

## The complaint

Mr and Mrs S complained about a letter they received from Bank of Scotland plc trading as Halifax, when their mortgage was paid off. That letter said because they live in Scotland, they should pay a lawyer to complete the removal of Halifax's charge on their property.

## What happened

Whilst this complaint is brought by both Mr and Mrs S, as the mortgage is in both their names, our dealings have been with Mr S. So I'll mainly refer to him in this decision.

Mr S said he'd complained to Halifax about a letter he'd received in April 2023, after he'd paid off his mortgage. He said this letter was the first time he'd been aware he would need to pay a solicitor hundreds of pounds to have Halifax's charge over his property removed.

Mr S said Halifax was preventing him from selling his house, and he found it difficult to accept nothing could be done to simplify this process. Mr S said he felt Halifax had just brushed him off.

Mr S later expanded on his complaint, adding that if there was a way he could submit the documentation required for discharge himself, then he thought Halifax should have told him about that, and helped him with the process. He also wanted to know why this was referred to as a specifically Scottish issue. Mr S said that the unexpected charge of hundreds of pounds at the end of an issue free mortgage must come as a shock to many people.

Mr S said he wanted Halifax to just release the charge on his property.

Halifax didn't think it had done anything wrong. It said that it cannot remove the charge over this Scottish property for Mr S. It said because this property is in Scotland, a legal discharge document has to be drawn up to achieve that, and Halifax cannot act for itself there, because it's also the grantor of the discharge.

Halifax has told our service that it first wrote to Mr S about this on 13 October 2023.

Halifax said many of its customers do choose to complete the discharge process shortly after repaying the mortgage, but it doesn't need to be completed until the property is sold or transferred. Halifax said there was a reference to this process in the documentation it provided when the mortgage was taken out, and it pointed to provisions about either completing a discharge document, or sending an electronic discharge direct to the Land Registry. Halifax said it couldn't send the electronic discharge straight to the Land Registry for Scottish properties. And it said its information does say *"If the property is in Scotland you will have to pay the necessary registration fees."* Halifax said it advises customers to consult a solicitor to draft the relevant documentation, but it's up to Mr S whether he does that, or submits a discharge request himself.

Halifax said there was no comparison to be drawn with other properties where the charge remained on the property. Here there had been no mistake in failing to remove the charge. Halifax had explained why it couldn't just do that for Mr and Mrs S.

Halifax also said it didn't agree the wording of its letters had been threatening.

Our investigator didn't think this complaint should be upheld. He said that he'd explained to Mr and Mrs S that the process for removing a legal charge is different in Scotland, where it is governed by Scottish law. There, the Registers of Scotland (RoS) require a discharge deed to be produced. Our investigator said he thought there was a reference to this in the information accompanying Mr and Mrs S's mortgage offer.

Our investigator said that because the requirement for discharge to be done by deed is imposed by Scottish law, not Halifax, Halifax didn't need to inform Mr and Mrs S that they would need to pay a solicitor for this. So he didn't think this complaint should be upheld.

Mr S replied, to say he was unhappy. He thought our response was overly simplistic and narrow. Mr S said he wasn't just looking for Halifax to pay the costs of his discharge, he said he also wanted changes to be made to improve the customer service Halifax provides, in an area that affects a lot of people.

Mr S said he didn't understand why we were referring to the differences between English and Scottish law. He said that wasn't the issue, the issue was the surprising yet unavoidable, and high level of the security release fee. Mr S said if he didn't do anything, then Halifax would retain its charge and he couldn't sell his house.

Mr S said we'd told him this was a standard process in Scotland. But he said if that was the case, then Halifax should have made clear there would be significant charge at the end of the mortgage, that customers had to pay this or they wouldn't be able to sell. He also said Halifax should have considered if there is a simpler, fairer and more customer centric way that security release could be achieved. He thought Halifax not doing these things, was unfair. Mr S asked us to tell him more about the Scottish process, and he said if Scottish home buyers are treated differently, then that's an unfairness Halifax should have considered.

Mr S said he didn't have copies of the original documentation where our investigator said these issues were mentioned. And he said Halifax's current website didn't make this clear.

Mr S said Halifax hadn't told him he didn't need to do this discharge now. It also hadn't told him he may be able to do this himself, and he thought Halifax should have told him that, then signposted him to help on how to do this. But he said his primary argument was if his contract with Halifax had ended, then Halifax should be releasing the security which was taken as part of the contract. Without that, he said he thought Halifax still owned his house.

Mr S repeated that he wasn't aware of the charge when he entered into this mortgage. He wanted to know if this was included in all relevant literature. He objected to the legalistic tone of communications from Halifax, and he said its process was unhelpful. Mr S said Halifax's current arrangements lacked customer focus, and remained unfair. He compared Halifax's approach in his complaint to a customer redress procedure elsewhere, where charges had been held unnecessarily after loans had ended.

Our investigator sent Mr S a copy of the booklet originally issued to him when he took out the mortgage. He said if Halifax had discussed discharging the security at the end of the

mortgage with Mr S, our investigator wouldn't expect Mr S to recall that now. But even if Halifax hadn't done that, it wasn't obliged to do so. So this complaint couldn't be upheld.

Our investigator repeated that the requirement for the discharge of the standard security to be done by deed is set by Scottish Law, not Halifax. He said he couldn't comment on the overall fairness of the law itself relating to this discharge. And he couldn't comment on a separate redress scheme either. He could only look at what was happening in this complaint.

Mr S said he still thought we'd taken too narrow an approach here. He said he had now read the booklet Halifax gave him when his mortgage started, and he thought it didn't set out for him what would actually be required once his mortgage had ended. Mr S said the booklet did tell him Halifax wouldn't release the security until his debt was paid, but not that Halifax would also refuse to release the security until he'd paid a solicitor to provide the discharge documentation. He thought without that, Halifax's booklet was misleading and incomplete.

Mr S wanted this complaint to be considered by an ombudsman, so it was then passed to me for a final decision.

### **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've reached the same overall conclusion on this complaint as our investigator.

Mr S has expressed the concern that our service has taken too narrow an approach to his complaint. However, our investigator has explained that we can only take into account the circumstances of Mr S's case. It's outside the scope of this complaint for us to, for example, ask Halifax to act differently when it deals with other customers in future, as Mr S has suggested.

Mr S said he thought Halifax should just remove this charge for him, and he referred to circumstances where he said other banks within the same group were taking steps to release securities that had been retained. I've explained that I can only look at the circumstances of this case. And I don't think a mistake has been made here, by Halifax, when it told Mr S he would need to take some steps himself to ensure that this security is released.

Mr S said he didn't think Halifax's original documentation warned him appropriately that he would need to pay a solicitor when his mortgage was paid off, to remove Halifax's security. He says there just isn't enough detail in Halifax's documentation for him to have understood this at the time he took the mortgage out. But Halifax isn't responsible for the process for removing security in Scotland. It is, as our service has set out, a result of Scottish law, which Halifax must follow. And I don't think that it would be unfair or unreasonable for Halifax not to have set out exhaustively for Mr and Mrs S, in full detail, this requirement of house purchasing which is not a stipulation of its mortgage agreement, but rather an entirely separate provision imposed by Scottish law. Equally, I don't think Halifax needed to provide costings for this for Mr S, or include this payment in the APR of the mortgage he and Mrs S have now repaid.

Mr S has also referred to Halifax having sent him what he felt was unnecessarily legalistic correspondence. But Halifax is here dealing with a legal requirement, and one which it has told us it isn't permitted, by Scottish law, to just carry out for Mr S. I've read the correspondence that Halifax has sent to Mr S, and I don't think it is unnecessarily legalistic or not consumer friendly.

Mr S also felt that if there was a way to avoid the costs of employing a solicitor to complete the discharge of security, then Halifax was responsible for telling him this, and advising him further on how to do this. But Halifax has said it recommends Mr S hires a solicitor.

The decision on how to proceed with the discharge is of course one for Mr and Mrs S to take. That includes whether they choose to do this now or at some point in future when the ownership of the property is changing, and whether they do choose to hire a legal professional to complete this work. But a house is usually the single most valuable asset someone will own, in their lifetime. So I don't think that it was unfair or unreasonable for Halifax to suggest that Mr S avoid any risks of getting the discharge wrong, by engaging a lawyer to complete this documentation for him.

I know that Mr S, in particular, will be disappointed by my decision, but I don't think this complaint should be upheld.

### **My final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S and Mrs S to accept or reject my decision before 7 November 2024.

Esther Absalom-Gough

**Ombudsman**