DRN-4876689

The complaint

Mr and Mrs F complain that they asked Bank of Scotland plc trading as Halifax for a payment holiday, during a time of financial difficulty. But they said the arrangement they ended up with damaged their credit rating, and left them with a lump sum to repay.

What happened

Before setting out the facts of this case and its history to date, I'd just like to clarify at the outset some of the terms I'll be using here.

- A "payment deferral" is what our service calls a period of missed payments under special arrangements put in place by the financial service regulator during the pandemic. There were particular rules governing those payment deferrals, and lenders were required to offer them. I understand Mrs F previously had a payment deferral on a different mortgage, but those are no longer available.
- A "payment holiday" is a period of missed payments under the terms of Mr and Mrs F's mortgage with Halifax.
- A "nil payment arrangement" is a form of payment arrangement which Halifax may offer to customers in financial difficulties.

Mr and Mrs F said that they asked Halifax for a payment holiday, but they didn't get that. They said Halifax gave them a nil payment arrangement instead. They said Halifax didn't make clear what they were signing up to, that this would affect their credit files, and that they would have to repay the whole amount at the end of the three month period. Mr and Mrs F said if they'd been properly informed, they wouldn't have taken this solution.

Mr and Mrs F told us Mr F had unfortunately lost his job in early 2023. Mrs F was just starting a business, and was taking only a modest wage from that. They paid their mortgage until June with savings, but then on 7 June they asked Halifax for help.

Mr and Mrs F said they'd clearly requested a three month payment holiday, and for the balance to be added to the mortgage amount. After responding to affordability questions, they were offered a nil payment arrangement. They said the Halifax advisor didn't explain the difference between this and a payment holiday. And she didn't tell them their credit file would be affected, or that they would have to pay the whole amount back after three months.

Mr and Mrs F said they did then get correspondence from Halifax, but they said they read this in the context that they believed they had been offered what they asked for, a payment holiday and for the value of this holiday to be added to the mortgage balance. They didn't think the letters made clear that this wasn't the case.

Mr and Mrs F called Halifax in September, to ask if any further help could be offered, but they said Halifax wouldn't offer any further support. It then wrote to them saying there was almost £12,000 to pay. Mr and Mrs F said they were concerned, they'd already told Halifax they would resume their contractual monthly payments in October. So they wrote to Halifax, saying they expected the arrears to be added to the mortgage. But Halifax just wrote again, asking them to pay the arrears back, and asking them to get in touch.

They called Halifax, and they said the advisor then, for the first time, explained the difference between a payment holiday and the nil payment arrangement. They said they would not have accepted this, and jeopardised their credit ratings, if they had known this. But Halifax just said they had to repay the missed payments.

Mr and Mrs F said Halifax then said it would remove the missed payment markers from their credit files, before changing its mind, and saying the markers must stay, and Mr and Mrs F must repay the missed payments within six months.

Mr and Mrs F told us how this affected them. They also said Halifax then sent a letter saying their arrears were only £8,000, not the £12,000 it had previously asked for. Mr and Mrs F thought this was progress, but then Halifax replied to their complaint and said it wouldn't be upheld. It was still asking them to make payment, and on the same day as they received a complaint response, they also received a letter threatening legal action over the arrears.

Mr and Mrs F said Halifax admitted it got things wrong on the call after the nil payment arrangement ended. They thought it also got things wrong on the call they had with it when the arrangement was set up, and they pointed out that Halifax couldn't then locate a recording of this call. They wanted our service to get Halifax to clean up their credit files, and add the arrears to their mortgage.

Halifax accepted it had made a mistake when it spoke to Mr and Mrs F after their nil payment arrangement was finished. It was sorry its agent had led Mr and Mrs F to believe that their credit files would be updated. It paid £25 as an apology for that.

At this point, Halifax doesn't seem to have located a recording of the call it had with Mr and Mrs F on 7 June. So it also apologised if things hadn't been clear on that call, and paid £25 for that. But it didn't think it had made a mistake when the payment arrangement was set up. It hadn't put them on a payment holiday. Those were in the terms of their mortgage, but Mr and Mrs F unfortunately didn't qualify for one, they hadn't had the mortgage for long enough.

Halifax said it had written to Mr and Mrs F after it spoke to them on 7 June. The letter of 9 June confirmed the payment arrangement on their mortgage, and explained that they'd need to make up the payments when the arrangement ended. That letter also confirmed that this arrangement would affect their credit files.

Halifax then wrote again and said it wouldn't change its mind. It was sorry they had found the letters about this upsetting, but it said it has to tell borrowers about their arrears, and also about the possible consequences if those aren't paid. Halifax urged them to get in touch.
By the time this complaint reached our service, Halifax had located a recording of the call on 7 June, and listened back to it. So Halifax said then it had explained to Mr and Mrs F that their payments would still fall due during the nil payment arrangement, and their account would be considered to be in arrears.

Our investigator didn't think this complaint should be upheld. She said she had listened to the call Mrs F had with Halifax on 7 June 2023. Halifax had explained why they couldn't have a payment holiday, and transferred Mrs F to another advisor to discuss other options. That other advisor offered a nil payment arrangement for three months. And, importantly, our investigator said she'd heard Halifax explain that while monthly payments weren't being made, Mr and Mrs F would fall behind and being behind would show on their credit file.

Our investigator also said the letter Halifax sent after this explained the missed payments needed to be made up after the arrangement. And it also said that Halifax would let credit reference agencies know when payments aren't being made on a plan and this will show on their credit files as missed payments.

Our investigator did think it would have been better if Halifax had explained on the call that Mr and Mrs F would need to repay the missed payments in full after three months, but she thought that its letter did then make this clear. And she said the impact on their credit files was covered in the call and the letter.

Our investigator said after the nil payment agreement had ended, Mr and Mrs F tried to get Halifax to confirm the arrangement worked in the way they wanted, but it kept asking for payment. On a call on 28 September, Halifax explained the difference between a payment holiday and the nil payment arrangement. Mr and Mrs F said they wouldn't have agreed to that.

Halifax had offered £25 for poor service when Mr and Mrs F contacted it in June, and a further £25 for the mistake it made about clearing their credit files and capitalising the arrears. Our investigator thought that the payment of £25 was fair for not covering the need to repay the arrears on the call of 7 June, and the payment of £25 for initially giving incorrect information on the call of 28 September.

Our investigator said that when Halifax wrote to Mr and Mrs F with a reduced arrears figure, that was just because they'd paid their October payment at the end of September, which had reduced the arrears at the time the letter was sent.

Our investigator said she understood the timing of some of Halifax's letters caused some distress, but she said Halifax does have a duty to keep Mr and Mrs F informed of the actions it might need to take if an outstanding amount on the mortgage hasn't been paid for several months and it hadn't reached any agreement with them on repayment. Our investigator didn't think Halifax had to do any more.

Mr and Mrs F didn't agree. They asked to be sent the call recordings from 7 June, and once they had listened to them, they wrote again to flag up some particular points in the second recording, when the nil payment arrangement was established.

Mr and Mrs F said they weren't bankers, and had never been in this position before. They thought the call recording supported their case, that they tried to clarify things as best they could, and that they left the call with the clear impression that Halifax had given them a plan where they didn't have to pay anything for three months and normal payments would just restart in October.

Mr and Mrs F said if it wasn't for the lack of clarity in this call, they wouldn't have taken this option. They couldn't pay the balance back in three months. They wanted us to reconsider. But our investigator didn't change her mind. She said it wasn't just the call that set up the nil payment arrangement, it was also the letter that followed. Taken together, those were clear.

Mr and Mrs F wanted their complaint to be considered by an ombudsman, so it was passed to me for a final decision. And I then reached my first provisional decision on this case.

My first provisional decision

I issued a provisional decision on this complaint and explained why I proposed to uphold it in part. This is what I said then:

> I want to say at the outset that I've been sorry to hear about the difficulties that Mr and

Mrs F have faced, in the first months of their mortgage. I understand that this must have been a very difficult period indeed for them both, and I hope that things have since improved.

I've listened to the call where Mrs F set up the nil payment arrangement, following Mr F's loss of his job. And I do think it was clearly explained to Mrs F at the start of this call that she could not have a payment holiday.

Halifax has shown us the terms of Mr and Mrs F's mortgage since, and I can see that there are a number of criteria for a payment holiday which Mr and Mrs F unfortunately didn't meet. But on the call, the first call handler explained to Mrs F that she and Mr F hadn't had their Halifax mortgage for long enough, to qualify for a payment holiday.

Mrs F was then transferred to another agent. On that part of the call, she was offered a nil payment arrangement. The agent started by explaining that this would be based on affordability, and would generate a shortfall on the account.

She and the agent discussed Mr and Mrs F's budget at the time, and Halifax then offered a nil payment arrangement. I do accept that the agent wasn't completely consistent in her use of terminology on the call, but once the couple's budget was clear, the agent did explain the impact this would have. She said the account may fall behind.

Mr and Mrs F have listened to this call too, and they said that at this point, they objected. Mrs F said she didn't want to fall behind. I can hear that she said they didn't want to be in that situation at all, but I don't think Mrs F was clearly rejecting what Halifax had offered. She did accept the arrangement.

Halifax's agent went on to say that as Mr and Mrs F wouldn't be paying their monthly payment, the mortgage would fall behind. And being behind will show on their credit file for up to six years.

Mr and Mrs F say there just wasn't full agreement on this call. I think there does appear to have been some gaps in understanding, because Mrs F said she left thinking that she could just miss three monthly payments, and the arrears would be added to the mortgage debt, which is referred to as capitalisation. But I haven't been able to hear that Halifax said this debt could be capitalised, and its terms don't generally allow immediate capitalisation in these circumstances.

I do think it's quite understandable that Mrs F would be concerned at this time, and would be finding this call stressful. I think that's likely to be why this misunderstanding occurred. This was clearly a difficult and stressful time in their lives. But that is why Halifax followed up with a letter, which explained things again.

Mr and Mrs F say that it isn't fair to look at the letters without considering the context in which they read them, because they'd understood that something quite different was happening on their mortgage account. But I don't think that misunderstanding on the initial call was Halifax's fault. And I do think it took steps then to follow up with Mr and Mrs F, to make sure they understood what had been agreed.

I'm sorry to have to tell Mr and Mrs F that, because I don't think what has gone wrong here is Halifax's fault, I don't think it has to remove the arrears from their credit files now.

I asked Halifax what it recorded on Mr and Mrs F's credit files. It said it had recorded the arrears which accrued while they weren't making their monthly payments. But, because they weren't paying anything, it hadn't recorded them as in any arrangement to pay.

I understand that Mr and Mrs F weren't making any payment at all to their mortgage between July and September 2023. But Halifax had reached an agreement with them to this effect. So I don't think it's fair for their credit files to look the same as if Mr and Mrs F had simply stopped paying, without speaking to Halifax and agreeing this approach. I think it would be appropriate here for Halifax to show that Mr and Mrs F were in an arrangement to pay for July, August and September 2023.

I will ask Halifax to make this amendment to Mr and Mrs F's credit files now. This won't prevent Halifax from recording the arrears which accrued during this period on Mr and Mrs F's credit files. But it will reflect that Mr and Mrs F had recognised the difficult situation they found themselves in, and had spoken to their lender to address this.

I think this should have been done from the outset, and may have meant the deterioration in Mr and Mrs F's credit rating was a little less marked. So I will ask Halifax to pay Mr and Mrs F £100 for the distress this would have caused. But, because I think this would only ever have made a marginal difference, I don't think Halifax has to pay more than that.

I also asked Halifax whether it would now be prepared to capitalise the arrears on Mr and Mrs F's mortgage. Halifax said that Mr and Mrs F have made eight months of mortgage payments, so that criterion is met. But Halifax said it didn't know what Mr and Mrs F's current financial situation is. And it wouldn't want to capitalise the arrears on this mortgage, without being sure that this would be affordable for them going forward. So I would encourage Mr and Mrs F to contact Halifax to discuss this, if that would still be helpful for them.

I know that Mr and Mrs F will be disappointed, but I don't currently think Halifax has to do more than this.

I invited the parties to make any further points, if they wanted, and both sides replied.

My second provisional decision.

I then issued a second provisional decision. I explained that, having considered the arguments I'd received, reviewed the existing evidence, and also requested and considered some additional evidence in this case, I felt I should add to my previous provisional award. This is what I said then –

Halifax said it would accept my decision, but it wasn't able to input a payment arrangement with two of the three major credit reference agencies, if no payment at all had been made. I have discussed this matter further with Halifax, and it has agreed to adjust Mr and Mrs F's mortgage, to record a payment of £1 for each of the three months they were in a nil payment arrangement. That will then allow Halifax to show Mr and Mrs F as in such an arrangement during this time. I understand that Halifax has already taken this step, but I am including this in my final decision below, as agreed with Halifax.

Mr and Mrs F wrote to say that they had now been able to capitalise the arrears on their mortgage. They still thought Halifax ought to have made this change for them immediately that their arrangement to pay had finished.

Mr and Mrs F asked me to confirm if my decision would mean that their credit files would be amended for the three months of this arrangement, and also after this time. They said they expected my provisional decision to produce a change on their credit files, meaning that they would show as in an arrangement to pay for July, August and September 2023, but then also to remove the arrears after this, which Mr and Mrs F weren't making a payment towards.

I contacted Mr and Mrs F to say that my provisional decision didn't require Halifax to make changes to their credit files after September 2023. I said I hadn't identified a reason why it would be fair to require Halifax to amend their credit files after this date, when the account remained in arrears, and they weren't paying the arrears.

Mr and Mrs F then said they weren't making any payment towards these arrears because Halifax would only accept a payment plan over a six month period, at the longest. And that wasn't affordable for them. So they felt it wasn't fair for these arrears to remain on their credit file, for the time after their nil payment arrangement had ended. They still thought the arrears should have been capitalised as soon as their nil payment arrangement had ended.

For the avoidance of doubt, my decision isn't that Halifax ought to have capitalised the arrears on Mr and Mrs F's mortgage as soon as their payment arrangement ended. I understand that very shortly after their nil payment arrangement ended, Mr and Mrs F asked Halifax to extend the arrangement for them. And although Mrs F then said she could make the payments, and we now know Mr and Mrs F did resume their payments, I don't think it was clear at the time that Mr and Mrs F would be able to return to full payment. In those circumstances, I don't think Halifax had to do what Mr and Mrs F wanted, and capitalise their arrears straight away.

Mr and Mrs F said all they were offered, on their calls with Halifax on 28 September, was a payment plan to repay their arrears over a maximum of six months, which they said wasn't affordable for them. So I have obtained and listened to these two calls.

The first call was when it was explained to Mrs F that the debt would not be capitalised. The agent then said the arrears could be spread over some months. I understand that on this call, Mrs F was focussed on the effect of the debt on her and Mr F's credit files, which she hadn't previously understood. The agent said someone would listen to the call which Mrs F had to set up the nil payment arrangement, and would call her back the same day. She offered to transfer Mrs F to someone who could discuss repayment of the arrears with her, but Mrs F declined that on this call. She didn't think there should be any arrears.

The second call was later that day, and was in two parts. At that point, Halifax hadn't been able to retrieve the call it had with Mrs F to set up the nil payment arrangement, so it accepted what Mrs F had told it about the content of this call.

At the start of this call, Halifax said it would amend Mr and Mrs F's credit files. I understand, Mrs F then thought the problem was resolved, and would have been very disappointed to later find this wasn't the case. Mrs F told Halifax she wanted the missed payments spread across the whole of the mortgage term, and the agent said she would have to talk to a different team about that. The agent then connected Mrs F to that team.

On the second part of this call, a different agent explained to Mrs F that the mortgage was in arrears. The agent asked Mrs F to complete an income and expenditure assessment, to put an affordable plan in place to clear those arrears. Mrs F repeated that she had understood the missed payments would be capitalised into the mortgage, and repaid over the full term, and she didn't want to go through an income and expenditure assessment again. The agent clarified that the debt wouldn't be spread across the whole mortgage term, and that any repayments would need to be affordable for Mr and Mrs F. The agent said the plan would be based on the surplus identified through an income and expenditure assessment.

I can hear the agent mention six months, at this point. The agent said *"usually plans are set up on a maximum of a six month period and then we would review it every six months, but again it's hard to say without doing the budget, what that would look like for you".*

Halifax has since clarified the agent was only explaining that any repayment plan will be reviewed every six months (to check it remains affordable and the best fit for the customers). The agent was not suggesting that any plan must ensure the arrears are fully repaid within six months. I do think the explanation Halifax has since given fits with what I can hear on this call, but this statement was, unfortunately, open to misunderstanding.

Mrs F repeated she would not have taken this payment arrangement out with Halifax, if she'd been properly advised about what it meant. The agent said if Mrs F wanted her arrears to be capitalised, and had understood that's what the agent would do, then her complaint had not been fully resolved. So the existing complaint needed to be reopened.

The agent advised Mrs F to set up her direct debit again, so she didn't fall further into arrears, and told Mrs F how to make her next payment manually.

Having ensured the complaint would be reactivated, the agent then stressed for Mrs F that the arrears would still be showing on the account in the meantime, and for those arrears to be addressed, they would need to discuss Mr and Mrs F's budget. The agent said she would advise Mrs F to complete a budget and get something in place.

What I can hear on this call, makes me think Mrs F was undecided about how to proceed, at this point. Mrs F said repaying over six months would cost an extra £2,000 per month. Up until then, the agent hadn't said that Mrs F did have to repay in such a short period.

I think there was some confusion at this point, at the end of the call. This is what I heard –

> *Mrs F – you couldn't do across a sort of a two year plan, then?*
>
> *Agent – no, no, no, we don't. Usually it's a maximum of six months, unless we can show an affordability to clear the arrears within twelve. So again it will depend on what your budget shows of what affordable surplus you have left.*

I think it ought to have been clear to the agent from what Mrs F said, that she had understood she had to repay over six months. She asked whether it would be possible to repay over twelve months, and the agent said no.

Whilst the agent may have intended to say that a plan could only be set up for six months, and then must be reviewed, I think that unfortunately, by answering Mrs F's questions in the way she did, what she had told Mrs F at this point was that the plan had to ensure repayment happened within six months. That would have added a very significant amount to Mr and Mrs F's already large monthly mortgage payment.

So, having listened to this call in full, I do now think the reason Mrs F didn't set up a payment plan on this call was, as she and Mr F suggested, because Halifax didn't appear to be offering any option which they could afford at that time. I think this was a misunderstanding, but I'm not able to say this misunderstanding was Mr and Mrs F's fault.

I think if this misunderstanding hadn't happened, it's most likely that Mr and Mrs F would have set up a repayment plan, on this call. That would not have cleared their arrears immediately, but it would mean their credit file would show them in an arrangement to pay, continuing on after the end of the nil payment arrangement.

> Because of this, I do now think that Mr and Mrs F's credit files should be amended for the period from October 2023 to July 2024 inclusive. I think the arrears should remain on their credit files for this period, because I don't think it was ever likely that Mr and Mrs F would simply have cleared their arrears on this call. But I do think their credit files should additionally show an arrangement to pay during this time. That would mean Mr and Mrs F's credit files will show as in an arrangement to pay, from the start of their nil payment arrangement, up to the point when our service prompted Halifax to offer Mr and Mrs F consolidation of their arrears, on the basis of several months of resumed payments.

Because I had changed my mind, I explained this decision would again be provisional, and I again invited both sides to comment further. Both sides have now replied.

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.

Both sides have replied accepting my second provisional decision. As neither side has offered any further evidence or argument, and I haven't changed my mind, I'll now make the decision I originally proposed.

My final decision

My final decision is that Bank of Scotland plc trading as Halifax must amend Mr and Mrs F's mortgage to show a payment of £1 per month, received from July to September 2023, inclusive.

Bank of Scotland plc trading as Halifax must then amend the credit files of Mr F and Mrs F, so that each one shows this mortgage as being in an arrangement to pay from July 2023 until the point when Mr and Mrs F's arrears were capitalised in 2024.

Bank of Scotland plc trading as Halifax must also pay Mr and Mrs F £100 in compensation.

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