

## The complaint

Mr and Mrs A have complained about a delay by Bank of Scotland plc trading as Halifax in responding to their solicitor about their mortgage and secured loans. They say the delay meant they couldn't complete on their new equity release mortgage before the offer expired. This led to the offer being withdrawn and the replacement offer was at a higher rate of interest.

## What happened

Mr and Mrs A had a mortgage and two secured loans with Halifax.

In March 2022 they met with a mortgage broker as they wanted to reduce their outgoings and borrow some further funds for home improvements. They applied for an interest roll-up equity release mortgage with a lender I'll refer to as lender P.

They received an offer for the new mortgage at the end of April 2022 which showed they were going to borrow around £305,000 and the interest rate would be fixed at 4.14% for the life of the mortgage. The offer had an expiry date of 3 June.

The solicitor acting for lender P ("the solicitor") asked Halifax for a redemption statement, which was provided on 10 May.

There were some issues relating to the property which the solicitor resolved on 26 May.

At the start of June lender P granted an offer extension until 30 June.

On 2 June the solicitor sent a contact form to Halifax. That said:

*"Please confirm if the redemption statement supplied to us 11/05/2022 (also attached to this email) from the account number mentioned above covers the following three charges and that they will be removed from the title upon its redemption"*

The solicitor chased Halifax for a response on 9 June, 20 June and 27 June.

In the meantime Mr and Mrs A raised a complaint with Halifax about the fact it hadn't responded to the solicitor. Halifax responded to Mr and Mrs A's complaint on 28 June saying:

***"Your solicitor has requested up to date redemption statements and confirmation we are able to remove any charges on your mortgage and the two Secured Personal Loans (SPL).***

*I appreciate you are unhappy as your solicitor confirmed the bank are not cooperating with you. I'm sorry but this is incorrect, as i [sic] discussed on today's call, I reached out to the secured assets team yesterday to check the correct process and to ensure the correct service levels have been provided with the correct information to your solicitor. I'm pleased to confirm the correct teams have already provided the redemption statements to your*

*solicitor; these were sent within the correct timeframe. Your solicitor also requested confirmation that we can remove the charges.*

### **What the secured assets team have confirmed**

*This is not something we normally do as it is the solicitors [sic] job to know what charges they are and what they need to pay off in order to remove the charges at the Land Registry.*

*It is not for the bank to confirm this. However, having reviewed your title and all 3 charges, the secured assets team are happy for me to send the confirmation that the redemption figure dated 10 May 2022 does cover the charges showing on the borrowers [sic] title. However, this would not be an accurate amount due to the time it has been since that date and a new redemption statement would need to be requested. At which point we will provide new balances for the two secured personal loans dated 28 May 2005 [sic] as well as for the mortgage."*

As that answered the solicitor's enquiry it was happy to move to completion on the new equity release mortgage, although it required an up-to-date redemption statement and it was unable to obtain that before the offer extension expired. The solicitor contacted lender P to ask if a further extension could be given on the offer as it was just awaiting an up-to-date redemption statement but unfortunately the funder wasn't willing to agree to that.

A revised offer was issued on 6 July, but this time the interest rate was fixed at 5.04% for the life of the mortgage.

Halifax provided an up-to-date redemption statement on 15 July, and the equity release mortgage completed on 20 July, repaying Halifax.

In the meantime Mr and Mrs A raised a further complaint with Halifax about a delay in it issuing a redemption statement for a month preceding its response. Halifax offered £100 compensation and offered to backdate the redemption to 17 June.

Unhappy with what had happened Mr and Mrs A referred two complaints to us; this one about Halifax and the other about lender P. They said the two lenders were blaming each other and they wanted one of the companies to cover the additional interest they'll incur over the life of the mortgage.

I reviewed the complaints together and I issued provisional decisions on both of them to give the two lenders the chance to make any final submissions before I reviewed the cases again.

### **What I've decided – and why**

I issued a provisional decision in December 2023, the findings of which said:

*"Halifax has said:*

*"It is normal practice for the charges registered on the Title Deed to be removed by the lender, once funds had been received to repay any outstanding balances.*

*It is the responsibility of Halifax to request the removal of the charges and for your solicitor to ensure the charges have been removed, following redemption. We do not usually have to confirm this procedure will shortly be taking place to our customer's solicitors in such level of detail."*

*I agree that is the normal process. But the problem was that the solicitor needed Halifax to confirm that the redemption statement covered all the debt owed under three separate charges Halifax had secured against the property. The solicitor had a redemption statement, but the redemption statement didn't state that the redemption figure was the figure to release the three separate charges. Whilst the mortgage and two secured loan accounts were listed on there, they could all have been secured under the original charge and so the solicitor needed to check Halifax wasn't going to ask for further funds to remove the other two charges.*

*Halifax has said that it explained this on the redemption statement, and that the wording it provided on 28 June was "similar". But I don't agree. The original wording said that Halifax wouldn't release its charge until all monies are received; which is entirely the concern the solicitor had. It needed Halifax to confirm whether the sum requested on the redemption statement represented "all monies" that were needed to release all three charges.*

*Whereas the letter of 28 June explicitly said "However, having reviewed your title and all 3 charges, the secured assets team are happy for me to send the confirmation that the redemption figure dated 10 May 2022 does cover the charges showing on the borrowers title." Which is the confirmation the solicitor had asked for on 2 June.*

*At various times throughout this complaint Halifax has said it responded to the solicitor on 2 June, but the evidence it provided doesn't support that. The system screen print it has provided shows two documents were received on 2 June at 8.59am (which would have been the contact form the solicitor sent along with the redemption statement it said it had attached). If one of those had been a response, as Halifax has claimed, then it wouldn't have been at exactly the same time as the contact form was received in and it also would have required a third line; two lines showing the contact form and the redemption statement coming in, and then a third line showing Halifax's response going out.*

*The document Halifax told us it sent in response was in fact the redemption statement the solicitor had provided with its request for confirmation all three charges would be removed. In any event, if Halifax had provided a further copy of the redemption statement that wouldn't have helped as the query the solicitor had related to the redemption statement, so providing a further copy of it without answering the question wouldn't have moved matters forwards.*

*On 6 June there is a 'Reassign' note on Halifax's system that says "Request is regarding within the Redemption Figure request. Along with this Law Firm Relying on the response is response for ensuring the figures contained within the response is in line with customer expectations. Please look into it." Again, that doesn't support Halifax's claim that a response had been sent on 2 June as if it had that reassign note wouldn't have been required.*

*On 20 June Halifax's system shows a 'Chase' note which says "Email send to \$Deeds – Title Queries". Again, supporting the fact no response had been sent by that time.*

*Halifax says it sent an email to the solicitor on 21 June saying if the redemption figures were paid in full this would mean the charge would be released. Unfortunately, I can't see a copy of that email has been provided by Halifax, and even if it had the description Halifax has given our service of that email wouldn't have helped matters as the point was Halifax held three charges over the property, and the solicitor needed confirmation that all three charges would be removed upon receipt of the redemption amount requested, not just "the charge".*

*Halifax has said the confirmation the solicitor was asking for wasn't a requirement of the*

equity release offer and listed some of the offer conditions to show this. But nothing on the redemption statement says all three charges would be removed upon receipt of the funds, and it is possible that Halifax had sent the solicitor a redemption statement for just one of the three charges. If that was the case, and the solicitor had just paid the redemption figure quoted, then the other two charges would have remained and those would have ranked ahead of lender P's charge, thus impacting its security. The solicitor had a responsibility to ensure lender P's security wouldn't be impacted and asking the question it did doesn't seem unreasonable in this individual case due to the three separate charges being secured on the property.

The solicitor asked Halifax a straightforward question on 2 June. Even if Halifax thought the solicitor shouldn't have asked it, the fact is it did and I understand why it did so. The solicitor was responsible for ensuring lender P held first charge over the property and that's a fundamental part of the conveyancing process. The solicitor decided it wasn't safe to proceed until it had received that confirmation and I can't say it was wrong to do that.

Halifax said "The solicitors did not specify that they required a more in depth response to our email sent on the 2 June 2022 and we did not hear back from this to say that they required more information." But as I've explained I don't think the evidence Halifax has provided so far indicates it did respond on 2 June, in fact everything points towards it not responding at all until Mr and Mrs A complained and it answered the question the solicitor had asked in its response letter on 28 June.

All Halifax needed to do was confirm that upon receipt of the sum stated on the redemption statement that all three charges would be removed from the property's title. Halifax didn't do that until 28 June and then didn't provide an up to date redemption statement (as it said in its letter of 28 June that the redemption figures were out of date) until after the offer extension had expired.

Had Halifax responded to the solicitor's contact of 2 June in a timely manner then I see no reason why Mr and Mrs A's new mortgage with lender P wouldn't have completed before the mortgage offer extension expired, and therefore they would now have a mortgage being charged at 4.14% rather than 5.04% for the life of the mortgage.

Having considered everything very carefully I'm currently minded to uphold this complaint and award redress as I've set out below.

### **Putting things right**

I've thought very carefully about the basis on which it's fair for Halifax to compensate Mr and Mrs A for the additional interest that will accrue to the mortgage they took. I've looked at the information the mortgage broker gathered about Mr and Mrs A's preferences and priorities, and the mortgage offers that were issued.

The recommendation letter shows us:

- Mr and Mrs A wanted to repay their existing mortgage and secured loans.
- They wanted to undertake some home improvements.
- They wanted the least impact on their estate by getting the most competitive interest rate, without affecting the amount they could borrow.
- They weren't considering moving again.

- *Mr A and Mrs A were both 76 years old and their estimated life expectancy was 88 years old and 89 years old respectively.*

*The mortgage offer dated 22 April shows Mr and Mrs A intended to borrow £305,179 at a fixed interest rate of 4.14%. Whereas the replacement offer (that they took) was for £305,429 at a fixed interest rate of 5.04%. The difference in loan amounts was explained as that Mr and Mrs A had needed to go into their overdraft due to the delay in completion, so the additional £250 was to repay that amount.*

*It's difficult to predict how long the mortgage will run for. But based on the information recorded in the recommendation document in answer to "What would you say is a realistic life expectancy (in years)?" I think it is fair to take a term of 13 years which takes Mrs A to age 89 as indicated. That means I think it's reasonable to assume it will run from completion on 20 July 2022 to 19 July 2035.*

*Although there's the possibility of avoiding an early repayment charge if the mortgage is repaid on downsizing, it's not possible to predict if those circumstances will arise. It's perhaps more likely the mortgage would be transferred, but then Mr and Mrs A would still be tied into the mortgage and fixed interest rate if that happened. I'm conscious they said they don't intend to move again. So, on balance, I think it's fair to assume they won't. Given the potentially substantial early repayment charge, I think it's unlikely they would choose to repay the mortgage during the term.*

*Bearing everything in mind, on balance, I think it's fair that Bank of Scotland plc trading as Halifax compensates Mr and Mrs A for the difference between:*

- *the total interest that would have accrued to a mortgage of £305,179 at a rate of 4.14% a year on a rolled up (compound) basis between 20 July 2022 and 19 July 2035; and*
- *the total interest that will accrue to their mortgage of £305,429 at the rate of 5.04% on the same basis and over the same period.*

*I recognise there is a benefit to Mr and Mrs A in receiving a lump sum interest payment now bearing in mind that sum may not be paid for many years or at all. But, for the reasons I've explained, I think it's fair and reasonable in the circumstances that they receive a sum equivalent to the additional interest that will accrue until 19 July 2035. However, because they will be getting the lump sum in advance of when that interest will actually become due I make no further award of compensation for any distress and inconvenience caused."*

Mr and Mrs A accepted my provisional findings. Halifax responded at some length saying, in summary:

- *It received various redemption statement requests and it provided an explanation to our service of how those were actioned, when the redemption statements were issued and for what estimated completion dates.*
- *"The next redemption statement request was received on 21/06/22, however it wasn't actually a redemption statement request, it was a request for confirmation that all 3 charges would be removed upon redemption." And "No new redemption statement was produced as this is not what the solicitors were asking for. They just wanted confirmation that the charges would be removed following redemption."*
- *It works closely with the solicitor concerned and the solicitor would have been aware that Halifax wouldn't be able to confirm that the three charges would be removed.*

- The redemption statement appears to address the Land Registry query regarding the removal of the charges and clearly confirms that this will be addressed once the mortgage had been repaid.
- The solicitor was already aware that not only was the mortgage attached to the charges register, but there were also the secured personal loans that needed to be repaid in full before Halifax's charges could be removed.
- The correct action for the solicitor was to repay the mortgage and then contact Halifax to arrange discharge, but it is clear that this process had not happened in this case. Halifax said it seems as if the solicitor had asked a question where the only answer that could have been provided by Halifax would have been either "look at the redemption statement" or "No".
- Given the nature of Halifax's relationship with the solicitor, the solicitor had routes into Halifax to check such matters and these were not used. Halifax said it could not confirm what the solicitor was asking, and the redemption statements were provided within a timely manner.

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, and having carefully considered everything Halifax has said, I don't depart from my provisional findings.

I won't answer all Halifax's points in the same detail as they were expressed as they aren't all relevant to the outcome of this complaint. For instance, the outcome of this complaint isn't based on how many redemption statements were issued, how they are produced or how quickly they were provided.

Halifax has referred to its relationship with the solicitor and that the solicitor could have used other routes into Halifax to ask its question. But it isn't clear why Halifax feels the solicitor needed to use a different route. The solicitor asked Halifax a direct question on 2 June and it now doesn't seem to be in dispute that Halifax failed to respond to that.

Halifax has said it "*could not confirm what [the solicitors] were asking*" but there was an easy resolution to that which was for Halifax to respond to the contact from the solicitor to ask them to confirm what they were asking. Instead, Halifax just didn't respond.

Halifax has said "*the solicitor had asked a question where the only answer that could have been provided by Halifax would have been either "look at the redemption statement" or "No".*" But that's not right as Halifax gave an answer on 28 June in response to a complaint from Mr and Mrs A. All Halifax needed to do was provide that response when the solicitor first asked on 2 June, rather than over three weeks later.

Ensuring the new lender has good security is a key requirement of the UK Finance mortgage lenders' handbook for conveyancers. I have previously seen cases where the redemption figure given by the existing lender was paid, only for it to come to light after the payment had been made that it didn't cover all the separate charges held on the property. In this case, if it had only come to light after completion that all of the charges hadn't been removed, this could have impacted the new lender's security as the existing charges would have taken priority over theirs. So I can understand why the solicitor wanted an answer from Halifax on this point before completion.

The redemption statement didn't clearly state that all the charges would be removed upon

receipt of the redemption funds stated and, having considered everything, I don't think the solicitor's question was unreasonable in the circumstances.

Halifax could have answered the question at the start of June, or contacted the solicitor to clarify the question if needed. Had that happened, I'm satisfied it is more likely than not that Mr and Mrs A's new mortgage with lender P would have completed before the mortgage offer extension expired, and therefore they would now have a mortgage being charged at 4.14% rather than 5.04% for the life of the mortgage.

### **Putting things right**

I order Bank of Scotland plc trading as Halifax to pay Mr and Mrs A the difference between:

- the total interest that would have accrued to a mortgage of £305,179 at a rate of 4.14% a year on a rolled up (compound) basis between 20 July 2022 and 19 July 2035; and
- the total interest that will accrue to their mortgage of £305,429 at the rate of 5.04% on the same basis and over the same period.

I recognise there is a benefit to Mr and Mrs A in receiving a lump sum interest payment now bearing in mind that sum may not be paid for many years or at all. But, for the reasons I've explained, I think it's fair and reasonable in the circumstances that they receive a sum equivalent to the additional interest that will accrue until 19 July 2035. However, because they will be getting the lump sum in advance of when that interest will actually become due, I make no further award of compensation for any distress and inconvenience caused.

### **My final decision**

I uphold this complaint and order Bank of Scotland plc trading as Halifax to settle it as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs A to accept or reject my decision before 29 February 2024.

Julia Meadows  
**Ombudsman**