

## The complaint

This complaint's about an interest-only mortgage that Mr F holds with Bank of Scotland plc trading as Halifax. Mr F suffered a life-changing brain injury in 2019, and his sons, whom I'll refer to as Mr F1 and Mr F2, have been granted power to manage his affairs by an order from the Court of Protection (COP). They're unhappy that Halifax has continued to charge interest on the mortgage since Mr F lost capacity, and with all the problems Halifax has caused them over registration of the COP order, and its communication with them.

## What happened

By way of a provisional decision dated 6 September 2022, I set out my provisional conclusions on this complaint. The following is an extract from the provisional decision.

"The broad circumstances of this complaint are known to Mr F1, Mr F2 and Halifax, and not in dispute. So I don't need to repeat all of the details here. Our decisions are published, and it's important that I don't include any information that might result in Mr F, Mr F1 and/or Mr F2 being identified. Instead I'll give a brief summary of the main points, rounding the figures where appropriate, and then focus on giving the reasons for my decision. 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.

The mortgage started in 1984, with an initial term of 25 years, which means that subject to any changes that may have happened subsequently, it was originally due to run until 2009. However, the mortgage was still running in 2019 when Mr F suffered a serious brain injury that left him without capacity, and unable to manage his affairs or live in his home. Mr F1 and Mr F2 applied to the COP for power to manage Mr F's affairs, and in January 2021, such power was granted. However, the scope of the COP's order didn't allow Mr F1 and Mr F2 to sell the mortgaged property.

Over the course of 2021, Mr F1 and Mr F2 experienced numerous difficulties in trying to deal with Halifax regarding the future of the mortgage and its recognition of the COP order. They complained about the time all of this took, the demands Halifax was making of both of them, and argued that Halifax should have stopped charging mortgage interest after Mr F lost capacity. Halifax mostly rejected the complaints, so Mr F1 and Mr F2 brought the matter to us.

Our investigator upheld the complaint and recommended Halifax refund the interest charged since November 2019, stop charging interest in future, and pay compensation of £500 to Mr F1 and Mr F2 for the time, trouble, and upset it caused them over the way it handled everything.

Halifax asked for the complaint to be reviewed by an ombudsman. It readily accepted it should pay the £500 compensation, but didn't agree that the mortgage should become, in effect, interest-free. Meantime, whilst the case has been with us, Mr F1

and Mr F2 have applied to the COP for an expanded order giving them power to sell the mortgaged property.

### **What I've provisionally decided - and why**

I'll start with some general observations. We're not the regulator of financial businesses, and we don't "police" their internal processes or how they operate generally. That's the job of the Financial Conduct Authority (FCA). We deal with individual disputes between businesses and their customers. In doing that, we don't replicate the work of the courts.

We're impartial, and we don't take either side's instructions on how we investigate a complaint. We conduct our investigations and reach our conclusions without interference from anyone else. But in doing so, we have to work within the rules of the ombudsman service, and the remit those rules give us.

Under our rules, we can consider a complaint from a consumer. Here, Mr F is the consumer and therefore the "eligible complainant" as set out in our rules. Our rules say that a complaint may be brought on behalf of an eligible complainant by a person or persons authorised by the eligible complainant or authorised by law. In this respect, by virtue of the COP order, Mr F1 and Mr F2 are authorised by law to bring the complaint on behalf of Mr F1.

But I must explain that, although Mr F1 and Mr F2 represent Mr F, it is Mr F who is Halifax's customer. It's Mr F1 and Mr F2's role is to bring the complaint on Mr F's behalf, in the same way that other consumers might instruct a solicitor or accountant to represent them in a complaint. But this does not entitle them to air their own grievances about Halifax, or complain about how they have been treated, because they are not Halifax's customers; their role is limited to putting forward Mr F's complaint.

When they referred the complaint to us, Mr F1 and Mr F2 added a comment to the effect that due to his ongoing vulnerability, there should be an examination of the interest rate that Mr F had been tied to for the preceding ten years. We could look into that, but not as part of this complaint. That's because it wasn't one of the issues raised with Halifax before the referral to this service.

Our rules only allow us to look into something if the business has had the opportunity to deal with it first. If Mr F1 and Mr F2 wish to pursue a complaint about the rate(s) of interest Halifax has charged on Mr F's mortgage historically, they should let the investigator know. He can then set up a separate complaint, and refer it to Halifax to look into first. If Mr F1 and Mr F2 then tell us they aren't happy with the response from Halifax, we'll begin our consideration of it. Here, however, I'm confined to two issues, which are:

- whether it is fair for Halifax to have continued charging interest on the mortgage since Mr F lost capacity; and
- whether Mr F (**not** Mr F1 and Mr F2) has experienced distress and inconvenience as a consequence of how Halifax has handled the COP order and dealt with matter generally since it was first told of Mr F's situation.

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I've reached a different conclusion from the investigator. By issuing this provisional decision, I'm giving both parties the opportunity to comment before I finalise my decision.

On the first issue, I'm aware from correspondence received from Mr F1 and Mr F2 that other creditors have stopped charging interest on unsecured debt owed by Mr F. However, what those creditors have done has no bearing on what Halifax should fairly do. Here, my starting point is that the underlying mortgage contract allows Halifax to charge interest. What I then have to decide is whether its duty to treat customers fairly *requires* it to stop doing so because Mr F no longer has capacity to manage his financial affairs.

It's an onerous test, and rightly so, because it is also a highly sensitive subject, particularly for Mr F1 and Mr F2. But when I view it dispassionately, as I'm required to do, I can't fairly conclude that Halifax should not be allowed to continue to apply interest to the mortgage in accordance with the contract terms. Mr F may no longer have capacity to manage his financial affairs, but Mr F1 and Mr F2 *do*, by virtue of the power granted to them by the COP.

When they applied for the order from the COP, Mr F1 and Mr F2 weren't just asking to take over the capacity to manage Mr F's affairs, they were also asking to take over the responsibility and duties that involved. What had previously been Mr F's responsibility to pay interest on the mortgage became their responsibility. Interest is contractually due until such time as the mortgage debt is repaid; realistically, that means, until the mortgaged property is sold.

If the initial COP order didn't grant Mr F1 and Mr F2 the power to sell the mortgaged property, then that wasn't Halifax's fault, and it's not down to Halifax to mitigate the position by ceasing to charge interest. It's down to Mr F1 and Mr F2 to remedy the position by reverting to the COP to obtain the power they need, a process I'm advised they started earlier this year. I understand that's a daunting exercise, and that it can take a long time for the COP to issue an expanded order. But expecting Halifax to forego interest that is rightfully and contractually owed, isn't a proportionate measure. If anything, it could be seen as reducing the incentive for Mr F1 and Mr F2 to remedy the situation.

I'm not for one moment suggesting they might be less motivated to obtain the expanded COP order, but if I were to order Halifax to do what they're asking, the mortgage debt would become static at its November 2019 level, and remain there for an open-ended period whilst the property that secures it might possibly have increased in value in the same period, and continue to do so going forward. That's what I mean by it not being a proportionate measure.

I now turn to the second element of the complaint; to do with how Halifax has dealt with Mr F1 and Mr F2 since they started trying to address their father's situation. It's not something on which I need to make a finding; by common consent, Halifax had made life more difficult for Mr F1 and Mr F2 than it needed to be, the issues with the COP notwithstanding. That Halifax accepts this to be the case is demonstrated by its agreement to pay the compensation of £500 our investigator recommended. It had previously paid £250 to Mr F1 and said it would pay the same amount to Mr F2 on being provided with his bank account details.

Again, at first glance, that might seem a fair resolution, but as I've already explained earlier, I can't consider how and to what extent Mr F1 and Mr F2 were affected by Halifax's admitted shortcomings. Meanwhile – and I don't mean this unkindly – there's nothing in the evidence to indicate that Mr F is aware of what has happened, so I can't in all fairness award compensation to him.

If Halifax remains willing to pay £250 to Mr F 2, in addition to the £250 already paid to Mr F1, then assuming he accepts it, a settlement can be reached directly between the parties. But I can't order that to happen because it's outside my remit to tell a business to pay compensation to someone who is not an eligible complainant."

I gave the parties two weeks to respond to the provisional decision; both have done so. Halifax has confirmed it will pay £250 to Mr F2; meanwhile Mr F1 has replied on behalf of Mr F by telephoning our investigator. The following is a summary of the points he made:

- Whilst conceding the point that interest can be charged generally, Mr F1 reiterated his unhappiness at the rate Halifax is charging, which is likely to go up. He also wants to start a new complaint that Halifax chased Mr F for the debt for many years after the term ended;
- The compensation Halifax paid was for mis-handling the COP order only, not for subsequent failings; also, he didn't understand why a payment should be made to Mr F2, when he hadn't done anything on the complaint;
- The COP can take up to six months to issue a revised order, meanwhile they're at the mercy of Halifax to charge what it wishes; and
- Credit card providers in the same banking group had cancelled interest.

### **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've considered afresh everything that both parties have said and provided. Having done so, I won't be departing from my provisional conclusion. I'll explain why.

I've explained in the provisional decision that if Mr F1 and Mr F2 want to complain about the *rate* of interest, that'll have to be a separate complaint for Halifax to consider first before we can get involved. The same applies to Halifax chasing the outstanding debt after the mortgage term expired. Our investigator can explain the next steps in that regard; neither issues is a matter for this final decision.

I've also explained in the provisional decision why, on the question of compensation, I have no power to consider the impact on Mr F1 and/or Mr F2. Nonetheless, for completeness I'll restate that I can't order compensation be paid to *them* for being inconvenienced by anything Halifax has done wrong. As to whether Mr F2 is deserving of compensation to the extent Mr F1 might be, that really is a private matter between them.

I've also explained in the provisional decision that the actions of credit card providers – even those in the same banking group – aren't relevant here. Credit card debts are unsecured, whereas a mortgage is secured by an asset which, in the normal course of events, the borrower has a reasonable expectation will rise in value.

In short, Mr F1's response to the provisional decision doesn't raise any new points that hadn't already been covered in the provisional decision.

### **My final decision**

My final decision is that I don't uphold this complaint. My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further consideration or discussion of the merits of it. I'll leave it to Mr F1 and/or Mr F2 to contact Halifax directly regarding the further payment of £250. It's not a matter for this service.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 7 November 2022.

Jeff Parrington

**Ombudsman**