

The complaint

Mr and Mrs T complain that Bank of Scotland plc (trading as Halifax) treated them unfairly and caused delays. They say this resulted in them having a larger shortfall debt after their property was acquired by their local council. They ask that the shortfall debt is written off or significantly reduced.

What happened

Mr and Mrs T had a mortgage with Halifax. They noticed problems with the property and contacted the local council. The council placed a dangerous buildings notice and statutory works order on the property in 2016. In 2017 it issued a compulsory purchase order.

Mr and Mrs T say the council paid £5,000 compensation for the property in 2022. They owe a shortfall debt of about £86,000 to Halifax. They say it's unfair for Halifax to ask them to pay this. They dispute the amount and say delays by Halifax mean the debt is more than it should have been. They say if Halifax had acted on their requests in 2016 they'd have repaid the shortfall debt by now.

Our investigator said Halifax hadn't acted unfairly. It had given due consideration to Mr and Mrs T's requests in 2016. It didn't have to agree to their requests. Our investigator said Halifax applied the compensation to the mortgage account when it was received from the council. He said Halifax was entitled to apply interest to the outstanding balance and to ask Mr and Mrs T to repay the shortfall debt.

Mr and Mrs T didn't agree and asked that an ombudsman reconsider the complaint.

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.

Where the evidence is incomplete, inconclusive or contradictory, I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

Mr and Mrs T say they were advised by their solicitor in July 2016 to ask Halifax for a calling up notice (a notice to repay the debt owed). They say this would have allowed them to include the shortfall debt in a legal agreement with their creditors to pay back part of what they owe over a set period. Mr and Mrs T say if they'd been able to do this in 2016 they'd have already repaid the shortfall debt.

Initially, Halifax agreed to issue a calling up notice and instructed solicitors. There was an error – which Halifax accepts – when a calling up notice was issued for Mr and Mrs T's other property. I don't think this error made any difference to the outcome.

Halifax instructed its solicitors to issue a calling up notice for the correct property. The solicitors advised against this because there was a statutory works order in place. Based on

the legal advice it received, Halifax didn't issue a calling up notice or agree to take possession of the property. This would have been the same if there hadn't been an error in issuing a calling up notice for the wrong property.

I don't think Halifax's decision not to issue a calling up notice or take possession was unfair. Mrs T had told Halifax her share of the cost of the work would be about £70,000 to £80,000 and her insurance didn't cover it. Given the potential cost of the work, that the property was deemed dangerous and had a statutory works order in place it seems unlikely Halifax would have been able to sell the property to clear the mortgage debt.

The local council issued a compulsory purchase order – the evidence suggests this was issued in 2017. Since then, the mortgage debt has increased. I don't think Halifax was responsible for the compulsory purchase process taking so long. And I can't see there was anything to stop Mr and Mrs T making payments to reduce the shortfall if they were in a position to do so. I've explained this below.

Halifax says the council controlled the compulsory purchase process, which was delayed by the Covid-19 pandemic.

Mrs T told Halifax in early 2018 she'd had an offer of £5,000 from the council. She wanted to go into Halifax's negative equity process. Halifax received a valuation which said £5,000 was reasonable and it consented to the shortfall sale.

Halifax's notes suggest it was Mr and Mrs T's solicitor that dealt with the council regarding the amount of compensation. Mrs T and Halifax discussed the shortfall on a number of occasions. Mrs T told Halifax they didn't have a proposal for the shortfall until they knew what the local authority were offering for the compulsory purchase. They were hoping their solicitor would be able to get them more than £5,000.

It's understandable that Mr and Mrs T wanted to get more compensation from the council. It's unclear if this was the cause of delays in the matter being completed, or if there were other reasons for the delays. But, based on the available evidence, I don't think Halifax is responsible for the time this process took, or for the compensation amount being less than Mr and Mrs T had hoped for.

It seems the council was consistent from 2018 that it would offer compensation of about £5,000. Mr and Mrs T would reasonably have known there would be a shortfall to pay, and approximately what this would be. Halifax tried to discuss the mortgage debt, and Mr and Mrs T's proposals to repay it with them. If Mr and Mrs T had the means to make repayments, they could have done so even if they didn't know the exact amount of the shortfall.

I think Mr and Mrs T were aware that interest was applied to the mortgage balance. They didn't make any payments from 2016 and the interest was added to the amount owed. Halifax told Mr and Mrs T if they didn't make payments interest would be applied to a higher balance and their credit files could be impacted. I don't think it was unfair for Halifax to apply interest and costs to the mortgage in accordance with the mortgage terms and conditions. If Mr and Mrs T wanted to avoid their mortgage balance increasing, they could have continued making monthly payments – at least to cover the interest – if they were able to do so.

Halifax received the compensation payment from the council in mid-2022 and applied it to the mortgage balance. It provided evidence of this. Mr and Mrs T had been aware of the council's offer of compensation since 2018 and their solicitor had been in contact with the council with the aim of getting more compensation. I don't think it's fair to say that Halifax is responsible for the compensation amount being less than Mr and Mrs T had hoped.

Mr and Mrs T say they were upset to be contacted by a debt collection agency about the shortfall debt, rather than by Halifax. Halifax says once the compensation payment was received, the mortgage account was closed and it passed the shortfall debt to a third party that acts on its behalf. It says this is its usual process for collecting payments on a shortfall debt. Mr and Mrs T haven't said the third party has acted unfairly – only that they'd prefer to deal with Halifax. In fairness, I need to take into account that Mr and Mrs T were in contact with Halifax for some years and didn't put forward any proposals for repaying the mortgage debt. I don't think, in the circumstances, I can fairly require Halifax to deal directly with Mr and Mrs T regarding the repayment of the shortfall debt.

What happens now?

When Mr and Mrs T took out the mortgage loan, they agreed to repay it and to pay interest in the meantime. Mr and Mrs T found themselves in a difficult position, with a property deemed to be dangerous and which needed costly building work, and which was compulsorily purchased by the council. But these events didn't come about due to an error by Halifax.

I don't think Halifax has made an error here or treated Mr and Mrs T unfairly so as to make it fair and reasonable to require it to write off all or some of the shortfall debt.

Mr and Mrs T will need to engage with the third party acting on behalf of Halifax – via their solicitor if they prefer – with the aim of reaching agreement regarding repayment of the shortfall debt. Halifax, and the third party acting on its behalf, will need to treat Mr and Mrs T fairly and in accordance with relevant rules on mortgage regulation.

Mr and Mrs T say the council should be responsible for the debt. Whether there's any basis for that isn't something I can look into.

My final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T and Mrs T to accept or reject my decision before 27 September 2023.

Ruth Stevenson
Ombudsman