

The complaint

This complaint is brought by Miss W, in her capacity as Executor of the estate of her late father, Mr W, who died in 2006. Miss W's complaint is about the way Bank of Scotland Plc (trading as Halifax) has dealt with her late father's Retirement Home Plan mortgage (RHP), and in particular in relation to arrears on the account.

What happened

The evidence in the case is detailed, running to several hundred pages of documents. I've read everything, and it's apparent that some parts of the evidence are less relevant to the underlying case than others. There are also a lot of duplicated documents and repetition of arguments. In what follows, I have, by necessity, summarised events in rather less detail than has been presented.

No discourtesy's intended by that. It's a reflection of the informal service we provide, and 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. This approach is consistent with what our enabling legislation requires of me. It allows me to focus on the issues on which I consider a fair outcome will turn, and not be side-tracked by matters which, although presented as material, are, in my opinion peripheral or, in some instances, have little or no impact on the broader outcome.

Briefly, Mr W had a RHP with Halifax. This is a type of interest-only mortgage where there is no end date to the mortgage term. Monthly payments of interest are required, but no repayment vehicle is necessary, as the mortgage is repaid on the death of the borrower, or when they go into long-term care or sell the property voluntarily.

It's not clear when Mr W took out the mortgage or what the initial advance was, but when he passed away in December 2006 there was just over £32,000 outstanding. The mortgage terms and conditions say that, on the death of Mr W, the mortgage must be repaid, and that the estate has 18 months in which to do this. Probate was granted naming Miss W as sole Executor on 23 October 2007.

Miss W continued to pay the interest on the mortgage for some years, but in 2017 Halifax wrote to her to say that the account must now be closed. The direct debit was cancelled and arrears began to accrue. Halifax began to write to Miss W about the arrears, repayment of the mortgage and possible possession action. Miss W complained to the bank, but her complaint wasn't upheld.

Miss W brought her complaint to the Financial Ombudsman Service, where an investigator looked at it. He didn't think Halifax had acted unfairly, given the terms and conditions of the mortgage and the length of time since Mr W had passed away. He thought Halifax had given Miss W sufficient time to sell the property.

After this, Halifax confirmed that the arrears had been repaid, but that there was still a risk of litigation due to the mortgage balance remaining outstanding.

Miss W didn't accept the investigator's findings. She says (and I summarise) that Halifax is trying to take the property away from her, and that this is personal and "*a well organised set up*" to ensure that she does not inherit the property which her father left to her.

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 am very sorry to note that Miss W has recently been ill, and I hope she is now recovered.

As I said at the start, I have summarised what's happened, as well as Miss W's response to the investigator's findings. That's because the issue in this complaint is relatively simple: has Halifax acted unfairly in its dealings with the late Mr W's estate?

In this context, I will explain that, as Executor, Miss W's role is to administer the estate and pay off the estate debts, within a reasonable time. Mr W died over 14 years ago, and the debt owed to Halifax remains outstanding.

I'm conscious that Miss W considers Halifax's actions to be targeted against her personally and she is unhappy that a specific member of staff has been dealing with the account. But Miss W isn't Halifax's customer – it was her late father who was the borrower, and Miss W's role is to represent his estate – which includes an obligation to repay Mr W's debts. So although I've noted everything Miss W has said about how she considers Halifax's actions have affected her personally, that's not something I can consider here because Miss W isn't Halifax's customer. Furthermore, we don't award compensation to Executors.

The terms and conditions of the mortgage say that the balance outstanding on the account must be repaid within 18 months of the death of the borrower. This means that the mortgage should have been repaid by the end of June 2008. I appreciate that around this time the global financial crash happened, which affected the property market. But we are now many years on from that, and the mortgage is still outstanding.

The property doesn't appear to be on the market at the moment. Online estate agency listings show it to have been modernised, and it seems (at least in the latest listing from December 2019) to be occupied as a family home. It does not appear to be Miss W's home address, as both we and Halifax have the same alternative address for Miss W.

Overall I think Halifax has shown considerable patience in the length of time it's waited for repayment of the debt. I appreciate Miss W thinks Halifax has acted unreasonably in refusing to accept further payments. But the account terms and conditions don't provide for this mortgage to be transferred to a third party. I can see that Miss W has taken Halifax's actions personally, but it seems to me that all Halifax has done is to try to engage with Miss W to get this long overdue debt repaid.

Halifax allowed Miss W on behalf of the estate to pay the interest for several years whilst the bank was waiting for the property to be sold. I'm satisfied that it was reasonable for Halifax to decide not to accept further payments in 2017, as the debt had remained unsettled for more than nine years after the 18-month period specified in the terms and conditions for repayment of the mortgage had expired. There is no provision in the terms and conditions for this mortgage to be paid by a third party indefinitely. As the mortgage wasn't repaid in full, unpaid interest continued to accrue against the debt and was shown as arrears. This is how the account operated, and so I don't think it was unfair of Halifax to do this. It had made its position very clear that the mortgage needed to be repaid in full, and that unpaid interest would show as arrears.

The outstanding debt is modest compared with the value of the property – under £40,000 outstanding against a sale price (December 2019) of £540,000. If Miss W doesn't want to sell the property, it is always open to her to raise finance to pay the mortgage off. But in terms of the length of time Halifax has waited for repayment, and the steps it's taken to try to concentrate Miss W's mind on her responsibilities as Executor, I'm not persuaded Halifax has acted unreasonably.

Going forward, I think it would be reasonable for Halifax to grant a further extension of time for repayment of the mortgage – and I think six months from the date of this decision is fair, given that the debt has been outstanding since Mr W died in December 2006. It might help Miss W to take some advice from an independent financial adviser or a solicitor about how the estate intends to repay this debt, if Miss W doesn't want to sell the property.

I must emphasise that if the mortgage isn't repaid in full, Halifax will be entitled to take legal action to enforce repayment. This will in turn increase the amount of the debt owed, so I would urge Miss W to take steps to repay the mortgage sooner rather than later. Given the length of time the debt has been outstanding, I don't think it would be unreasonable for Halifax to take action, in the absence of the account being settled in full.

I appreciate Miss W will be disappointed at my decision. However, after taking account of all the circumstances, I don't think Halifax has acted unfairly or unreasonably.

My final decision

My decision is that I don't uphold this complaint.

This final decision concludes the Financial Ombudsman Service's review of this complaint. This means that we are unable to consider the complaint any further, nor enter into any correspondence about the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W on behalf of the estate of the late Mr W to accept or reject my decision before 22 February 2021.

Jan O'Leary
Ombudsman