

The complaint

Mr M complains that Bank of Scotland plc trading as Halifax won't remove him from the joint mortgage he had with his former partner. He finds this, and being sent arrears letters, very distressing.

What happened

Mr M and his former partner have a joint mortgage with Halifax. Mr M says he's a victim-survivor of domestic abuse. He left the relationship and the property in 2019 and hasn't had anything to do with the mortgage since then.

Mr M has asked Halifax to remove him from the mortgage several times. It's tying him to a property and a relationship he wants to move on from. Being party to the mortgage and property has made it difficult for him to access support and services in finding a new home and he's currently homeless. Mr M says he doesn't want to benefit financially from the property. He just wants to be free of the mortgage and able to move on with his life.

Recently, the mortgage has fallen into arrears. Halifax has sent letters about the arrears to Mr M even though he's not living in the property and not paying the mortgage. Mr M has found this very upsetting.

Halifax said there was nothing it could do. It had explored everything it could, including writing to the other party to point out that she could apply to take over the mortgage. But it couldn't just remove Mr M, and while he was on the mortgage it had to write to him about the state of the mortgage.

Our investigator didn't think Halifax had done anything wrong. As Mr M didn't agree, the case comes to me for a final 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'm very sorry to hear about Mr M's situation and everything he's been through. I'm not going to go into details here, but I've taken everything he's said into account and thought very carefully about whether there's anything we can do.

I'm afraid that what Halifax has told Mr M is right. This is a joint mortgage, and at one time both Mr M and the other party wanted to take it out and both agreed to be responsible for it. Of course, things have changed since then. But this was lent as a joint mortgage and turning it into a sole mortgage isn't as simple as just taking Mr M's name off it.

Removing Mr M means that the other party would become solely responsible for the mortgage. That's a change to her situation. It gives her additional responsibility compared to the current position. We can't impose that on her without her agreement.

The other issue is that making changes to a mortgage is covered by the mortgage rules, set

out by the Financial Conduct Authority. The rules say that changing from a joint to a sole mortgage requires a check that the party keeping the mortgage can afford it on their own – unless exceptionally, it would be in their best interest to go ahead even if they didn't pass the affordability test.

The other party hasn't made an application. We don't know anything about her finances. But the mortgage is in arrears, so it's likely she wouldn't pass the affordability test to take the mortgage over. It might be in her best interests to go ahead anyway (I'm sure it would be in Mr M's best interests) – but without hearing from her we don't know that.

In circumstances like this, where a joint mortgage is being converted into a sole mortgage, there has to be an application from the party keeping the mortgage not the party coming off it. Mr M's former partner has to ask Halifax to turn this from a joint mortgage into her sole mortgage. If she hasn't asked for that to happen, Halifax can't go ahead and do it.

Halifax has said that if there was a court order requiring the other party to apply to take the mortgage over, and saying that Mr M has no interest in the property, it might be able to consider going ahead based on the court order alone. But there isn't a court order. I know this doesn't help Mr M, because he can't afford to take legal advice. So there's no prospect of him getting a court order.

All that means that unfortunately I agree with Halifax that, under the rules as they stand, there's nothing it can do to remove Mr M from the mortgage without either an application from the other party or a court order.

I'm very sorry for the impact this news will have on Mr M, and I know he's very concerned about his future if things don't change. Our investigator has given him details of organisations that can support him, and I hope he finds himself able to move on from his current circumstances.

Finally, while Mr M remains on the mortgage Halifax has to write to him from time to time – the mortgage rules say that it has to send statements, arrears letters and so on. If Mr M doesn't want to be contacted he could ask Halifax to remove his address from its systems, but I can't require Halifax to stop sending letters it has to send.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 4 March 2024.

Simon Pugh
Ombudsman