

## **The complaint**

Mr K has complained about the survey that was carried out when he took out a mortgage with Bank of Scotland plc trading as Halifax.

## **What happened**

Mr K wanted to buy a new property and he applied for a mortgage with Halifax.

As part of the application process Mr K opted for a level two survey and valuation, and he paid £565 for that.

The survey was carried out on 22 December 2020 and the property purchase (and mortgage) completed in February 2021.

Mr K says that in November 2021 he observed water ingress in the loft space. He obtained various reports and raised a complaint with Halifax. Halifax referred the complaint to the firm of surveyors ("company E") that carried out the survey. Unhappy with that Mr K referred the complaint to our service and explained why he felt Halifax was liable.

Our Investigator didn't agree. He said that Halifax's only obligation was to instruct a reasonably competent surveyor, something it did when it appointed a surveyor that is a member of the Royal Institution of Chartered Surveyors ("RICS").

Mr K didn't agree and so it was passed to me to decide.

## **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.

Although I've read and considered the whole file I'll keep my comments to what I think is relevant. If I don't comment on any specific point it's not because I've not considered it but because I don't think I need to comment on it in order to reach the right outcome.

Mr K has provided extensive submissions about why he feels Halifax is liable but unfortunately he has erred in his understanding of our rules.

Mr K has referred to Halifax sub-contracting the service out to the surveyor, but that wasn't the nature of the relationship. Mr K never had a contract with Halifax that it, as a business, would undertake a survey of the property he wanted to buy. The contract always was that Halifax would instruct a third-party company to carry out the survey. Mr K says that wasn't explained to him and he wasn't given a chance to select or refuse the choice of surveyor. He says the language Halifax used implied it would be carrying out the survey. Halifax doesn't employ qualified surveyors to carry out property valuations, nor does it sub-contract that out, so it could never have carried out the survey. Instead Halifax inputs what it needs onto an online system, and that request is then passed to an independent third party company to carry out the service. How Halifax instructed the survey is entirely normal in the mortgage

industry and a mortgage applicant doesn't get to choose what surveyor is instructed.

The mortgage declaration as part of the mortgage application process says the applicant understands that *"If I choose a Survey and Valuation Report, you will choose the valuer for the property assessment and that it is the valuer's responsibility to agree the Conditions of Engagement for the private survey element with me."*

If company E didn't make contact with Mr K in advance of carrying out the survey so their conditions of engagement could be agreed to, then that is a matter between Mr K and company E. It doesn't then make Halifax liable instead.

Company E wasn't acting for Halifax when it undertook the level two survey, and Mr K did pay the surveyor, albeit Halifax collected the fee and then passed it onto company E. Halifax doesn't get sight of the survey report, all it receives is a basic overview of the property details (that is information such as how many rooms the property has, the type of construction and the value the surveyor has given).

I'm limited in what I can look at in this case and in the findings I can make. The Financial Ombudsman Service operates under rules set out in the Financial Conduct Authority under the heading DISP. Rule 2.3.1 sets out the activities we cover.

These are, broadly speaking, what are known as regulated activities (that is, they're set out in law as activities regulated by the Financial Conduct Authority and as falling within our remit), as well as certain other banking-type activities, such as lending money. And we can consider *"ancillary activities, including advice, carried on by the firm in connection with them"*.

In this case, Halifax was carrying on a regulated activity, it was *"lending money secured by a charge on land"*. But company E is a different firm to Halifax.

The two activities (of property surveying and mortgage lending) are related, of course – in that the property valuation facilitates the mortgage lending. But, even if the activities of the surveyor were ancillary to the mortgage lending (that is, the *"lending money secured by a charge on land"*), they weren't *"carried on by the firm"* as *"the firm"* in question as referred to in our rules would be Halifax. They were carried on by a different firm, that being company E – a different legal entity. I can't therefore, under our rules, hold Halifax responsible for anything done by company E, and I can't make findings about the acts and omissions of company E as part of a complaint about Halifax.

As our Investigator explained, it's not for us to decide whether or not the valuation was accurate or whether the surveyor reached the right outcome. Our powers are limited to considering the actions of Halifax.

As lenders do when considering an application for a mortgage, Halifax appointed an independent qualified surveyor, accredited by RICS, to value the property. The purpose of this is to make sure the property is valued appropriately, and doesn't present any other risks, so that Halifax can be sure it is good security for the loan it's being asked to lend. This is standard practice. And it's reasonable for a lender to rely on the surveyor's opinion to decide whether or not the property is good security. But, to be clear, being good security for the loan isn't the same as being entirely free of any defects such as Mr K has said there are with his property.

Halifax is in our jurisdiction, but only for things it did (or didn't do); we can't consider complaints against it for things a separate business did (or didn't do). All I can consider against Halifax is if it discharged its duty in instructing a suitable firm of surveyors, and

having considered everything I'm satisfied it did as it instructed company E which is a member of RICS.

Mr K has referred to previous decisions issued by the Financial Ombudsman Service, but the difference with those was that the surveying firm concerned was part of the Bank of Scotland group of companies, and so Bank of Scotland was liable for the acts and omissions of that firm. That isn't the case here; company E is entirely independent of Bank of Scotland so I can't hold Bank of Scotland liable for the acts and omissions of the surveyor.

The correct place for this complaint is with company E directly and then, if Mr K remains unhappy with the outcome of that, for the complaint to be referred to the independent redress provider approved by RICS Regulatory Board, which is the Centre for Effective Dispute Resolution <https://www.cedr.com/consumer/rics/>.

Whilst I've a great deal of sympathy for Mr K's situation, there are no grounds for me to make any order or award against Halifax as, under our rules, it isn't responsible for the content of the survey report.

### **My final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 12 March 2024.

Julia Meadows

**Ombudsman**