

The complaint

Mr G and Ms Y have complained about a mortgage application they made with Bank of Scotland plc trading as Halifax. They've said Halifax discriminated against them and put barriers in the way to prevent the lending, which has led to them being around £16,000 worse off.

What happened

Mr G and Ms Y bought their property in March 2021 for £605,000. They'd had a homebuyers survey report carried out in December 2020 which said the agreed purchase price was too high and the market value was £565,000. That report provided some negative commentary on the risk of flooding, the local vicinity, and risks involved with the local environment. It also said part of the walls employed an external wall cladding system, and the balcony floor was constructed of an unconfirmed composite material. It recommended reports be obtained for the issues.

To complete the purchase Mr G and Ms Y obtained a mortgage with a lender I'll refer to as X. The fixed rate for that mortgage was due to end in December 2023.

In June 2022 Mr G and Ms Y's mortgage broker contacted them to remind them their fixed rate with lender X was coming up for review and booked a meeting with them to discuss the options available.

After some back and forth an application was submitted to Halifax on 4 August 2022.

A valuation was carried out and the report dated 1 September said:

"7+ Floors: Curtain wall glazing/cladding present

The external wall system including any cladding and any attachments (if applicable) for the subject block require review. It is necessary to provide a completed EWS1 form to the lender to confirm the status of the external wall system and any applicable attachments.

The form must be prepared by a suitably qualified independent professional advisor with the level of expertise described in the notes on the EWS1 form.

Flooding. The property is in an area where there is a risk of flooding which may affect future saleability and there may be insurance issues."

On 2 September Halifax told the broker that it needed the EWS1 form for the block. Mr G and Ms Y told their broker that there was no cladding on the building, and it currently had a rating of B2. They said they'd requested the current EWS1 form along with the detail about the works, and said they'd upload it once they received it.

On 17 September Mr G and Ms Y sent the form to their broker, and said that lender X had contacted them that week to say they could now start the process to switch to a new rate with them.

The EWS1 form was provided to Halifax on 20 September, and it responded that due to the B2 rating the property wasn't suitable for lending until all the remedial works had been

completed. It also said the EWS1 form was missing the property's postcode so an amended form was needed to include that.

On 23 September Mr G and Ms Y emailed their broker saying "...there is no set date for the work to be completed but the earliest would be in one or two years from now." To which their broker said no lender would look at remortgaging the property as it stands, and the most realistic option was for a product transfer to be undertaken with lender X. Mr G and Ms Y responded to say they'd already applied for a product transfer with lender X, having done so on 22 September. They reiterated that there was no completion date for the works, and they closed by saying:

"We are extremely frustrated with the progress of the works in our building and the constant promise of a completion date that is never set. We will of course put as much pressure as possible on our freeholder and the constructors who need to fix and pay for this. But this is very unlikely to be resolved in the coming months and if Halifax really want to see that silly useless form before lending money to us then I don't see how we can convince them that their risk lending to us is really low. If your team has any other means of influencing their decision or ideas we can try then we would be extremely happy."

Then on 26 September Mr G and Ms Y said:

"We might actually have a completion date for the remediation works in our building. See attached newsletter from our freeholder on the progress of the works. We are the [name of block]."

On the table in page 3 you can see that both the remediation works our block needs (to replace the balcony decking and to install the wall fire cavity barriers) should be completed in Winter 2022.

This PDF an periodical update shared by our freeholder on the progress of the works. It also contains too much detail about every other block managed by them and history of progress so far. We think all these detail could be confusing and raise unnecessary concerns.

I will ask [the company] instead for the EWS1 form with the correct postcode in it and also to add this winter 2022 date to the letter they already provided claiming the works are ongoing there is no cost passed on to us. If we manage to get those 2 documents then this is all Halifax requires, right?."

At the end of October 2022 a letter was provided which stated the remedial works had already begun and the scheduled completion date for all works was June 2023. The amended EWS1 form was also provided.

After some further back and forth it was agreed on 2 November that an amended valuation report would be released, and that was signed off by the surveyor on 12 November. That said:

"Following review it is believed that remediation works relating to fire safety (either cladding or non-cladding related) are outlined for the block of apartments/flats. We believe there is commitment from the builder to fully fund these works and you should seek confirmation of the same through your legal advisor. The valuation has been provided on the basis that this remediation work will be completed.

Flooding. The property is in an area where there is a risk of flooding which may affect future saleability and there may be insurance issues."

The surveyor gave a property value of £540,000 against the £625,000 estimated value Mr G and Ms Y had put on the remortgage application.

Halifax initially said Mr G and Ms Y could appeal the valuation figure, but later confirmed that couldn't be done due to the nature of the report – that is, it was a free valuation report for lending purposes only where the surveyor had carried out an internal inspection of the property. In the meantime the broker had told Mr G and Ms Y:

“Good news that they are open to a valuation appeal. They have very specific criteria for the appeals and it's a once chance thing so we need to make sure we get this right. I have attached the appeal form for you to complete, they need 3 properties that have sold (& completed) within the last 6 months. Please read the new build requirements as well as you can see they will look at other sites which widens the scope for comparables.”

To which Mr G and Ms Y had replied:

“I did some investigation on flats sold recently in our block and there was one just completed last month. [An estate agent] have been very kind to offer themselves as points of contact if they need confirmation of the price first hand.

Please find attached the information to include in the valuation appeal. Let me know if you have any questions or concerns. I expect further (unjustifiable) obstacles from Halifax, so I would appreciate if you could submit this as soon as possible if there are no concerns.

To comment on your suggestion about new builds - ours is not a new build. It was built in 2014 and we purchased it in 2020 from the previous owners. The criteria for new builds does not apply to us.”

The broker confirmed receipt and said they had submitted the appeal, explaining that it didn't look like the appeal met Halifax's criteria:

“I have transposed this information into the official form and submitted it along with the supporting [estate agent] literature. I note that 2 of the comparables are outside of the 6 month criteria so that may be a stumbling block, we will just have to keep our fingers crossed and wait for their response which will hopefully be at some point next week.”

Unhappy with what had happened Mr G and Ms Y raised complaints with Halifax, the surveyor and the Royal Institution of Chartered Surveyors (“RICS”).

Halifax responded to the complaint on 5 January 2023. It said the valuation was carried out by a member of RICS and it relies on their judgement. It said the valuation couldn't be appealed. It also dealt with some complaint points raised by Mr G and Ms Y about the process and how long responses had taken. It said it could potentially still lend, but it would be based on a valuation of £540,000. Overall it didn't uphold the complaint.

Mr G and Ms Y referred their complaint to our service where it was looked at by one of our Investigators. She said she could understand the time Mr G and Ms Y spent on the matter caused them inconvenience and so she felt £250 compensation was due. However she said that the reason the application didn't proceed in the end was that the surveyor didn't agree the property was worth what Mr G and Ms Y felt it was and so they were no longer eligible for the rate they had selected. She said Halifax was entitled to rely on the opinion of the surveyor, and it didn't have to allow for that to be appealed.

Halifax accepted our Investigator's recommendation. Mr G and Ms Y didn't, saying £250 is a slap on the wrist compared to the financial damage they suffered. They said they believed

Halifax and the surveyor conducted themselves unprofessionally with the sole intention of asking for a higher interest rate than the one advertised.

As an agreement couldn't be reached the matter 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.

The EWS1 form was introduced in collaboration between government, the mortgage industry and the surveying industry following the Grenfell Tower tragedy. The fire at Grenfell Tower led to concerns across the country about the possibility of combustible cladding and other fire safety issues which might allow a fire to spread quickly through affected buildings.

The EWS1 process allows a qualified fire safety inspector to assess a building's external wall system and any other issues. The building will then be given a rating showing that there are no fire safety risks, that there are issues but the risk is low, or that there are issues which are high enough risk to require remedial work. Obtaining the EWS1 form is the responsibility of the building owner/management company because the form covers the whole building.

The EWS1 process was designed, among other things, to give mortgage lenders enough information to decide whether a building presented a particular fire safety risk. Lenders will therefore only lend where the property is subject to the property being good security for the loan – and if there is a fire safety risk, it might not be good security. That's because there's a higher risk of damage to the property, and also a greater likelihood that it won't be able to be sold if it needed to be.

General guidance to surveyors and valuers from their professional body at the time was that an EWS1 will be required where there are potential cladding or other issues, and the building is six storeys or higher. And that an EWS1 may be required for smaller buildings too, if there are grounds for considering there's a risk that needs to be assessed.

In common with other lenders, Halifax took these issues into account in setting their lending criteria for lending mortgages on properties in blocks of flats and similar buildings. Halifax's lending criteria stated that a surveyor is to assess the building in line with directions given by the RICS guidance in determining the risks posed by the cladding attachments and other fire safety issues. Where it's deemed necessary, the surveyor will require the production of an EWS1 certificate.

Mr G and Ms Y's property was rated as B2 which is one where there is a higher risk of damage to the property.

The original valuation report of 1 September identified that an EWS1 form was needed, and that was provided to Halifax on 20 September. Unfortunately the form didn't contain the correct postcode, and the amended form wasn't provided to Halifax until 27 October, with Halifax then agreeing to an amended valuation report being completed on 2 November.

The amended valuation report was provided to Halifax on 12 November and the surveyor said the property was only worth £540,000, rather than the £625,000 Mr G and Ms Y had declared in their application. To be eligible for the interest rate product they'd selected Mr G and Ms Y needed a valuation figure of at least £583,340 as it was only available for loan to values of up to 60%.

Halifax is just the mortgage lender and it relies on other professionals to do their parts in the

process. Halifax doesn't have the expertise to value property, so it employs the services of a surveyor. When doing so, it's obliged to instruct a suitably qualified surveyor – a requirement that was fulfilled in this case by Halifax appointing a member of RICS.

Halifax isn't accountable for the conduct of the individual surveyor or any act (or omission) by the surveyor or the firm they work for. 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. The surveyor, as an independent professional, decided the property was only worth £540,000, just as the surveyor in 2020 had decided it was only worth £565,000. I can't hold Halifax liable for the figure the surveyor reached as it had no input in that.

The mention RICS made of lenders being involved relates to valuers assessing the property against the individual lender's criteria. For instance, some lenders won't lend on properties above certain retail premises, others won't lend on certain types of property construction etc. It doesn't mean the lender has any input in the valuation figure reached by the independent surveyor.

A valuation for lending purposes is just for the lender's benefit, and here Mr G and Ms Y didn't need to pay for that report. A lender is entitled to decide what – if any – valuations can be appealed, and the criteria for those appeals. I don't think Halifax did anything wrong when it said it doesn't allow appeals of these valuations. But even if it should have been allowed, it looks like the appeal would likely have been unsuccessful anyway as the broker had already pointed out to Mr G and Ms Y an appeal is a one time chance, and certain criteria had to be met for the comparables, which Mr G and Ms Y hadn't met.

Whilst I understand Mr G and Ms Y have placed a great emphasis on the fact they feel Halifax misled them, I don't think this complaint turns on that.

They've provided details of the rates lender X had available on 4 August and said, had they been aware Halifax wouldn't lend to them, then they would have applied to stay with lender X instead. They said that had they done so they could have obtained a rate fixed at 3.35% for five years.

But at that time lender X only allowed product switches to be started 90 days before the existing rate was due to end, which Mr G and Ms Y have said was December 2023. So Mr G and Ms Y would never have been able to obtain the rate lender X offered on 4 August 2022 unless they paid the early repayment charge on their existing mortgage as they were outside of the 90 day period allowed at that time.

As early as 19 July 2022 the subject of staying with lender X came up in the emails between Mr G and Ms Y and their broker, with the broker saying that an application could be made to a new lender and then in October once lender X made its products available if a lender X rate was more favourable then Mr G and Ms Y could just remain with lender X instead. At that time the broker confirmed the window for obtaining a new rate with lender X was 90 days before the current rate ended.

Lender X changed its rules on 22 August so that a new rate could be obtained 120 days before the existing one ended, which is why it then wrote to Mr G and Ms Y, a letter they told their broker they'd received in the week commencing 12 September. So Mr G and Ms Y were on notice from then that they could book a new rate with lender X, as they were then within the 120 day period allowed. I can see from the correspondence between Mr G and Ms Y and their broker that this was discussed, with the broker saying lender X's rate at that time was 3.69%.

Even if there hadn't been the back and forth about the B2 rating and the joint statement on

cladding, the first EWS1 form wasn't provided to Halifax until 20 September 2022 and so that is the earliest it could have proceeded to arrange for an amended valuation report to be completed (which it later did in November 2022). The very earliest I would have expected that report to have been ready would have been 23 September and that was the date Mr G and Ms Y had applied with lender X for a new rate.

So even if Halifax did what Mr G and Ms Y thought it should do, which was accept the EWS1 form with a B2 rating as the remedial works were being carried out at no cost to the leaseholders, then the outcome would have remained exactly the same. The only difference would have been that a property valuation of £540,000 would have been given on 23 September rather than 12 November.

Mr G and Ms Y could never have obtained the lower rate they've mentioned with lender X as they weren't eligible to select a new rate at that time, and the earliest point I think Halifax could reasonably have given the valuation figure was 23 September as it needed the first EWS1 form before that could be done. Whilst lenders had agreed to take the necessary steps to facilitate lending on properties rated A3 or B2, the EWS1 form was still required. That was entirely normal at the time and as I would expect to see.

Mr G and Ms Y haven't lost out financially due to that delay from 23 September to 12 November as they booked their rate with lender X on 23 September, so all I need to consider is the distress and inconvenience that was caused by the back and forth about the B2 rating. Having considered everything I'm satisfied the figure of £250 put forward by our Investigator is fair and reasonable for the reasons she explained, and is in line with our standard approach.

My final decision

I uphold this complaint and order Bank of Scotland plc trading as Halifax to pay compensation of £250 to Mr G and Ms Y in recognition of the distress and inconvenience caused to them.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G and Ms Y to accept or reject my decision before 25 March 2024.

Julia Meadows

Ombudsman