

The complaint

Mr M complains that Bank of Scotland plc trading as Halifax:

- caused unnecessary delays which led to his mortgage offer expiring;
- declined his second application;
- provided very poor customer service; and
- failed to remove his ex-partner's name from the mortgage.

To put matters right Mr M wants Halifax to make the changes he has requested to the mortgage account, agree to additional borrowing, apply the mortgage product he selected in 2021 and backdate the application of this product to his mortgage account.

Mr M is represented in this matter by his partner.

What happened

Mr M took out a mortgage with Halifax, in joint names with his ex-partner, in 2007.

Mr M says that in 2008 his ex-partner asked Halifax to remove her name from the mortgage. At the time Mr M made his complaint, his ex-partner's name hadn't been removed from the mortgage.

In September 2021, Mr M applied to add his new partner's name to the mortgage, change the mortgage from an interest only basis to a repayment mortgage and to take out a new mortgage product. He also asked for his previous partner's name to be removed from the mortgage.

The application was initially declined but was then referred to an underwriter for further assessment. Halifax asked Mr M and his current partner to provide additional financial information to support their application. In mid-October 2021, Halifax issued a mortgage offer to Mr M and his current partner.

Once the mortgage offer had been issued Halifax instructed solicitors to carry out the necessary legal work involved. It then came to light that Land Registry held details of additional charges secured against the property. The solicitor contacted Mr M about these charges on 12 January 2022. On 19 March 2022, Mr M told Halifax that there were plans in place to repay these charges.

In early April 2022 the mortgage offer expired. A new application was submitted on 13 April 2022.

In late July 2022, Mr M asked Halifax if the mortgage could be increased by £8,000 in order to repay the other charges against the property and proceed with the application. This new application was declined by Halifax on 12 August 2022.

Mr M complained to Halifax as he was unhappy with the way it had handled his applications and the delays he had experienced.

Halifax upheld the complaint in part. It accepted that it had caused some delays and paid Mr M £150 to compensate him for its poor service. But it said Mr M could only proceed with the mortgage offer if the second charge holders provided a Deed of Postponement and they had refused to do so. It also said it felt Mr M had brought the complaint about his ex-partner's name not being removed from the mortgage too late for it to have to consider it.

Mr M did not accept Halifax's response and referred his complaint to this service.

Having carefully considered this complaint our investigator said she didn't think this service could consider Mr M's complaint about his ex-partner's name not having been removed from the mortgage, as it had been brought too late under the rules this service must apply.

She explained that we aren't free to deal with every complaint we receive. In particular, the Financial Conduct Authority's (FCA) Dispute Resolution rules set out that this service cannot consider a complaint if it is referred to us:

- more than six years after the event complained of, or, if later,
- three years from the date on which the complainant became aware, or ought reasonably to have become aware, that they might have cause for complaint.

Unless exceptional circumstances prevented the complainant from bringing their complaint any sooner. Or unless the business complained about consents to us considering the complaint.

Mr M says his ex-partner asked for her name to be removed from the mortgage in 2008. A complaint about Halifax's failure to remove her name was not made until 2023, around 15 years after the event complained about. Our investigator explained that this meant the complaint failed on the first branch of the rule.

She then considered if the complaint had been made within three years of the date Mr M became aware that his ex-partner's name hadn't been removed from the mortgage. She noted that Halifax had provided copies of letters about the mortgage sent between 2008 and 2023, when the complaint was made. These letters were addressed to both Mr M and his ex-partner. In view of this she said she thought Mr M ought reasonably to have known that his ex-partner's name had not been removed from the mortgage from 2008 onwards. As this was the case, she said she was satisfied that the complaint had also been brought too late under the second branch of the rule.

As the complaint about removing his ex-partner's name had been made too late under the rules this service must apply, she said she couldn't consider this aspect of Mr M's complaint. But she said she could consider the issues Mr M had raised about the applications he and his current partner made, and the subsequent problems they experienced.

Having considered these parts of Mr M's complaint, she said she felt Halifax needed to do more to put matters right. She noted that Halifax had accepted that Mr M had experienced problems getting in touch with it during the application process and it had paid Mr M £150 to compensate him for its poor service. She said she didn't think the redress Halifax had paid was sufficient to compensate Mr M for the poor service he had received.

In particular, she said she felt Halifax could have done more to assist Mr M and keep him informed when the additional charges against the property came to light in January 2022. As Mr M had not made Halifax aware of these charges during the mortgage application process they only came to light when the solicitor Halifax had instructed searched the Land Registry.

She said she felt Halifax should pay Mr M a total of £400 (including the £150 it had already paid) for the worry and upset its poor service had caused. But she said she couldn't reasonably require Halifax to agree to make the changes to the mortgage that Mr M had requested. She explained that Halifax couldn't remove his ex-partner's name from the mortgage without her consent. And she said that the other charge holders' unwillingness to agree to a Deed of Postponement was outside Halifax's control. She noted that Halifax had tried to assist by considering an application for additional borrowing to cover repayment of the debts that had led to these charges, but this application had failed as it hadn't met Halifax's lending criteria.

Mr M did not accept our investigator's view. His representative asked for the complaint to be determined by an ombudsman. She said, in summary that she did not think that the compensation our investigator had recommended was sufficient.

She reiterated that they would like Halifax to pay '*...the difference in our current monthly payments since the interest rate increases and what we would have been paying had we been able to go ahead with adding the charges to the amount Mr M wanted to re-mortgage but would like to be able to go ahead with that option*'.

She said she felt the additional borrowing Mr M had requested was affordable and said that the monthly mortgage payment, even with the additional borrowing requested, would be less than Mr M was currently paying if he was able to take out a fixed rate mortgage product.

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 am sympathetic to Mr M's position and I have carefully considered all the points he and his representative have raised in connection with this complaint. Having done so, I have reached the same view as our investigator and for much the same reasons. I'll explain why.

Jurisdiction

As our investigator explained, this service does not have a free hand to consider every complaint referred to us. In particular, the Financial Conduct Authority's (FCA) Dispute Resolution Rules set out that this service cannot consider a complaint if it is referred to us:

- more than six years after the event complained of, or, if later,
- three years from the date on which the complainant became aware or ought reasonably to have become aware that they had cause for complaint.

Unless exceptional circumstances prevented the complainant from bringing their complaint any sooner. Or unless the business complained about consents to us considering the complaint.

Mr M says his ex-partner asked Halifax to remove her name from the mortgage in 2008. As a complaint about Halifax's failure to remove her name was not made until 2023, more than six years had passed from the date of the event complained about, so the complaint fails on the first branch of the rule.

Halifax has provided copies of letters about the mortgage sent between 2008 and 2023, when the complaint was made. These letters were addressed to both Mr M and his ex-partner. A complaint was not made within three years of the date Mr M ought reasonably to

have been aware that his ex-partner's name hadn't been removed from the mortgage as Mr M continued to receive letters about the mortgage from 2008 onwards, addressed to him and his ex-partner. As this is the case, I must find that the complaint has also been brought too late under the second branch of the rule.

I have also considered whether Mr M was prevented from bringing the complaint any sooner than he did due to exceptional circumstances. I note Mr M's representative has said Mr M suffers from significant mental health problems and this meant he would not have realised that, (despite receiving letters addressed to both him and his ex-partner) his ex-partner's name had not been removed from the mortgage. I am sympathetic to Mr M's circumstances, and I do understand this would have made things more difficult for him. But I cannot reasonably find that this prevented Mr M from bringing his complaint any sooner than he did.

In reaching this view I have taken into account that Mr M was in contact with Halifax regarding the mortgage on a number of occasions and the records show that he knew the mortgage was held in joint names with his ex-partner. If Mr M felt this was incorrect, I think he ought reasonably to have raised this with Halifax at that time.

I also note, that in order to have removed Mr M's ex-partner's name from the mortgage Mr M would have needed to apply to remove the other party. A solicitor would also have needed to make the necessary changes at Land Registry. As Mr M's ex-partner is still recorded as the joint owner with the Land Registry there is nothing to indicate that the necessary changes were made.

I therefore agree with our investigator's view that this aspect of Mr M's complaint has been brought too late for this service to be able to consider it.

Service Mr M has received from Halifax

It is not in dispute the service Mr M received from Halifax has added to the worry and upset this matter has caused him. What is in dispute is whether the redress our investigator has recommended is fair compensation for the trouble and upset the poor service and delays caused Mr M.

To put matters right, Mr M wants Halifax to allow him to borrow additional funds so that he can repay the additional charges secured against the property and backdate his mortgage account using the fixed rate product he selected when he first applied to make the changes to his mortgage in late 2021.

As our investigator explained, the holders of the additional debt charges have refused to agree to a Deed of Postponement. As this is the case Mr M needed to repay these debts in full, for the mortgage application to proceed. Halifax's lending criteria require it to have the first legal charge on a mortgaged property. Halifax has explained that, as Mr M wants to remove his ex-partner's name and add his current partner's name to the mortgage this is treated as a new application and, if agreed, it would need to remove its existing charge on the property. Once the existing charge is removed the second charge holders would automatically take precedence over any charge subsequently registered by Halifax. This means Halifax would not hold the first charge against the property. Halifax was not able to agree to this as its lending criteria require it to hold the first legal charge on a mortgaged property.

To resolve this Mr M wants Halifax to agree to lend a further £8,000 so that he can repay the debts connected with the additional charges. Unfortunately, having considered the application to borrow additional funds, Halifax said it was not willing to do so as it was not satisfied that the additional borrowing was affordable.

I appreciate that Mr M and his representative feel this is unfair and that the cost of the additional borrowing would be affordable. But Halifax is required to ensure that any lending it agrees is affordable both now and for the foreseeable future. I cannot require Halifax to agree to additional borrowing if it is not satisfied that it is - and is likely to remain - affordable.

Having very carefully considered this matter, I can see that there were delays in responding to Mr M and that, on occasion he had trouble getting in touch with his mortgage adviser. But I must also take into account that there would have been unavoidable delays while the other charge holders were contacted about providing a Deed of Postponement. It is unfortunate that the other charge holders were unwilling to provide a Deed of Postponement, but I cannot reasonably hold Halifax responsible for this or for any delay while it waited to hear back from the other charge holders.

I think the £400 our investigator recommended to compensate Mr M for the trouble and upset these delays caused him is fair and reasonable in the circumstances of this complaint.

I would add that Halifax has told this service that if Mr M is able to find an alternative way to repay the debts related to the additional charges, it would be happy to consider a new application to remove his ex-partner's name from the mortgage and add his current partner's name. But it has confirmed that this cannot go ahead whilst the additional charges are in place and the charge holders refuse to postpone.

In the meantime however, Mr M can request a new interest rate mortgage product and to change the mortgage to a repayment basis. If Mr M does want to request these changes, Halifax will need the agreement of the other party to the mortgage before it can agree any such changes.

I do understand that this is not the decision Mr M was hoping for, but as I have set out above, I cannot require Halifax to make the changes he has requested.

My final decision

My decision is that, for the reasons I have set out above, I uphold this complaint in part. In order to put matters right, Bank of Scotland plc trading as Halifax should pay Mr M a total of £400 (including the £150 it has already paid).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 4 September 2024.

Suzannah Stuart
Ombudsman