

## **The complaint**

Mrs H complained because Bank of Scotland plc, trading as Halifax, contacted her about payment of an outstanding mortgage balance.

The property owned by Mrs H and her ex-partner had been sold in possession. Mrs H believes Halifax shouldn't be pursuing her for the money, because it was ten years ago.

## **What happened**

In August 2009, Halifax took possession of the mortgaged property owned by Mrs H and her ex-partner. The proceeds of the sale didn't pay off the balance they owed Halifax, and there was an outstanding balance of just over £14,000.

In July 2019, Mrs H complained to Halifax. She'd been contacted by a debt collection agency, who said she was jointly liable for the debt. Mrs H told Halifax that she'd never been told there was a mortgage shortfall. She explained she'd wanted to sell the property, but her ex-partner had refused. She said she'd paid her share of the mortgage, and she told Halifax it should be contacting her ex-partner instead. She said this was causing her stress and could affect her health.

Halifax didn't uphold Mrs H's complaint. It explained that it had no obligation to tell her about the mortgage shortfall, as it had passed the debt to debt recovery agents. It gave Mrs H the names of four agents it had engaged: one in 2009, one in 2012, another in 2013, and the agent which had contacted Mrs H from 2018 onwards.

Halifax said that the rules allowed it 6 years to try to contact borrowers where there was a debt, and it could show it had tried to contact Mrs H within that time. Halifax said Mrs H hadn't provided contact details, and it was reasonable to expect borrowers to take some personal responsibility in understanding the outcome and position of the mortgage account after possession. As Mrs H and her ex-partner were jointly and severally liable for the mortgage, they would both be contacted for the money. It wasn't possible to write off the debt, as the mortgage contract Mrs H had signed required full payment.

Mrs H wasn't satisfied and complained to this service. She said her ex-partner had walked out on her, and he'd refused to agree to sell the property. Mrs H enclosed a copy of a 2008 letter from her solicitor to her ex-partner's solicitor. This said that the ex-partner had refused to sign the agreement to sell. It also said that Mrs H had no objection to her ex-partner moving in and paying for the mortgage.

Mrs H told this service that looking her up on the electoral roll and register of births, marriages and deaths, could have identified her within the six years. She said that as her ex-partner hadn't agreed to sell the property, the debt had been incurred through no fault of hers. Mrs H said that if the debt wasn't written off, it should be transferred in full to her ex-partner.

Our investigator didn't uphold Ms H's complaint. She said that banks had to try to contact borrowers within six years after the sale. Halifax had instructed the first debt collection agency in 2009. Although neither of the first two debt collection agencies were now contactable, the third, appointed in 2013, had provided evidence that it had tried to contact Mrs H four times, but couldn't find an address for her. So she said Halifax wasn't too late in trying to contact Mrs H.

Mrs H didn't agree. She asked for call recordings of outgoing calls to her from 2009, and said if these weren't available, she shouldn't be penalised. And she couldn't believe that Halifax or the agents had tried to contact her, because she said her details were on the electoral roll, and births/marriages and deaths. Mrs H also said that she had a current account with Halifax. And she also said she shouldn't be penalised for her ex-partner not being contactable.

The investigator explained that there are no rules to say a bank has to record calls, and if they do, there's no set time for which they must be kept – though there is a rule to say they mustn't be retained for more than six years. She also said that she'd seen evidence that letters were sent to Mrs H within the six years, and Halifax had said it didn't send any personal information by email. In relation to Mrs H's Halifax account, the investigator said Mrs H had been added to someone else's account, with a different name and different address from that on the mortgage.

Mrs H wasn't satisfied and asked for an ombudsman's 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.

#### *Liability for the outstanding debt*

When a property is sold in possession, any outstanding debt isn't written off. Under the mortgage terms and conditions, it's still payable by the borrowers. So when Mrs H (who was then known by another name) and her then partner took out the mortgage in 2005, they were both *'jointly and severally liable'* for the money.

I recognise that Mrs H says that she felt she'd paid her share, and that it was her ex-partner who wouldn't agree to selling the property before Halifax took it into possession. She also believes that the letter her solicitor sent to her ex-partner's solicitor, which said that Mrs H would have no objection to her ex-partner moving in and paying for the mortgage, means the debt should be transferred to his sole name.

But that letter doesn't show that Mrs H and her ex-partner jointly agreed to ask Halifax for the mortgage to be transferred to her ex-partner's name, or that Halifax agreed to any such legal change to the mortgage deed. So nothing had legally changed on the deed which Mrs H had signed. This means that Mrs H was still jointly and severally responsible for the outstanding debt.

#### *Whether Halifax was too late to recover the debt from Mrs H*

The rules say that the lender must start recovery action within six years. That's not the same as saying the debt will be written off if the lender can't trace the borrower, or if the borrower hasn't paid in full within that six years. So what I have to consider is whether or not Halifax started to try to recover the debt from Mrs H within six years of the date of sale. That sale took place in August 2009.

In its final response letter, Halifax told Mrs H the names of the four debt recovery agent firms it had used, starting in 2009. The first two are no longer contactable, but I've seen evidence to show that the third debt recovery agency received the file in November 2013 and then tried four times to contact Mrs H, but couldn't do so. So I find that Halifax did attempt to contact Mrs H about the debt within six years of the date of sale.

Mrs H has said that she was on the electoral roll, on the register of births, marriages and deaths, and that she did tell Halifax that she'd moved. But Mrs H had a different name when she was a party to the Halifax mortgage. Debt collection agencies aren't obliged to check particular registers, and it's hard to see how they could have succeeded in tracing Ms H when she wasn't known by that name on the mortgage. The same applies to Mrs H saying that she had a Halifax account. She had been added to this account, in her new name of Mrs H, and with a different address. So I don't think it's surprising that Halifax's debt collection agencies couldn't find her.

There's a conflict of evidence about whether or not Mrs H gave Halifax her new contact details. Mrs H said she did; Halifax said she didn't. Where evidence conflicts, I base my decision on what I think it more likely to have happened. Here, I think it's more likely that Halifax didn't receive new contact details from Mrs H. That's because it's clear that Halifax had appointed debt collection agents, and I consider those agents would certainly have used any new contact details they'd been given.

But in any case, what matters is not whether or not Halifax had been able to trace Mrs H, in her new name and new address. What matters is that it had started the debt recovery process within six years of the sale in possession in August 2009. I find that it did. This means that Mrs H is still jointly and severally responsible for the shortfall on the mortgage.

### **My final decision**

My final decision is that I do not uphold Mrs H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 10 November 2020.

Belinda Knight  
**Ombudsman**