

The complaint

Mr A complains about how Bank of Scotland plc trading as Halifax has dealt with him following the ending of the term of his interest-only mortgage.

What happened

Mr A has an interest-only mortgage with Halifax that he took out in September 2004. The term ended in September 2020, but the mortgage balance is still outstanding. Mr A was overholding, had been making interest-only payments but had fallen into arrears on these and his ability to make payments was affected by the Coronavirus Pandemic as he could not work as a builder. Mr A cleared his arrears and has been making overpayments. The capital balance, which I understand to be over £380,000.00 remains unpaid. Mr A has been making overpayments to the credit of the account from about September 2022 and that account stood in credit of about £45,000.00 by June 2024. There is substantial equity in the property.

In August 2023, Mrs A on her husband's behalf contacted Halifax to discuss whether the mortgage could be extended. But Halifax considered the mortgage unaffordable on a repayment basis and wouldn't agree to an interest-only extension as there was no repayment vehicle. Halifax says that it suggested to Mrs A that they take advice from an independent financial adviser on any viable alternative solution. In September 2023, Mrs A said she was speaking to a broker but there were limited options and raised the possibility of her being added to the mortgage or as a last resort might sell her investment properties.

In October 2023, Mr and Mrs A applied for a joint mortgage but Halifax rejected his application as unaffordable. The final decision was made on the application at the end of January 2024. But it appears that Halifax collections department was unaware of this, requested information about the application from Mr and Mrs A and when this wasn't received, they moved the account to legal. Halifax has accepted that the move to legal was premature and it agreed to put a two month hold on legal proceedings, refund the legal costs incurred up to that time and pay compensation of £250. Mr and Mrs A say that Halifax didn't deal with Mr A appropriately as a vulnerable person who had suffered a stroke in 2022. Halifax says it was unaware of this until December 2023.

Our investigator considered that Halifax's offer of compensation was fair for moving prematurely towards legal proceedings but that it had otherwise dealt fairly with Mr A. Mr A through Mrs A disagreed saying that it should have been aware that Mr A was affected by a stroke in 2021 as she recalls telling Halifax that in 2022 and that fairer compensation would be £25,000.00.

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.

Mr A unfortunately suffered a massive stroke which left him paralysed on the right side of his body and he is now immobile. He asks Halifax to give him some time to get another mortgage to pay off his interest-only mortgage but, he says, instead of helping him it started

repossession proceedings. He says Halifax raised the possibility of a joint mortgage with Mrs A but then declined the application without reason. Mr A would like 12 months for Halifax to allow them to either remortgage or sell the property

I should firstly deal with the question as to when should Halifax have been aware that Mr A had a stroke. I am sorry to hear that he had and how it has affected him. Mrs A says Halifax should have been aware in 2022 that he had a stroke as she phoned Halifax to tell them. This is of some significance as Mr A believes that Halifax should have considered Mr A's vulnerability when making its decisions. Halifax says that it wasn't aware of this until December 2023. Although Mrs A says that she told Halifax about it in 2022 I could see no record of this on Halifax's files. Indeed, reading the file there is no indication before December 2023 from Mrs A, who was mainly dealing with Halifax that Mr A had any difficulties, in fact, the opposite appears to be the case.

There is a record on the file of a discussion in August 2023 between a member of the End of Term ("EOT") team and Mr and Mrs A. The notes read:

" Mr 68 self-employed builder, says he will retire at 80 with same level of income. Questioned sustainability of this as does some manual/heavy work but both insist several times this is correct as very fit and healthy."

That wasn't the case but not disclosed to Halifax until Halifax told Mr A that the account was moving to legal in December 2023. So, I can't fault Halifax for not acting on the information that Mr A had suffered a stroke if it was unaware of it.

Mr A says that Halifax didn't give him time to sort out a new mortgage. The term on this mortgage ended in September 2020. In 2019 Halifax wrote to Mr A saying that the mortgage term was ending. In September 2020 Halifax discussed the situation with Mr A. At that stage Mr A said that he was working as a builder, earning £26k-£30k per year with a freehold he said was worth £1.2m to £1.5m. He said that he planned to clear the arrears and downsize in the future and of course there is substantial equity in the property.

In July 2021 Halifax again spoke to Mr A about a repayment vehicle and whether this could be used to pay off the balance. The notes record that Mr A had put an investment of £450K into a property company of which his partner owned 100% and was MD of the company. At that stage Mr A was not looking to sell and wanted to remortgage until he was aged eighty. The notes on file record that Halifax in August 2021 asked for information from Mr A's accountant but there is no record of this being received. Halifax says it tried to contact Mr A in the meantime but there is no record of contact from Mr A until Mrs A contacted Halifax in 2023.

I see that Halifax engaged with Mr A and Mrs A regularly through the autumn of 2023 exploring possible solutions that included equity release – but Mr A at that stage didn't want it; a remortgage in Mr A's name - but that was unaffordable, which is understandable given that Mr A wasn't working; Mrs A had a portfolio of properties and in September was discussing raising money against these properties but then decided that this wouldn't work; also In September Mrs A said that they tried to get an external mortgage but couldn't because of Mr A's age but they were approaching another broker as the house was worth £3m and there was only £400k equity in the property; In late September 2023 Mrs A agreed to make an application to Halifax for a joint mortgage. Eventually, in January 2024 Halifax refused this application.

I've access to the documentation relevant to the application and I consider that Halifax fairly considered the application even if it was refused. I also note that in the discussions with Mr and Mrs A over the summer of 2023, Halifax made it clear that if a solution couldn't be found

that it would pursue legal action. Was that fair? The difficulty with upholding this part of the complaint is that it is now four years from when the mortgage balance should have been repaid and the solutions preferred by Mr A have not been productive. That said given the amount of equity in the property there are solutions that would be available to Mr A such as equity release or downsizing that Mr A appeared unwilling to consider at that time. So, in the absence of a solution which would allow Halifax to recover its capital within a reasonable period and given the passage of time since the term of the mortgage ended, and that other solutions were available to Mr A, I don't consider that it was unreasonable for Halifax to issue legal proceedings if there was no evidence of any progress. I note that throughout the negotiations in the autumn of 2023 that Halifax made Mr A aware that this would be a likely outcome if there was no progress

But at the same time Mr and Mrs A were progressing their application for a joint mortgage, Halifax decided to issue legal proceedings to recover the property. It appears that one section of Halifax dealing with recoveries was unaware that another part of the organisation was dealing with a new mortgage. So, the issue of the legal proceedings was premature and on that basis I will be upholding his complaint. But given that at the end of the joint mortgage application it was refused and there was no other proposal on the table, those proceedings would likely have issued in any event. Whilst agreeing that Halifax acted prematurely I can't agree with Mr A's request that they get a year to either remortgage or sell the property. This issue has been with them for some time and a further extended time of 12 months – unless there is a purpose to the further time - does not seem beneficial to either party, although a short period of two months may be helpful. If Mr A believes further time would be helpful, he should put that request to Halifax, and I will leave it to the bank to consider it fairly.

I appreciate that Mr A must have been annoyed with the issue of the legal proceedings prematurely. During the course of this complaint, Halifax reconsidered the matter and issued an offer whereby it agreed that it had acted prematurely and in recompense offered to pay the legal costs incurred during the period in question, pay £250 for Mr A's distress and inconvenience and put a two month hold on proceedings. I see that Mrs A suggests that the compensation should be higher saying that Halifax has unreasonably treated her husband. If I look at the whole picture I don't consider that it has. As I've said above it was unaware of his stroke. Mr A was aware that the capital should have been repaid by 2020 and Halifax allowed him an extended period to explore a solution to the problem of repaying the mortgage. It does seem that solutions are available but are unattractive to Mr A but that's not Halifax's fault. It's certainly at fault for issuing the legal proceedings prematurely but I can see that from looking at the file, Halifax made Mr A aware that if a solution couldn't be found – and there was nothing on the table after the joint application failed – that the legal process would follow. So, although I've no doubt that it was unwelcome for Mr A, the possibility had been flagged to him already. So, I consider the £250 offered fair.

Putting things right

Bank of Scotland plc trading as Halifax should pay Mr A £250, pay the initial cost of issuing the legal proceedings against Mr A and allow a period of two months before continuing with those legal proceedings from the date hereof.

My final decision

My decision is that I uphold this complaint in part and require Bank of Scotland plc trading as Halifax to take the action set out above.

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

reject my decision before 27 November 2024.

Gerard McManus
Ombudsman