

The complaint

Mr C complained that Bank of Scotland plc, trading as Halifax, didn't treat him fairly when it possessed his property.

The property was sold in possession but there was a balance outstanding. Mr C wants Halifax to write off this debt.

What happened

Mr C said he lost his job in 2015 or 2016, and then struggled to find work. His mortgage went into arrears.

On 25 June 2016, Mr C spoke to Halifax's collections team from a branch. They completed a full income and expenditure form. Mr C explained he hadn't got a job, and had been using savings to pay bills, but they'd now run out. Halifax provided the details for debt charities, and gave Mr C two months with a nil payment arrangement. Mr C also told Halifax at this point that he and his family had been living elsewhere for a couple of years, and renting out the property. As Halifax hadn't been told, this meant an extra 1.5% interest was charged on the mortgage. Halifax told Mr C to get back in touch after the two months with a nil payment, so they could sort out a Consent to Let questionnaire.

In November, Halifax sent Mr C a Consent to Let questionnaire. There was another phone call, and Mr C confirmed that he had unsecured debts of around £45,000. He said he was getting help from a debt charity, so Halifax gave Mr C another week to go into a branch to fill up a new Income and Expenditure form.

In late November, Mr C said the debt charity hadn't completed the form for him yet. Halifax put a 30 day hold on collections chasing, to give him breathing space and time to update the Income and Expenditure form, update his address, and apply for Consent to Let.

There were further phone discussions between Mr C and Halifax in January 2017. Mr C said he hadn't been able to complete an income and expenditure review. He said his tenants had left and as they were paying rent where they were living, he couldn't afford to pay the mortgage until he got new tenants. He was thinking of selling the property, or bankruptcy. He told Halifax he'd had an accident at work and depression, which meant he'd had six months without working. His wife worked part-time and they had two young children.

Mr C asked what he should do, about getting new tenants or selling the property. Halifax said it couldn't advise him, but said that if he couldn't clear the arrears, or a large lump sum off the arrears, he should talk to Halifax's solicitors. Halifax gave him the contact details for its solicitors, and also a sale of property form, in case Mr C decided to sell the property.

A court hearing took place in February 2017, and the court granted Halifax a possession order. Enforcement action started in June, and on 23 June, Mr C rang Halifax and did complete an income and expenditure form. But this showed the mortgage wasn't affordable on Mr C's circumstances.

The property was possessed on 25 July 2017. Halifax obtained two independent valuations, one for £77,000 and the other for £80,000. The property was marketed at £84,500, and it sold for £82,000 in December 2017. The proceeds weren't enough to cover Mr C's mortgage and there was a shortfall of £21,101.41. This meant that Mr C still owed Halifax this amount.

Mr C complained to Halifax in summer 2018. He said he hadn't received any documents about the possession process, but Halifax replied that it had sent them to the temporary address Mr C had provided in November 2016.

Mr C complained again in early 2019. He said he'd been unfairly treated while his account had been in arrears, and during the 2017 possession of the property. In its final response letter on 4 April 2019, Halifax set out what had happened since Mr C's mortgage had gone into arrears in June 2016. It said that its collections and litigation departments had followed normal bank processes and procedures, and hadn't acted unfairly. The correct processes had also been followed after possession, in respect of the valuation, marketing and sale.

Mr C wasn't satisfied and complained to this service. He said Halifax hadn't carried out the possession in the correct manner, and hadn't treated him fairly. He said this had affected his health and wellbeing.

In summary, in his long and detailed letter to this service, Mr C complained that:

- after agreeing a payment holiday, Halifax had then said it wanted the full arrears of £2,855.87 to be paid immediately in full;
- he'd suggested adding the arrears to the mortgage, or extending the payment holiday, but Halifax hadn't given any further help about his ideas, or suggested any ideas for paying the arrears;
- he was being advised by debt charities, who had told him Halifax hadn't followed the right procedures. The charities had helped him apply to have the possession stopped. But the court had allowed the possession to go ahead;
- he'd asked Halifax's solicitors whether he had to attend court. He didn't want to take time off work, as he'd now got a new job, and Halifax's solicitors had said he didn't have to. But Mr C said the debt charities had later told him he should have gone to court as it would have looked better.
- after the possession had taken place, Mr C had been contacted by a debt collection agency about the shortfall £21,101.41. He felt they'd treated him rudely and aggressively, and were harassing him to pay the outstanding balance, even though he'd explained his situation;
- when he'd complained to Halifax about the debt collection agency, Halifax had said the agency had been trying to get income and expenditure information from Mr C. Mr C said he couldn't because he was self-employed and didn't know how much work or how much income he would have.
- Mr C said that debt charities had told him that Halifax hadn't followed procedures, and he wants the shortfall debt written off.

The investigator didn't uphold Mr C's complaint. He said that Halifax had asked Mr C to complete an income and expenditure form on a number of occasions, but he didn't do so. He also said that Halifax didn't do anything wrong by refusing to extend the mortgage term, or add the arrears to the loan. The investigator explained that most lenders would only do that if there was proof of income, and if it was clear the loan could continue satisfactorily on that basis. It would have been irresponsible lending if Halifax had let arrears build up without means of repayment. The investigator also thought that the sale had been conducted fairly.

Mr C didn't agree. He said Halifax had acted unfairly, and hadn't offered any help about paying the arrears. He said Halifax had insisted on the arrears being paid in full in one payment after the end of the payment holiday, even though it hadn't warned him at the start

that this would happen. Mr C also said that he'd told Halifax he was self-employed, so his income was too random to complete an income and expenditure form. Mr C said that if Halifax had just let him extend the mortgage, they'd still be receiving the mortgage payments. He asked for an ombudsman 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.

I can see from the evidence that Mr C had been having a difficult time. He'd had employment difficulties, and health issues, and he told Halifax that he also had unsecured debts of around £45,000. And ultimately, when he did eventually complete the income and expenditure form in June 2017, this showed that the mortgage wasn't affordable. So I sympathise with Mr C's situation. But my job is to consider whether Halifax acted fairly towards him.

Halifax's actions before possession

Mr C believes Halifax acted unfairly by telling him that, at the end of the payment holiday, he'd have to pay the £2,855.87 arrears immediately and in full. He said he hadn't been warned this would happen.

I've looked at the records of what happened. There was a "nil payment" arrangement for two months in June 2016, and collections actions were put on hold for 7 days, and then for 30 days in November 2016. A nil payment arrangement doesn't stop the payments being due, and just stops collections actions such as phone calls and legal action. And interest is still chargeable to the mortgage even when a nil payment arrangement is in place.

I've seen the records which were written at the time and I can't see anything to show that Mr C was told he'd have to pay the arrears immediately in full after the June nil payment arrangement. I don't think the need to pay was linked to either the June nil payment arrangement, or the holds on collections in November. I think confusion has arisen because, by the time of the 7 and 30 day holds in November 2016, the mortgage situation had reached a point where there just didn't seem to be any other options apart from court action.

Mr C believes that if only Halifax had been willing to agree to his ideas about extending the mortgage term, or adding the existing arrears to the mortgage balance, it wouldn't have been necessary for the property to be possessed.

But with either of these two options, the total amount of interest payable by Mr C would have increased, so it wouldn't have been a quick fix solution which Mr C hoped it would. Lenders have a duty to lend responsibly. And it wouldn't be responsible lending to increase the mortgage balance by the amount of the arrears, or lengthen the term of the mortgage, without clear evidence that Mr C would have been able to afford these higher-cost options.

Halifax asked Mr C many times to provide details of his income and expenditure, but he didn't do so until June 2017, well after the possession hearing. Without this, Halifax had no evidence about whether or not any sort of arrangement would stand a practical chance of working. On every occasion when Mr C and Halifax spoke, it's recorded that Halifax asked for this. Mr C gave various reasons why he couldn't provide this – that he didn't know his wife's income or which bills she paid; and that he hadn't had the form back from the debt charity; and he's since said that he couldn't do this, because he was self-employed. But self-employed people do provide income and expenditure information, and I'm not persuaded that Mr C wasn't able to do so.

Possession and afterwards

Mr C has told us that his debt charities told him Halifax hadn't operated the possession procedures correctly so he could appeal to have the possession stopped. This is a matter for the court to decide, so I can't comment on it. I note that the court didn't stop the possession.

Mr C has also said that Halifax's legal team told him he didn't have to attend the court hearing. He'd told them it would be hard to have a day off because he'd only just started a new job. But ultimately, it was for Mr C to decide whether or not to attend the court hearings. His debt charity advisers were helping him. I don't have evidence that Halifax's legal team told Mr C he didn't have to attend, but even if they did, this was a statement of fact rather than advice. It was up to Mr C to decide whether or not to attend. And given the financial situation, there's no guarantee that attending would have changed the outcome or made the mortgage affordable.

I've looked at Halifax's actions after taking the property into possession. It obtained two independent valuations by qualified surveyors. I've seen these, and they were for £77,000 and £80,000. The property sold for £82,000. Properties in possession don't always sell for as much as the price identified by the initial valuations, and I accept that Halifax did what it could to obtain the best possible price. I've also seen the final statement showing that the amount of the shortfall was £21,101.41.

Finally, Mr C has said that Halifax's debt collection agency acted aggressively towards him. The disagreement appears to have been about Mr C's reluctance to complete an income and expenditure form, which I've discussed above. And in view of the length of time that's passed since then, it's unlikely that there would be any evidence either way. But I can't consider whether or not the agent acted aggressively because I don't have any record that Mr C formally complained about this to Halifax, and received the bank's final response about it, before raising it with this service. We're bound by rules which say, among other things, that we can only consider complaints that customers have previously raised with the financial organisation. So I can't consider this allegation of aggression.

My final decision

My final decision is that I do not 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 15 January 2021.

Belinda Knight
Ombudsman