

The complaint

Mr C complains about the way Bank of Scotland plc trading as Halifax handled the repossession of his property to recover the arrears due on his mortgage.

What happened

Mr C had an interest only mortgage with Halifax. As a result of previous mortgage arrears, Halifax had taken matters to court and received a suspended possession order in 2008. In 2019 the court ordered that the suspended possession order remained enforceable for six years without the need for Halifax to seek further permission from the court.

In 2022 Mr C made partial payments to the mortgage in January, February, and March. He made a payment close to the full monthly payment in April, but then didn't make any further payments until November 2022 when his son paid over £7,000 to clear the arrears.

In December 2022 Mr C called Halifax to discuss the mortgage account. He explained that he planned to put his house up for sale but was first having to pay for urgent repairs following a pipe leak, as well as redecorating and renovations. Mr C had submitted a claim for the water damage with his insurance company but wasn't sure how long that would take or what they would cover. Halifax said they would need to assess Mr C's income and expenditure to agree a payment arrangement for what he could afford to pay going forward. As Mr C wasn't sure of the exact costs and what his insurance company would cover, it was agreed that Mr C would pay what he could afford that month and he would call back before the end of January to provide an update.

Mr C didn't call Halifax with any updates and so they tried to contact him in February and March 2023. As they hadn't received a response, or received any payments to the mortgage, they applied to the court for an eviction date, which was set for 21 April 2023. Halifax's solicitors wrote to the property address on 4 April 2023 to inform Mr C that a bailiff's appointment had been arranged to take possession on 21 April 2023 at 12pm. The letter said it was important that Mr C had removed all of his personal belongings from the property prior to the appointment to avoid their disposal.

On 12 April Mr C spoke to Halifax and explained that the leak had caused serious damp issues in the property, and he had been advised by the insurance company that he shouldn't be living in the house as the damp could cause breathing problems. As a result, he and his family had moved out which was costing them more money. Halifax asked if he was still able to receive correspondence or whether he wanted to update his correspondence address, and Mr C said he had been going back and forth to the house and picking up post, and he had now arranged for his mail to be redirected which should be active within 7-10 days. Halifax told Mr C that to cancel the eviction he would need to clear the arrears in full and provide up to date income and expenditure information before the eviction date. Mr C said he would clear the arrears with the help of family within seven days. Halifax told Mr C that all correspondence about the mortgage and the eviction had gone to the house and so he should check all the letters received there.

Halifax called Mr C on 20 April, and the morning of 21 April but the calls went unanswered. Mr C called Halifax on the afternoon of 21 April to confirm the exact amount he needed to pay to clear the arrears on his mortgage. During that call Halifax told Mr C the property had already been repossessed as the arrears weren't cleared before the eviction date and time.

They said that in order to get the property back, he would need to clear the arrears in full and complete an income and expenditure assessment which showed the mortgage payments were affordable for him following a change in circumstances.

Mr C spoke to Halifax again on 24 April and discussed his income and expenditure. He explained that the mortgage payments would be affordable based on the household income, as his children would be willing to contribute. Halifax told Mr C they couldn't consider his children's income as they weren't named on the mortgage.

Mr C complained. He also instructed solicitors to send Halifax a letter of claim. He said he wasn't made aware of the deadline by which he had to clear the arrears. Halifax were aware he wasn't living in the property and so wouldn't have received any letters. Mr C had assumed he had until midnight on 21 April to clear the arrears as that was the case when he cleared the arrears in November. He had offered to clear the arrears in full and pay the next six months' payments in advance, but Halifax wouldn't accept that. He didn't think that was fair. Halifax's solicitors responded to the letter of claim. They didn't agree with any of the points Mr C's solicitors had made.

The mortgage was redeemed in full on 4 August 2023 by Mr C.

Mr C asked our service to look into his complaint. He said Halifax deprived him of the opportunity to explore other potential options that would have allowed him and his family to live in their home sustainably. He says his plan was to extend the mortgage, add at least one of his children to the mortgage, or re-mortgage to a different high street lender. He could potentially have repaid some of the mortgage through the sale of an asset, and agreed a lower interest rate product. But he says he wasn't given the chance to do any of the above due to Halifax's actions. As a result, he had to resort to short term high interest rate lending to prevent the sale of the property.

Our Investigator looked into things and explained that she felt Halifax had only taken repossession as a last resort, and thought they'd treated Mr C fairly and reasonably.

Mr C still felt he hadn't been treated fairly by Halifax. He also felt that the events that took place after Halifax took possession of the property should be taken into account. His children had reported missing possessions to the police that had been left in the property before repossession, and he said his daughter's car had also been re-registered in Mr C's name without her consent. He was also unhappy that Halifax had attempted to sell the property significantly under market value.

Our Investigator considered what Mr C had said but wasn't persuaded to change her opinion. She explained that any complaint about how Halifax had handled things after the repossession would need to be raised with them directly as a separate complaint.

Mr C asked for his complaint to be referred to an Ombudsman.

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.

Whilst I empathise with Mr C's situation, I've reached the same outcome as the Investigator. I'll explain why.

The repossession of Mr C's property

By the time Halifax took possession of Mr C's property in April 2023, Mr C had been unable to afford his mortgage payments for some time. With the exception of one lump sum payment made in November 2022 by Mr C's son, no payments had been made to the mortgage for a year. When Halifax applied for an eviction date in March 2023, I'm not persuaded they were acting unreasonably. I say that because when Mr C spoke with Halifax in December 2022, he said he would call back the following month with an update on his

plans and to agree a way forward. He didn't do that. And despite Halifax attempting contact multiple times through phone calls and letters, Mr C didn't respond or update Halifax about his circumstances. No payments had been received for four months, and Halifax hadn't received any updates about Mr C's plans despite multiple contact attempts. As a result, I'm satisfied Halifax were acting reasonably by taking legal action.

Halifax wrote to Mr C on 20 March 2023 to say they'd applied to the court for an eviction date, and on 4 April 2023, Halifax's solicitors sent Mr C two letters setting out the eviction date and time. Mr C says he never received those letters as he wasn't living at the property, which he says Halifax knew about. But I'm not persuaded Halifax were aware that Mr C wasn't living at the property before those letters were sent. The last contact they had with Mr C before the eviction date was set was in December 2022, and he hadn't moved out at that point.

From the evidence available to me, the first time Mr C made Halifax aware he'd moved out of the property was when he called them on 12 April 2023. I've listened to a recording of that call, and I'm satisfied Halifax made the position of the mortgage and the eviction sufficiently clear. They told Mr C he needed to clear the arrears and complete an income and expenditure assessment by 21 April 2023 – as the eviction would be going ahead that day. Mr C said that he would clear the arrears within the next seven days, which would have been in time to stop the eviction. However, that didn't happen.

During the conversation Halifax checked where Mr C wanted his correspondence sent three times. Mr C told Halifax that he had been going back and forth to the property and picking up his post, and he'd now set up a re-direction, so he didn't want to give Halifax an updated property address. Halifax told Mr C that all letters relating to the mortgage and eviction had been sent to the property address and so he needed to make sure he'd checked them all. Overall, having considered the circumstances, I'm satisfied Halifax did enough to make sure Mr C was aware of the position of the mortgage and eviction before they took possession of the property.

The arrears weren't cleared before the eviction date, despite Halifax attempting to contact Mr C again on the morning of the scheduled eviction date. Unfortunately, Mr C didn't return Halifax's call until late afternoon after the repossession had taken place and so it was too late to stop the repossession. But for the reasons I've explained, I'm not persuaded that's a result of anything Halifax did wrong.

I note Mr C says that even after attending the property after the repossession, the letters about the eviction date weren't there. But I've seen copies of the letters and I'm satisfied they were correctly addressed. And whilst the Halifax call handler didn't specifically state the repossession would take place at 12pm during the call of 12 April, she did say that Mr C had until 21 April to clear the arrears. Which would imply the payment would need to be made before that date. In any case I think it's reasonable to assume that if an eviction was scheduled for the date of 21 April, the arrears would need to be cleared before that date as the eviction would take place during the day. Mr C said he assumed he would have until midnight that day to stop the eviction, but I'm not persuaded that's a result of Halifax's actions.

Halifax's actions after repossession

After the property was repossessed, Mr C requested that Halifax relinquished the property back to him. Initially he offered to clear the arrears, and then he offered to also make a lump sum payment to cover the following six months of mortgage payments. Halifax didn't agree to Mr C's proposals, as it appeared the mortgage was unaffordable for him without him

having to rely on his children to help with the payments, and they wouldn't take into account the total household income as Mr C was the only party named on the mortgage.

Ordinarily, once a lender has repossessed a property, they will arrange for the property to be sold to repay the mortgage. In Mr C's case, he wanted Halifax to give the property back so that he could arrange for the necessary repairs to be carried out before selling the house. Mr C has given conflicting accounts of his plans. He's said that he always intended to sell his house and downsize, but he's also said that he had plans to try and re-mortgage, maybe add one of his children, and sell assets to reduce the balance. Either way it's accepted that the mortgage as it stood was not affordable or sustainable for Mr C without any help.

Halifax's policy said that in order for the property to be relinquished, the arrears would need to be cleared and Mr C would have to have had a change in circumstances so that the mortgage was affordable for him going forward. Or Mr C could redeem the mortgage in full (which he later did). I don't think that's unreasonable. After the court has granted possession and set an eviction date, once the repossession has taken place the property has legally been handed to the lender in order to realise their security. Whilst Mr C felt he had extenuating circumstances as the property was about to undergo repairs for the pipe leak and the resulting damp, it's not as straightforward as the lender cancelling the legal action and handing back the keys after the repossession has taken place.

It's not unreasonable that before a lender would relinquish a property back to the borrower, they would want to ensure that there was a clear plan in place for the mortgage to be repaid. Otherwise, it's likely that the mortgage would end up in much the same position and the legal process would need to be repeated, which adds more costs for the borrower to pay. I also think it's reasonable for Halifax to want to see Mr C could afford the mortgage sustainably based on his own income and expenditure, as the reliance on third parties can't be guaranteed indefinitely when they're not party to the mortgage.

I do empathise with Mr C here as he has suffered damage to his property at a time that he was already experiencing financial difficulties and was unable to pay his mortgage. But having considered everything carefully, I'm not persuaded Halifax have acted unfairly by declining Mr C's request to take the property back.

I know Mr C feels strongly that Halifax didn't fairly consider his proposals, and he doesn't feel Halifax had reached the last resort given what he was offering to do, but the proposals Mr C made were put to Halifax after the property had been repossessed. If Mr C had made those proposals to Halifax before the repossession, I would have expected them to have given them serious consideration and try and avoid a repossession where possible. But Mr C didn't engage with Halifax before the repossession took place. He didn't make any contact with them for four months despite multiple attempts by Halifax. And by the time he did make contact, it was too late. I've listened to the conversations he had with Halifax, and he wasn't given any assurances that the property would be handed back as he says he was. I don't think they gave him any incorrect or misleading information during those calls, and were clear with him about the next steps and his options.

Mr C has raised concerns more recently about the way Halifax handled the marketing and prospective sale of the property, and also how his and his family's possessions had been handled after Halifax repossessed the property. Those concerns were not considered by Halifax as part of this complaint. As such, I haven't considered them in this decision. If Mr C would like our service to consider those concerns, then he'll need to raise them with Halifax first and give them an opportunity to respond if he hasn't already done so.

My final decision

Considering everything, for the reasons I've explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or

reject my decision before 11 June 2024.

Kathryn Billings
Ombudsman