

The complaint

Mr C has made a number of complaints about his residential mortgage account with Bank of Scotland plc ("BOS"). In this current complaint, which was raised in a letter dated 24 July 2022, Mr C says:

- BOS denied him flexible options known as 'personal choice facilities' (payment holidays and additional borrowing) under his mortgage, and that he was given incorrect advice about the availability of these options and about the position of his mortgage account.
- He is unhappy that BOS continued legal action while he had active complaints with the Financial Ombudsman Service
- BOS failed to provide him with support during the Covid-19 pandemic

What happened

Both parties are aware of the background to this complaint, so I will not be going into detail about what has happened. I think it's helpful to note that an Ombudsman here issued a jurisdiction decision on 25 September 2023 explaining to Mr C what parts of his complaint we could and couldn't consider.

The Ombudsman concluded that we couldn't look into the points about him being denied flexible features on his mortgage because an Ombudsman had previously issued a decision on the matter on 17 February 2022, explaining that the complaint had been brought outside of the relevant time limits.

The Ombudsman found that the only parts of the complaint that we would be considering under this complaint, would be the legal action taken against him by BOS and the fact he said BOS failed to support him during the Covid-19 pandemic.

The parts of Mr C's complaint that we could look into, were reviewed by one of our investigators. The investigator didn't uphold the complaint and he was satisfied that BOS acted fairly in the circumstances of the complaint.

He said that Mr C hadn't made any mortgage payments to his mortgage account since April 2018 and the mortgage account was in arrears. He didn't think it was unreasonable for BOS to start legal proceedings against Mr C based on the status of his mortgage account.

He also found that while BOS could have supported Mr C during the Covid-19 pandemic, he couldn't see that Mr C had actually asked for help. And he explained that BOS would only have provided Mr C with a payment holiday, or deferral, if he had asked for one – and he couldn't see that he had done so. The investigator also said that even if Mr C had asked for a payment deferral, his credit file would still have been impacted as he was already in arrears for a number of months which would have been reflected.

Mr C didn't agree with what our investigator said. In summary, he made the following comments:

- He believes that BOS started wrongful possession action against him, and this was in breach of the Financial Conduct Authority's ("FCA") rules and regulations as well as the Mortgage Conduct of Business rules ("MCOB") and the Consumer Credit sourcebook ("CONC").

- He said we allowed BOS to refuse this complaint stating that it fell under a previous final response letter (“FRL”) and this is wrong. He said BOS started possession proceedings in October 2019 so it would be impossible for BOS to have dealt with this under that FRL. He therefore believes the previous decision is flawed.
- He believes that his original complaint points as well as other important facts have been overlooked and what the investigator looked at is different to his original complaint points. Mr C said his complaint is in relation to BOS being in breach of their contract and agreement and this hasn’t been considered. He said the breach of contract and agreement is based on new evidence that we have never considered before and this complaint has been made in time.
- He disagrees that it was fair for BOS to start legal proceedings. He said under the FCA rules it clearly states “a lender must not initiate legal proceedings where the lender is aware that the customer has submitted a valid complaint or what appears to the firm may be a valid complaint relating to the agreement in question and that is being considered by the Financial Ombudsman Service”. Mr C says that BOS should not have started possession proceedings when he had active complaints with our service.
- He said both BOS and their lawyers wrote confirming that the matter had been placed on hold to comply with FCA regulations in order to allow his complaint to be heard but BOS continued with legal proceedings anyway.
- BOS gave incorrect information in the pre-action protocol when making the application to Court in October 2019 by stating in a declaration of truth that he had no complaints with the Financial Ombudsman Service when they were fully aware that he had.
- BOS have caused him to be in the position he is in by causing him financial loss and detriment. Mr C said they wouldn’t take his income for four years which caused him to miss his mortgage payments and lose more than £200,000 in equity.
- He had extreme exceptional circumstances which are good reason for an extension in time for his original complaint to be made
- He provided a timeline which was asked for which has been ignored. The timeline shows five reasons for exceptional circumstances which support the fact that he should have been allowed an extension of time. Mr C says he was clearly incapable of making a complaint by the date required.

Mr C said that recent decisions and views are based on an inaccurate interpretation of his complaint and then misapplied making the decisions wrong, causing him an injustice, as many points of his complaint have been ignored.

As Mr C disagreed with the investigator, he asked for the complaint to be reviewed by an ombudsman, so it has been passed to me to decide.

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.

When considering what is fair and reasonable in all the circumstances of this case, I’m required by DISP 3.6.4F of the FCA Handbook to take into account the relevant law, regulations, and good industry practice when reaching my decision.

I've given careful consideration to all the submissions made by both parties, but I won't address each point that has been raised. I'll focus on the matters that I consider most relevant to how I've reached a fair outcome – in keeping with the informal nature of our service.

Having done that, I don't think this complaint should be upheld. I realise this will be disappointing for Mr C. But I hope the reasons I have set out below will help him understand why I have come to this conclusion.

I'd firstly like to acknowledge that I understand that Mr C has been going through a very difficult time and appreciate things haven't been easy for him. It's clear that he is very invested in this complaint, and he believes that previous opinions and decisions given by investigators and ombudsmen at our service are wrong.

An ombudsman here has recently made a decision on the parts of Mr C's complaints that we are able to consider so I must make it clear, that I am not going to be commenting on any of the complaint points that the ombudsman has decided are out of time. I agree with what the previous ombudsman has said, and they have already considered Mr C's exceptional circumstances – so I won't be going into this further. We have already explained why we can't consider some of the points he has continued to raise.

So to be clear, the only points that I will be addressing in my decision are the following:

- Mr C is unhappy that BOS continued legal action while he had active complaints with our service
- BOS failed to provide Mr C with support during the Covid-19 pandemic

I'll address each point one by one.

Mr C is unhappy with legal action taken against him while he had active complaints at our service

For clarity, it's appropriate to explain here that over the years, Mr C has had various complaints with the Financial Ombudsman Service which have been dealt with. BOS have obviously been aware of these complaints and Mr C thinks it's not right that they started and proceeded with legal action while these complaints were being investigated by our service.

I've taken a look at the account history, and I can see that Mr C hasn't made any mortgage payments to his mortgage since April 2018. This is a significant amount of time without payments being received.

I haven't seen that any arrangements were made with BOS to try and rectify this, and I can see from the contact notes provided, that BOS have tried to contact Mr C on numerous occasions but were unable to get through to him. I have seen the letters that have been sent to Mr C advising him of the arrears, but nothing had been arranged.

I do understand and I do appreciate that Mr C was going through a difficult time, and he has explained the situation to both our service and to BOS – who were fully aware at the time.

But Mr C didn't make any payments towards his mortgage, and I think BOS have acted fairly in this situation. From the information provided to us, I can see that they have put action on hold at various times throughout the last few years.

I can see that BOS sent Mr C a final warning letter dated 1 July 2019 after weeks of attempting to contact him. On 2 August 2019, BOS said he raised a complaint with our service which was responded to in September 2019. A hold was placed on any further action at this time.

On 17 October 2019, as Mr C had not been in touch with BOS, BOS instructed their solicitors to start legal action. Arrears at this time were £10,012.80.

A court hearing was initially set for 25 November 2019 and BOS said they were notified by our service that we had a complaint from Mr C so they cancelled the hearing and put further action on hold.

In March 2020, BOS removed the hold and began possession proceedings again, but the Covid-19 pandemic happened so all action was ceased. They said that after internal reviews were completed in February and March 2021 – they applied for a new court date which was set for 14 June 2021.

BOS said that this hearing date had to be moved due to the backlog in the courts at the time after the pandemic. They said they had received notification in August 2021 that Mr C had escalated another complaint to our service – so any action was then put on hold again.

They said a court hearing was applied for on 7 July 2022 and a court date was set for 26 July 2022. BOS said that Mr C had told them that he had complaints at our service and another new complaint was registered on 8 July 2022 – so the hearing was adjourned.

BOS said that a court hearing was then set for 14 November 2022 which their solicitors attended. BOS said that at this point, all complaints with our service had either been closed, or ruled out of jurisdiction. But they said the solicitor was notified at the court that Mr C had brought another complaint to our service and the judge had said at the time, that a court hearing should not have gone ahead – but not because of the position of the mortgage, but because there were still open complaints at our service.

BOS have said that Mr C still hasn't paid anything towards his mortgage since April 2018 and the case criteria meets possession action. They said that Mr C hasn't demonstrated that he can pay the mortgage and even if they continue to stop repossession proceedings, they are not confident that his situation will change.

It's evident from reviewing the information I have been provided with that BOS have on numerous occasions adjourned or moved court hearing dates when they found out that Mr C had complaints with our service. I think they have tried to be as accommodating to Mr C as they can be in light of his situation and the difficulties that he has been going through.

But that doesn't change the fact that there haven't been any mortgage payments made to the mortgage account since April 2018. The mortgage cannot continue to run without any payments being made. This is increasing the debt outstanding, and the mortgage is incurring charges because of this.

I think that BOS have been reasonable in how they have dealt with this situation, and I can't agree that they have been unfair by taking legal action while Mr C had complaints with our service. The evidence suggests that BOS have taken this into consideration many times.

The Pre-Action Protocol says that a lender should *consider* whether to postpone possession action if the borrower has brought a complaint to us about the possession. Mr C's mortgage has been in arrears for a number of years and based on what I have seen, BOS have postponed court action a number of times in the past. And because no payments have been made to the mortgage for a number of years, the debt is increasing so I don't think it's in Mr C's best interest that this situation continues. Our service isn't a mechanism to delay possession action and it's up to the lender to consider whether they postpone action or not.

BOS failed to provide support during the Covid-19 pandemic

Mr C has told us that BOS didn't provide any support to him during the Covid-19 pandemic.

The guidance for lenders which was released at the time by the FCA, set out what support they should be offering to mortgage customers to help them manage their mortgage during the pandemic. This guidance said that lenders were required to offer payment deferrals to borrowers if the borrower indicated they were likely to be affected by the pandemic.

The FCA also made it clear that lenders were not allowed to report a worsening situation on a consumer's credit file – if a payment deferral had been granted.

Payment deferrals were only granted to borrowers who approached their lenders for help during the pandemic. It was not an automatic process as there were many borrowers who didn't need any additional support.

Having reviewed the contact notes provided by BOS, I can't see that Mr C has contacted BOS to request a payment deferral or any other Covid-19 related support at this time. I've looked at the contact notes to see if Mr C contacted BOS during this time about anything in relation to the mortgage, such as financial difficulties at that time, but I cannot see any contact at all. I can see that BOS have tried to contact Mr C about the mortgage, but there wasn't any contact from Mr C during the pandemic. If there was, it would have been fair of BOS to offer a payment deferral as part of the guidelines surrounding Covid – but if these specific conversations didn't happen – it wasn't for BOS to apply a payment deferral on the basis that Mr C may have wanted or needed one.

As mentioned above, BOS did delay the legal action they were taking against Mr C during the pandemic which is what they were expected to do.

A payment deferral could only have been put in place for up to six months. But this didn't mean that a lender wasn't allowed to report any arrears during a payment deferral. A lender couldn't however report a worsening situation if a payment deferral had been agreed.

I therefore can't agree that BOS haven't supported Mr C during the pandemic for the reasons already given.

I appreciate that Mr C will be disappointed with my decision, but I'm satisfied that BOS have treated him fairly and reasonably under the circumstances.

My final decision

For the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 2 January 2024.

Maria Drury
Ombudsman