

The complaint

Mr U complains that Bank of Scotland plc (BoS) miscommunicated and misled him which ultimately ended up with a default being registered on his credit file.

What happened

Mr U has a personal loan with BoS, but due to him wanting to refinance his debt he visited a BoS branch to try and consolidate the rest of his debt into one loan, so he would only need to make one payment each month. Mr U says he was placed on a phone and the call handler told him they were unable to do this. Mr U says he was offered a three month payment holiday and he specifically asked if taking the holiday would impact his credit file. Mr U says that the call handler told him that it wouldn't impact his credit file.

Mr U says he started to receive arrears notices from BoS. He made a payment to clear the arrears and paid more than the arrears amount. He then made a further payment to the loan account, but he says that he received a letter saying he was still £144.58 overdue, despite him recently paying £767.41. He says he then received a letter saying his account had been closed, defaulted, and transferred to a debt collection agency (DCA). Mr U made a complaint to BoS.

BoS did not uphold Mr U's complaint. They said that when they spoke to him in June 2022, a plan was put in place for three months. This was to allow him breathing space from making payments during this time. They said they wrote to him on 10 June 2022 detailing the plan and then again on 8 September 2022 when the plan came to an end. BoS said they later sent a default notice and a formal demand explaining there were still arrears outstanding, and they may close the account. They said as the arrears weren't repaid by 9 November 2022, they arranged to close the loan and transfer it to a DCA. Mr U brought his complaint to our service.

Our investigator did not uphold Mr U's complaint. He said there was no evidence that Mr U made contact with BoS after September 2022 to set up a new payment plan to cover the minimum payments and to clear the arrears. He said this was a term of the payment break and the consequences of not adhering to this had been explained to Mr U, so he was unable to agree that BoS acted outside of their terms and conditions. He said that as no new payment plan was set up taking into account the arrears on the account and the minimum payments, the account would have remained in arrears.

Mr U asked for an ombudsman to review his complaint. He made a number of points. In summary, he said the verbal assurance provided during the call indicated that no accumulation of payments would occur. The absence of any correspondence acknowledging the payment break and its terms further complicated the situation. He said parts of the call were inaudible and sections of the call made it challenging for him to fully comprehend the terms discussed. Mr U says that he was under the impression that the payments made in September, specifically £184 on 7 September, and £400 on 29 September 2022, would cover the arrears. He said these payments were a direct response to receiving arrears letters, which led him to believe that something was amiss.

Mr U also said he expressed his preference to leave the loan as it was, but he was reassured that no accumulation of payments would occur and no lump sum would be necessary. He said he never received a text message reminder that the adviser assured him he would get along with the letter.

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.

Firstly, I'm aware that I've only summarised Mr U's complaint points. And I'm not going to respond to every single point made by him. No discourtesy is intended by this. Our rules allow me to take this approach. It simply reflects the informal nature of our service as a free alternative to the courts. If there's something I haven't mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual point to be able to reach what I think is a fair outcome.

I've listened to the phone call which Mr U had where the nil payment plan was set up. Just before 30 minutes of the call recording, the call handler says *"so, during this time, the amount you are behind by will increase during the plan, a plan to clear this will need to be put in place after this freeze ends"*. He is told that when the plan ends he would need to set up a new plan for more than the contractual monthly payment so he can get his account up to date.

The call handler talks about the impact on Mr U's credit file. He tells Mr U the plan is designed to give Mr U more time to improve his situation, and it will also stop a default appearing on his credit file *"for now"*. But he explains that if things don't improve and they need to close his account then a default will appear on his credit file for six years. He tells Mr U that the longer he does make reduced repayments then the greater the impact of this would be on his credit score. He says *"your credit file will show you have a plan in place with us, and you must get in touch with us as soon as this plan ends, if you don't do this then there will be an impact on your credit score and a default may appear on your credit file"*.

Mr U asks if he was to *"do a three month break"*, would the payments accumulate, and he asked if he would need to make that payment after the end of the three months. The call handler says *"no no, not after the three months"* and he's told he wouldn't need to make three lots of payments in one go. He says that once the nil payment plan expires, Mr U would call them back up and they'd look at another plan in clearing the arrears and the loan itself. So he explains the payments would be slightly higher. Mr U confirms this makes sense.

The call handler reiterates that *"once the plan is up"*, Mr U would need to give them a call to set up a new plan for between 2-12 months to clear the arrears but confirms Mr U could make a lump sum payment. Mr U says with regards to his loan, he wants to leave that as it is as he would forget to turn the direct debit on. The call handler says that's not how it works as Mr U would need to do everything as they would send him correspondence as well as texts. The call handler says if Mr U has more outgoings than income he has a duty of care to look after him. Mr U says *"I see"* and asks for the plan to be put in place for three months.

The call handler reads a script to Mr U, and Mr U confirms it's *"all good"*. The call handler says Mr U will get letters from them which will explain *"what's going on"*. The call handler gives Mr U their telephone number and he tells Mr U he will receive a letter. At 42 minutes the call handler says *"so you'll receive a letter, and it will give you the dates and everything that we've discussed"*. He explains the plan will end around 7/8 September and he says *"if you give us a call, erm around that date"*, Mr U says *"ok"*, the call handler says *"we can look*

at what we've got, what your situation is, hopefully it's improved and then we can look at putting a new longer term plan in place". The call handler reiterates it is not a payment holiday and it is a temporary plan. He asks if things make sense and Mr U confirms it does. The call handler says he will put it in place for Mr U.

I've considered whether Mr U was misled on the call. I'm not persuaded that he was and I'll explain why. He was told the nil payment plan would be shown as a plan on his credit file – and it was from the screenshot that Mr U provided to us of his credit file. And the call handler was correct that Mr U was not required to make the three months arrears up at the end of the plan. Mr U may question what I've said here, as that's what ended up happening. But this only happened when Mr U did not get in contact with BoS at the end of his plan as he had been told on more than one occasion that he needed to do this and he agreed to do this as detailed in the previous paragraph.

So when Mr U did not get in touch with BoS to set up a new plan (which as the call handler had explained would result in a higher monthly payment to pay his arrears and to also pay his contractual monthly payment), then this is why BoS demanded the arrears to be repaid.

The call handler mentioned letters and texts, and he was clear Mr U would get a letter about the plan. While Mr U says he didn't receive this letter, the letter is addressed to the address on his credit agreement. So I'm satisfied this was the registered address Mr U gave them. I have noticed a slight difference to this address to the one Mr U put on his complaint form to our service, which I can't document here to protect his identity, but as Mr U agreed this was his address on the credit agreement, then I would expect BoS to send any post to the address on his credit agreement. I have detailed the slight difference to Mr U in the covering letter with this decision. But as Mr U has said he did receive some letters from BoS, it's not clear if the slight difference of address had any impact here or whether he didn't receive some letters due to delivery errors from the postal service – which would be out of BoS' control.

I've seen no evidence that BoS send any texts as part of this process. So it may be that Mr U was expecting a text. But I'm not persuaded Mr U not getting a text changes the outcome of this complaint. I say this as the call handler was clear Mr U needed to get in touch with them, told him the date and Mr U said "ok". The call handler was also clear that BoS would be sending Mr U a letter with the details of the nil payment plan. So if Mr U did not receive a letter or text shortly after the plan was set up, it would have been proportionate for him to contact BoS regarding this, but BoS say that Mr U had not got in contact with them after the nil payment plan had been set up.

BoS have requirements they need to follow which may mean they have to send certain letters by post, so this would not be emailed to him even if his preference is to receive paperless communication and he may have received other information about his loan via this method. The letter dated 10 June 2022 clearly sets out to Mr U that he needs to get in touch with them towards the end of the plan, and this letter shows the plan ends on 8 September. So the date that the call handler told Mr U he needed to get in touch with them is aligned to the date in the letter. And it shows that being behind with his payments could affect his credit score.

When the plan ended, and Mr U did not contact BoS to return to his contractual monthly payments (and to pay back the arrears over a period of time – not immediately), then this is why the full arrears were asked to be repaid when he hadn't contacted them to arrange a new plan and return to his contractual monthly payment. As Mr U then needed to pay the arrears and the contractual monthly payment, he kept getting arrear notices as he didn't contact BoS to set up his direct debit payment again, so his monthly repayments were being missed. Although he had made payments in September and November, he did not pay his

contractual monthly payment on time after the plan had ended.

Even though BoS told Mr U he needed to contact them when the plan ended and he didn't, they sent a letter to his registered address dated 8 September 2022, which contained the text *"Please call us on the above number as soon as possible to discuss your options for repaying your arrears or to make a full arrears payment. It's important to make you aware that fees and charges may now be applied. If you've paid the arrears in full since the date of this letter, thank you and please make sure you maintain your future monthly payments as they fall due."* But again, Mr U didn't contact them and he didn't maintain his future monthly payments as they fell due. This caused arrears to continue on Mr U's account and his payments at this point weren't enough to both clear the total arrears when he hadn't made a new plan with them and make his contractual payments.

After BoS had sent Mr U a default notice, they addressed another letter to him dated 15 October 2022 which said in bold text *"Please get in touch in the next 14 days about the missed payments on your loan"*. The letter is clear that *"If you don't get in touch in the next 14 days, we'll end your loan agreement with us. We'll then ask you to repay the full loan amount, not just the payments you're behind on"*. But as Mr U did not get in touch with them after 14 days, they closed his account and registered a default. So I can't say they made an error in doing this when Mr U did not contact them to make a new plan including returning to making his contractual monthly payments.

I've considered what Mr U has said about parts of the call being inaudible and sections of the call made it challenging for him to fully comprehend the terms discussed. He also said he thought something was amiss with the arrears notices. But if he felt parts of the call were inaudible, I would expect for him to ask the call handler to repeat himself or ask for a further explanation. While he did say at one point his preference to leave the loan as it was, he ultimately did agree to the nil payment plan. If Mr U thought something was amiss with the arrears notices, I would expect him to contact BoS as he was told he would need to do this when the nil payment plan was expiring and in the letters that BoS sent him. So it follows I don't require BoS to do anything further.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr U to accept or reject my decision before 24 October 2023.

Gregory Sloanes
Ombudsman