

## **The complaint**

This complaint is about a mortgage Mrs and Mr B hold with The Co-operative Bank Plc trading as Britannia.

The essence of the complaint is that Britannia returned a direct debit payment to their current account by cheque, and then reduced the amount of subsequent direct debits to a nominal amount, without telling them what it had done. Mrs and Mrs B had deliberately set the direct debit at a high level to make overpayments. They say Britannia's actions derailed their aims of clearing the mortgage balance early, before their eldest child started university. This is a joint mortgage, and both borrowers have joined the complaint. All of our dealings however have been with Mrs B on behalf of herself and Mr B.

## **What happened**

The above summary is in my own words. The basic background to this complaint is well known to both parties so I won't repeat all the details here. Instead I'll provide a brief description of the complaint, rounding the figures, and then focus on giving the reasons for my decision. If I don't mention something, it won't be because I've ignored it. It'll be because I didn't think it was material to the outcome of the complaint.

Mrs and Mr B's mortgage is interest-only, and made up of two sub accounts, numbered 1 and 3 respectively. Mrs and Mr B have made regular overpayments for much of the period they've held the mortgage. In October 2022, the amount received for credit to sub-account 1 was greater than the outstanding balance. Britannia's accounting policies don't allow it to close a sub account down or reassign funds to a different sub account, without the borrowers' express authority.

However, rather than contact Mrs and Mr B to ask for instructions, Britannia returned the funds to their current account (by cheque) and amended the direct debit mandate amount to a nominal sum to reflect the interest being charged on the residual balance. It also didn't write to tell Mrs and Mr B what it had done, reasoning that they would notice the changes on their current account statement. Unfortunately, this didn't happen for about six months, and when Mrs and Mr B did notice, they complained that Britannia's actions had put their planned clearance of the overall mortgage balance behind schedule.

Britannia accepted it was at fault in failing to notify them of what it had done; to put things right, it said that if Mrs and Mr B paid them a lump sum equivalent to the overpayments they would have made in that six-month period (the figure identified is £3,999), it would back date the credit to remove the extra interest they'd incurred in the meantime. Mrs and Mr B referred the complaint to us, saying that they'd spent the money in their current account in good faith, unaware there was more than there should be, and didn't have it to pay Britannia in one go.

When the case came to us, Britannia agreed, in addition to the offer outlined above, to pay £150 compensation for Mrs and Mr B's time, trouble and upset. Our investigator thought that was fair and recommended Mrs and Mr B accept it. They have asked for the complaint to be reviewed by an ombudsman.

Whilst the complaint has been with us, Mrs and Mr B have resumed making over payments on sub account 3, to make up some of the “lost ground”. But they’ve reiterated that they consider it unfair to expect them to pay a lump sum they don’t have in order to receive the benefit of the settlement offer.

### **What I’ve decided – and why**

I’ll start with some general observations. We’re not the regulator of financial businesses, and we don’t “police” their internal processes or how they operate generally. That’s the job of the Financial Conduct Authority (FCA). We deal with individual disputes between businesses and their customers. In doing that, we work within the rules of the ombudsman service and the remit those rules give us. We don’t replicate the work of the courts.

We’re impartial, and we don’t take either side’s instructions on how we investigate a complaint. We conduct our investigations and reach our conclusions without interference from anyone else.

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

This isn’t a case where I have to decide fault; Britannia has accepted it should have let Mrs and Mr B what it was doing back in October 2022, so that they could give it the necessary instructions to keep things on track. Britannia has apologised, and offered redress, albeit that is conditional upon Mrs and Mr B making up the “missed” overpayments. What I must decide is whether that settlement proposal, and the condition attaching to it, are fair.

Having considered everything that both parties have said and provided, I’ve decided the current settlement proposal is fair. I’ll explain why.

I don’t wish to be unkind, but this complaint is not just about Britannia did or didn’t do. The timeliness of actions taken by both parties to the dispute is a factor in the overall outcome of this case. It goes to the question of mitigation.

The general position is that mitigation requires a person to take steps to minimise their loss and to avoid taking unreasonable steps that increase their loss. A person can’t recover damages for any loss (whether caused by a breach of contract or breach of duty) which could have been avoided by taking reasonable steps. A person is said to have a “duty to mitigate”.

This isn’t a duty that’s enforceable by anyone, rather it is a recognition that if a person fails to do so, their capacity to seek redress will be affected by that failure. In my view, that’s relevant and appropriate here. I have to consider when Mrs and Mr B ought reasonably to have realised all was not well, and that corrective action was needed.

In my view, the first opportunity for that to have happened was when a cheque for the amount of the October 2022 direct debit payment appeared unannounced in their current account. The second opportunity was when the next direct debit payment going out of their current account was for a nominal amount. Each of those events, which of course would have appeared on Mrs and Mr B’s current account statement, had the effect of placing more than £660 at their disposal that they would not reasonably have been expecting to have available to spend. The same applied in each subsequent month until Mrs and Mr B realised something was amiss.

Mrs B told our investigator, in an email dated 10 July 2024, that she and Mr B check the money in their account between her pay date, the dates of their various direct debits, and Mr B's pay date. In my view, that is not consistent with spending an extra £660 per month in good faith and not suspecting that this money should not be at their disposal. Having considered all of the circumstances, I'm not persuaded Mrs and Mr B did enough to mitigate the adverse effect on them of Britannia's failure to notify them of what it had done in October 2022. Overall, I find Britannia's settlement proposal, including the attaching condition, to be fair and reasonable.

One last point to make, for clarity. Accepting the final decision doesn't obligate Mrs and Mr B to pay the lump sum to Britannia, and I certainly have no power to order them to do so. But if they don't (whether by choice or because circumstances prevent it) I can't fairly require Britannia to implement the main element of the proposed redress. But Mrs and Mr B can still receive the compensation element if they accept the final decision.

### **My final decision**

My final decision is that I uphold this complaint and in full and final settlement order The Co-operative Bank Plc trading as Britannia to do the following:

- on receipt of £3,999 from Mrs and Mr B, re-work their mortgage as if that amount had been received on 1 October 2022, thus removing interest that has been charged to the mortgage in respect of that amount in the interim.

Separately, and without waiting for the above element of the award to be concluded, I order The Co-operative Bank Plc trading as Britannia to pay Mrs and Mr B £150 compensation.

My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further consideration or discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs and Mr B to accept or reject my decision before 17 December 2024.

Jeff Parrington

**Ombudsman**