

The complaint

Mr and Mrs K complain about the actions of Bank of Scotland trading as Halifax when it continued with legal action as they were taking out an equity release mortgage to replace the interest-only mortgage they had with Halifax.

What happened

Mr and Mrs K took out an interest only mortgage with Halifax in 2006 which matured in 2013. Thereafter they continued to make payments to Halifax but in 2022 say that Halifax threatened them with court proceedings to repossess their property. With equity in the property Mr and Mrs K decided to try and stay in the property with an equity release mortgage. Mr and Mrs K say that Halifax pushed them to use a firm of equity release advisors I shall call Firm X. Mr and Mrs K decided to use a different firm I shall call Firm Y. Halifax then began legal action to recover possession. Mr and Mrs K asked on 22 June 2023 for a 30-day hold and Mr and Mrs K got a firm offer from Firm Y on 31 July 2023. But Halifax in the meantime continued with the legal action and added legal fees and interest to their mortgage account. Despite all the payments Mr and Mrs K made over the years to Halifax, they still owed Halifax a lot of money.

Halifax says that it sent a letter to Mr and Mrs K on 10 May 2023 saying that without a proposal from them about settling the mortgage account that it would commence legal action. It says on 22 June Mr K contacted it and asked about what could be done to delay the legal action. The mortgage adviser told Mr K that if he took advice from Firm X that a hold of 30 days could be put on the account. Mr and Mrs K sought advice on equity release from Firm Y.

On 1 August Halifax got an equity release mortgage offer through Firm Y and agreed to adjourn the court hearing. The Halifax mortgage was redeemed in September. Halifax accepted that it may have misled Mr K that there was a hold on the account in the call on 22 June when in fact the legal process was continuing and offered a refund of the legal fees for all work done after 22 June and £200 for Mr and Mrs K's distress and inconvenience. Our investigator's view was that this was fair. Mr and Mrs K disagreed saying in summary that Halifax couldn't justify adding ten years of interest and fees to an expired mortgage, that Halifax's charges could have been plucked from thin air, that Halifax admitted its guilt by offering compensation of £200 which was derisory, that Halifax had paid them £3,715.00 in 2011 for failing to explain certain details and should compensate them fairly for their treatment since 2013.

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 background to the complaint is that Mr and Mrs K's interest-only mortgage had expired in 2013 and they were not in a position to repay the capital balance. At the time of this complaint, they were a retired couple in their seventies, had health issues and were unable to afford even the interest-only element of their mortgage and so were building up arrears.

I've looked at contact notes over many years and from at least 2019 I see that Halifax was suggesting that Mr and Mrs K speak to an independent financial adviser ("IFA") about a solution to this mortgage problem. In February 2020 there is a note that Mr K spoke to an IFA and who wasn't able to help and had referred him to another company to look at lifetime/equity release mortgages and was to have a meeting the following week and Mr K then reported back that he had a lifetime mortgage offer but wanted to look for a better rate.

I noted then Halifax at that stage said that if Mr and Mrs K could evidence that they were applying for a remortgage that Halifax would look to support by which I understand to mean that it would allow time for the remortgage. Then the Coronavirus Pandemic intervened. I see that an issue arose as to whether the property would qualify for an equity release as its desktop valuation was below what would qualify for that type of product. That was in May 2021. In June 2022 it was noted that Loan to Value figures would allow a referral to the firm I referred to above as Firm X, but Mr K was concerned about the effect of compound interest. The notes show no progress on a solution to the issue until when in 2023, Halifax referred the case to a solicitor. At that stage Mr and Mrs K got advice from Firm Y and arranged an equity release mortgage.

That is the background to the complaint. The actual complaint I have been asked to deal with is the complaint Mr and Mrs K raised with Halifax on 7 July 2023 about its failure to put a hold on Mr and Mrs K's account pending his discussions with Firm Y about equity release and the costs and distress suffered by Mr and Mrs K as a result. I note that Mr and Mrs K may want to bring other complaints against Halifax and if they wish to do so they should make those complaints directly to Halifax in the first instance, allow Halifax to investigate those specific complaints and if they are dissatisfied with Halifax's response, they may then be able to bring the complaint to us,

I've considered this particular complaint. Halifax had issued a pre-litigation letter or final warning letter on 1 February 2023 and in response Mr K contacted Halifax on 14 February 2023 when he was transferred to Firm X about equity release options. On 10 May 2023, after hearing that Firm X was no longer dealing with the case, Halifax started litigation action. That involved a number of legal fees. I noted that these were paid upon receipt of invoice from the solicitors and refer to actions before the phone call of 22 June 2023. I see invoice numbers and purchase orders in relation to these fees and relate to services that we would expect from a solicitor at that stage of the litigation, and I can see nothing that would suggest they were as, Mr K suggests "*plucked from thin air*". The fees were:

- £85.20 for Stage 1 Land Registry disbursements on Invoice dated 17 May 2023
- £159.00 for Stage 2 Disbursements (Land Reg) fees on Invoice dated 7 June 2023
- £ 156.00 for stage 2 on Invoice dated 21 June 2023

Following this there was a discussion between Halifax and Mr K on 22 June when Mr K asked about the equity release option. Halifax now concedes that at this stage Mr K was given to understand that there would be a 30 day hold on the account. It seems that Mr and Mrs K were working with Firm Y to get an equity release product. Rather than put a hold on the account Halifax continued with the legal process. Mr and Mrs K received a letter from Halifax's solicitors and raised a complaint with Halifax. Mr and Mrs K got an equity release offer on 31 July. In the meantime, Halifax incurred these further costs that it added to the account:

- £355 Court fee dated 12 July 2023
- £183.60 Disbursements (Land reg fees) dated 26 July 2023

As Mr and Mrs K's equity release application had been successful the court application was adjourned, and the mortgage redeemed. Following Mr and Mrs K bringing the matter to this service, Halifax reviewed the complaint and upheld the complaint on the basis that the legal process should have been put on hold following the conversation with Mr K in June. Halifax accepts that the litigation shouldn't have progressed beyond June. So, because the litigation wasn't put on hold, Halifax agrees that Mr and Mrs K were put to some distress and inconvenience and that the two charges raised in July 2023 should be refunded.

Looking at the background to the complaint, I can't say that Halifax did anything wrong by instructing solicitors in the matter. Mr and Mrs K were overholding on their mortgage for over ten years. The capital should have been repaid over ten years previously and the solutions were limited. They couldn't afford to pay the interest on the mortgage or have the affordability for a new mortgage. As it happened after Halifax engaged a solicitor, a solution was arrived at fairly quickly afterwards. So, it's difficult to say that Halifax shouldn't have engaged a solicitor and I consider that the initial fees it paid were fairly charged to Mr and Mrs K's account.. But when Mr K reacted to that by engaging Firm Y, Halifax should have given the time - as Mr K understood they were giving - to see if a mortgage offer would issue, as in fact it did. On that basis I uphold this complaint. Halifax's failure to hold the legal proceedings at that point would have caused an amount of disappointment and stress. I assess the compensation for that as £200 and Halifax should refund the two legal charges it incurred in July 2023 that were added to Mr and Mrs K's account.

Putting things right

Bank of Scotland plc trading as Halifax should pay £200 to Mr and Mrs K for their distress and inconvenience and refund them the two charges listed above of £538.60. The bank should also pay interest on the refunded charges of 8% simple from when it received the money until it is refunded. If the bank is required to pay tax on that interest by HMRC, it should provide a certificate of tax deduction to Mr and Mrs K to allow them to reclaim that tax from HMRC if they are able to.

My final decision

I uphold this complaint and require Bank of Scotland plc trading as Halifax to make the payments referred to above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K and Mrs K to accept or reject my decision before 5 September 2024.

Gerard McManus
Ombudsman