

The complaint

Mr L complains that action taken over his mortgage arrears by Bank of Scotland plc trading as Halifax, caused his second charge lender to greatly increase the costs of his borrowing. Mr L says Halifax was warned not to do this, and he thought it should cover his extra costs.

What happened

Mr L said that the term of his interest-only mortgage with Halifax had ended, and he was having problems keeping up with the increased monthly payments. So he told us he had been in regular contact with Halifax about the debt.

Mr L said he also had a second charge on the property, as part of the security for a very large bridging loan, which was also secured on a number of other properties he owns. Mr L said he had explained to Halifax that any legal action by it would affect this second charge lending. Mr L said Halifax had promised to work with him. But he said his second charge lender then received notice of repossession proceedings against him.

Mr L said the second charge lender was then very angry, and ready to call in the receivers. Mr L said he explained what had happened, but he said the second charge lenders still put him into default on the loan.

Mr L blames Halifax for this. And he said that at first, Halifax accepted responsibility for its actions. But when he told Halifax he wanted it to pay the resulting costs, which were very substantial, Halifax changed its mind.

Halifax sent Mr L two complaint response letters. It wrote to him on 13 September 2023, because he'd complained about getting a court hearing date, when it had put such action on hold to allow him time to sell the property. Halifax said it would pay him £50 to say sorry for that. It confirmed it had stopped that action, and things were on hold until 7 November 2023, to allow him time to sell.

Mr L replied, saying he blamed Halifax for the action that his second charge lender had taken. He said Halifax had agreed, when he spoke to it about his plans for sale, to withdraw legal action altogether, not just to put it on hold. And he said he'd told Halifax it shouldn't start legal action, because that would mean his second charge lender would default the loan he held with it. That would have severe financial consequences for Mr L.

Mr L said Halifax had given him reassurances that it would allow him time to sell, he then had a meeting with his second charge lender, to tell it everything had been agreed with Halifax. But then that lender was informed that legal repossession proceedings had been started by Halifax.

Mr L said this lender then decided to issue a default notice. That meant he incurred significant costs. And Mr L said that as Halifax had already accepted responsibility for its mistakes, then it should pay those costs.

Halifax wrote again on 24 October, to say it didn't think it was responsible for the extra costs Mr L had incurred. It set out the timeline, which started with it instructing solicitors on 22 June 2023. Halifax said it had tried to help Mr L before it took this step, and had issued a final warning.

Halifax said Mr L then contacted it on 26 July 2023, saying he intended to sell the property. Halifax put Mr L's mortgage on a short hold, and it cancelled the legal action.

Halifax said once its solicitors were instructed, they informed the second charge lender of the legal proceedings. Mr L then asked Halifax's solicitors to tell that lender that the action wasn't going ahead. Halifax's solicitors did so, and confirmed to Mr L on 1 August that they had contacted the other lender.

Halifax said it couldn't be held responsible for the action the second charge lender had taken. It wouldn't cover the resulting costs.

Halifax said that sometime after this, it had issued a court hearing letter to Mr L, on 22 August 2023. That was a mistake, Halifax was sorry about that.

Halifax said it didn't think it should have agreed a hold on Mr L's mortgage to allow him to attempt to sell the property. It said he'd had several holds on legal action before, and he had considerable arrears on the account. But because Halifax had offered this, it would honour that offer. However, Halifax said that if Mr L hadn't made any progress towards selling his property by 7 November 2023, it might have no choice but to proceed with legal action.

Mr L asked our service to look into things. He then contacted us again, to say Halifax was planning to restart legal action. He has also made us aware of the impact legal proceedings to gain possession could have on vulnerable family members.

Our investigator didn't think this complaint should be upheld. She said that by June 2023, with around £85,000 of arrears on the account, Halifax started litigation action. Mr L asked Halifax to stop, because he was marketing the property. In August 2023, Halifax's lawyers secured a court date, but when Mr L contacted it again, it put the legal action on hold.

Our investigator looked at the history of this mortgage since the original term ended in January 2020. She could see Mr L had tried various options to repay the debt, without success. And he wasn't able to make his monthly payments during this time either. The arrears which had accrued were significant and long term.

Our investigator thought Halifax had shown forbearance while Mr L attempted to resolve things, but she said that unfortunately hadn't been successful. Our investigator said by the time litigation proceedings commenced in June 2023, she thought Halifax had already given Mr L a reasonable amount of time to resolve matters.

Our investigator didn't think Halifax had to withdraw legal action when Mr L told it he was selling the property. She said that the temporary hold Mr L was provided with at that time was generous.

Our investigator said the additional charges Mr L told us that the second charge holder levied, were a matter for it. She didn't think Mr L could pursue Halifax for those extra costs.

Our investigator didn't think Halifax was wrong to set a court date, although she agreed that Halifax had told Mr L it would do something different. But it did then honour the three month hold it had previously said it would allow.

Our investigator understood that Mr L had faced very difficult circumstances, but she couldn't say Halifax ought to have acted differently.

Mr L replied to disagree. He said his solicitor thought the issue was timing. Halifax issued proceedings before the agreed date, which contradicted the assurances his other lender had been given, and resulted in the penalties that Mr L suffered. Mr L said he would want to offer further evidence.

Mr L then wrote again, attaching further evidence. He sent our service the loan agreement for the second charge on his property, and showed us he'd been forced to pay an additional default charge on that loan.

Mr L said Halifax was made aware of the consequences of any legal action. Mr L said he told Halifax that, and sent a letter following Halifax's agreement to stop legal action. Mr L said Halifax admitted responsibility in its first complaint response letter, dated 13 September 2023. That's when Halifax sent a cheque for £50. But Mr L said when Halifax then realised the full consequences of what it had done, it changed its decision.

Mr L also said Halifax was claiming it would only take legal action when all attempts to reach an agreement to be paid have been exhausted, but that wasn't the case here. Mr L said if Halifax continued, then he and vulnerable family members would be made homeless.

Because no agreement was reached, this case was then passed 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've reached the same overall conclusion on this complaint as our investigator.

Mr L's current problems making his monthly payments towards the interest on this mortgage appear to date back to 2019. In 2020, the term of the mortgage ended, and unfortunately Mr L didn't have a way to repay the capital owed. Prior to the issues raised in this complaint, Mr L had explored a number of other options, including the sale of other properties and an equity release mortgage. Mr L had also previously twice agreed with Halifax that it would put a hold on legal proceedings, to allow him to sell the mortgaged property, but unfortunately each time without success.

Halifax sent Mr L a final warning letter, telling him it was about to start legal action, on 15 March 2023. By June 2023, Halifax had not received the capital repayment, and it had been two years since Halifax had received any payment towards the interest accumulating on this debt. On 22 June, Halifax instructed solicitors.

Because Halifax had twice paused legal action to allow Mr L to sell the property, without success, and given the extent of the arrears and the fact that Mr L didn't have any other way to pay back the money he owed, I don't think Halifax made a mistake when it decided to go ahead with legal action to repossess Mr L's property.

We know that Mr L then spoke to Halifax, and he said it had agreed to cancel the legal action. I've listened to the call Mr L had with Halifax, which was on 26 July 2023. (Mr L's letter of 27 July refers to that conversation the day before).

Mr L explained then that the property had a second charge, which was secured on his home and some other properties he owns. He said he had reached an agreement with that lender to sell the house, but Mr L said the other lender was very unhappy that Halifax was going ahead with legal proceedings. He said the second lender was threatening to default him.

On this call, Halifax said that it would support him. Halifax and Mr L discussed at length his plans to sell his home and his other properties, and how he intended to clear the bridging loan as well as his Halifax mortgage. Halifax then paused to consider its position, and came back to the call to say it could see his property was being marketed. It would issue a Sale of Property pack, and would put a brief hold on proceedings to allow him to get the pack returned. But it also said that it would put a stop to any further action. Halifax stressed that it was important to get this pack back to it.

I don't think Halifax was sufficiently clear on this call that once Mr L had returned the Sale of Property pack, it would then review the position on Mr L's account. So Halifax might not decide to offer a longer pause to allow the property to sell. Halifax did say on this call it had cancelled the legal action for now.

I don't, however, think Halifax gave a commitment on this call to cancel legal proceedings entirely. I think this was always just about pausing to give Mr L time to achieve a sale.

Halifax says that after this, its lawyers wrote to the second charge lender, to tell it that the legal proceedings weren't going ahead. They had done this by 1 August.

Mr L has shown us a letter from the second charge lender dated 8 August, saying it was planning to default his account.

Mr L said Halifax then wrote to him to say it had applied for a court date. Halifax accepts that was a mistake, as it had told Mr L it would pause legal action. But this letter was dated 22 August.

I've explained that I don't think Halifax made a mistake on 22 June, when it instructed solicitors to take legal action. And I don't think Halifax's lawyers then made a mistake when they warned both Mr L and the second charge lender that Halifax had reached the point of taking legal action on Mr L's mortgage.

After Mr L told Halifax on 26 July that this would make things very difficult for him, Halifax suspended its proceedings, and once more allowed Mr L time to sell his property. Its lawyers also notified the second charge lender of this, and confirmed they'd done so to Mr L on 1 August. So I think at this point, Halifax had done what Mr L wanted.

It was a week later, on 8 August, when the second charge lender wrote to Mr L, telling him it was going to default his loan. I think Halifax had done all it reasonably could to help Mr L to avoid that, at this point. So I don't think Halifax is responsible for the second charge lender's decision to default Mr L's loan. And I don't think it has to compensate Mr L for the extra costs he faces as a result of that other lender's decision.

I know that Halifax then sent a letter telling Mr L it had applied for a court hearing, but it quickly rectified this mistake. And, because Mr L had already faced the consequences set out above, I don't think this affected his second charge loan. So I do think that the payment

Halifax offered, of £50, provides a fair and reasonable outcome to this part of Mr L's complaint. I understand that Halifax sent Mr L a cheque but he may not have cashed it, so I'll ask Halifax to pay this now, if Mr L didn't cash the cheque which was sent to him previously.

I can see that Halifax now says it doesn't think it should have offered a pause to allow Mr L to sell the property. But it decided to honour its offer, and a hold to allow for sale was in place until early November. I understand that unfortunately this pause hasn't assisted Mr L.

I've been sorry to hear that Mr L is continuing to face difficulties, and I have taken account, in my above decision, of the particular issues Mr L faces at home, with vulnerable people living in the property. But, for the reasons set out above, I haven't been able to uphold this complaint.

I know that Mr L will be very disappointed, but for these reasons, I don't think Halifax has to do more in this case than it has already offered to do.

My final decision

My final decision is that Bank of Scotland plc trading as Halifax must pay Mr L the sum of £50 which it previously offered, if Mr L hasn't already received this sum.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 27 May 2024.

Esther Absalom-Gough
Ombudsman