that Mr D felt that his proposal was viable, but it's also clear that Halifax didn't think it was and that it felt that forbearance options were exhausted by this point. Given the events set out above I can understand why it thought that. I say that because by August 2023, Mr and Mrs D's mortgage had been in arrears for around five years. The arrears on the mortgage were significant and growing. Mr D had told it that his circumstances were unlikely to change until 2025 and Halifax had decided to put on hold action to repossess the mortgage property on more than one occasion. I don't think Halifax acted unreasonably when it said it was unwilling to wait another 18 months plus for the arrears to be paid off. Much could have changed in that period of time. Arrears were continuing to mount up, and there was a risk that Mr and Mrs D's circumstances could deteriorate further.

After that Mr and Mrs D took action to sell the mortgaged property. I understand that the property is still on the market after a sale fell through.

Conclusion

I appreciate that Mr and Mrs D will be very disappointed by this decision. There's no doubt that they've been through a difficult time in recent years, and they've made significant effort to clear the arrears on the mortgaged property. I'm very sorry to hear about the challenges they've faced. I appreciate how frustrated they are that Halifax hasn't agreed to their proposals or offered them a solution that they're happy with. However, I can see that they've had numerous discussions with Halifax about their circumstances and possible options. So, I don't think it's fair to say that Halifax hasn't treated them fairly, or that it hasn't worked with them as should to try and find a solution that works for them.

In the circumstances, it wouldn't be appropriate for me to require Halifax to do anything to resolve this complaint.

Responses to my provisional decision

Halifax accepted my provisional decision, saying it had nothing to add.

Mr and Mrs D provided me with detailed comments on my provisional decision and our investigator's view – something they hadn't done before. They said the view didn't cover all of the detail of their complaint, or deal with all the issues involved – notably the pre action protocol that I considered in my provisional 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've considered Mr and Mrs D's comments on my provisional decision.

Once again, I think it's worth me saying here that the Financial Ombudsman Service is an informal dispute resolution service, so I don't think it's appropriate for me to cover every point Mr and Mrs D have made individually in this decision. I've considered everything that they have said and provided in this complaint. However, my role is to consider their complaint as a whole and make a decision that I consider to be fair and reasonable. So, I'll keep my comments to what I believe is relevant to that objective.

It's clear that Mr and Mrs D remain very unhappy that Halifax hasn't set out a detailed response to the 2022/2023 repayment proposal. Mr and Mrs D have said the lack of a detailed written response has meant that they haven't been in a position to understand its position fully or feel that it has thought everything through. They have complained that the agents Mr D spoke to on the phone (different ones every time) would only speak in generalities and weren't in the position to give their proposal the attention it deserved.

I appreciate Mr and Mrs D's point of view and the seriousness of this matter, but I remain of the view set out in my provisional decision – that even though Halifax didn't send Mr D a detailed written response to his proposal I'm persuaded that Halifax gave their circumstances and proposal its consideration as I would expect it to do. Halifax was consistently clear that it wasn't willing to accept monthly repayments below the monthly payments required to clear the mortgage balance by the end of the term because doing so it would cause Mr and Mrs D's arrears to increase.

While a temporary reduced payment arrangement or an interest only concession are appropriate forbearance measures where borrowers have shorter term difficulties and where there's a good prospect of the borrowers getting their mortgage back on track, they're not appropriate for longer term or ongoing forbearance. That's because once those concessions end the missed payments or unpaid capital will need to be caught up, which means Mr and Mrs D would need to pay more each month thereafter. It wouldn't be sustainable to put them in that position unless there was evidence that they'd be likely to be able to afford those increased payments in the future.

Mr and Mrs D said they would be able to afford to repay what they owed later. In November 2022 (in the 2022/2023 repayment proposal), Mr and Mrs D proposed making monthly repayments of £3,500 and then selling a property (one they were letting at that time) in 2025 to clear the arrears. Mr D said that if that proposal wasn't acceptable, he wanted Halifax to consider switching the mortgage to an interest only mortgage until April 2025. At that point he said, equity in another property would become available to settle any arrears, repay some capital and revert to a repayment mortgage.

In other words, Mr and Mrs D wanted Halifax to accept lower mortgage payments for two-three years, after which they would sell a property to repay what they owed.

Mr and Mrs D appear to take the view that by not accepting that, repossession in relation to the 2020 court order would be unfair/not a last resort.

I understand Mr and Mrs D's position, but I remain of view that I don't think Halifax acted unreasonably when it said it was unwilling to wait that long for the arrears to be paid off. Much could have changed in that period of time. Throughout that time arrears would be

continuing to mount up, and there was a risk that Mr and Mrs D's circumstances could deteriorate further. There was no guarantee that Mr and Mrs D would be able to sell the property they said they were planning to sell in 2025. Nor was it clear what price the property was likely to sell for.

It's clear that Mr and Mrs D remain extremely concerned that the mortgaged property could be repossessed by Halifax in line with the court order originally issued in March 2020.

I appreciate that a lot has happened since the court order was obtained in March 2020. If Halifax were to issue new possession proceedings today, a court would have to consider whether to grant possession bearing in mind all the circumstances of the case, including adherence to the pre-action protocol. Mr and Mrs D have made it clear that they don't think the pre-action protocol has been complied with.

I think it's worth me saying here that I have no power to cancel/amend that court order as that's something only a court can do. If Mr and Mrs D want to consider that they should get independent legal advice about that.

It's clear that Halifax didn't send Mr D a formal response to the proposal in writing until August 2023 – outside the time limit set out in paragraph 5.6 of the protocol. However, as I said in my provisional decision, Halifax says that's because it didn't receive Mr D's November 2022 letter when it was initially sent, so that's why it didn't respond promptly. I've said why I remain of view that I don't think Halifax acted unreasonably when it said it was unwilling to accept the 2022/23 repayment proposal.

Mr D has told us that the mortgaged property is on the market, and that he and Mrs D have another property that they are intending to sell too. He has told us he wants Halifax to give them the time they need to sell the properties so they can get a good price for them and repay what they owe. It's not clear how long it will take Mr and Mrs D to sell the properties or whether they'll be able to get the price they want for them. The mortgaged property has been on the market for some time now, and I'm conscious that a potential sale fell through in early 2024.

Halifax has told us that it isn't looking to proceed with an eviction as things stand today. It says it has asked Mr and Mrs D for a properly signed and filled out "Sale of Property pack" to be completed for the mortgaged property and for consent for it to speak to the relevant estate agents / conveyancers. Once that has been provided it will put enforcement action on hold for an initial 90 days. It says such a hold could be extended if the 90-day period has ended but Mr and Mrs D can demonstrate offers / a price reduction / clear attempts to sell. I'm conscious that Halifax has been asking Mr and Mrs D for this for some time now.

I encourage Mr and Mrs D to remain in contact with Halifax about the property sales and work with it to avoid repossession.

Taking this matter as a whole, I'm satisfied that Halifax hasn't acted quickly to repossess the mortgaged property using a historic court order. It has made numerous attempts to work with Mr and Mrs D as their circumstances have changed and implement other forms of forbearance. I think that Halifax has taken Mr and Mrs D's vulnerabilities into account when they did that. So while I'm in no doubt that Mr and Mrs D have found (and continue to find) this matter upsetting – especially given Mr D's health - I don't think it would be fair and reasonable for me to uphold this complaint.

My final decision

For the reasons set out above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D and Mrs D to accept or reject my decision before 26 July 2024.

Laura Forster
Ombudsman