

## **The complaint**

Mr S complains about the action that Bank of Scotland plc trading as Halifax (Halifax) has taken to repossess his home.

## **What happened**

Mr S took out a mortgage with Halifax in June 2017. There were no issues with the mortgage until August 2022, following which arrears began to accrue on the account. In January 2024, Halifax commenced legal action to repossess the property.

Mr S says that Halifax has not complied with the steps it should have taken before proceeding with legal action to repossess his property under the Mortgage Pre-Action Protocol (PAP). He says that Halifax has failed to provide sufficient notice before taking the matter to court; has started court proceedings whilst he was on an agreed payment holiday; not made genuine efforts to resolve the matter outside of court or responded to his payment proposals; and proceeded with legal action despite knowing that the property was in the process of being sold. Mr S is also concerned about the accuracy of the evidence Halifax presented to the court in the PAP Checklist.

Mr S would like Halifax to go back to the beginning of the pre-court process and start again by waiting for three months of non-payment before sending out the 15 days' notice. As the property is being sold, he would like Halifax to adjourn the current court proceedings and allow at least six months for this to complete. He would also like Halifax to pay his court costs.

Halifax says that it only decided to take legal action on Mr S's mortgage account when it had exhausted all other options, had no contact from him and due to the level of arrears on the account. It said that prior to legal action being taken, it had not had a payment on the account since 31 July 2023 and had not spoken with Mr S since 14 November 2023, when he had indicated that he was looking to redeem the mortgage by the end of that month. There was no contact throughout December 2023 and no arrangement or payments on the account. Whilst Halifax says that it understands that Mr S is looking to sell the property, it requires a Memorandum of Sale (MOS) from an estate agent or conveyancer in order to put the account on hold and this has not been supplied.

Halifax accepted that there were errors in the PAP Checklist and that the form had not been correctly or sufficiently completed in the ways highlighted by Mr S. It paid him £100 to compensate him for the affect this had had on him.

Our Investigator looked into Mr S's complaint and didn't think Halifax needed to take any action. He found that Halifax had made regular and repeated attempts to have discussions with Mr S from the period the account went into arrears, but that Mr S had rarely engaged with Halifax in response and had declined to complete Income and Expenditure (I&E) reviews. The Investigator was satisfied that Halifax had exercised all options and did all it could before reasonably concluding that legal action was the best way forward to conclude the matter. Overall, he was of the view that Halifax had not acted unfairly or unreasonably by taking the matter to court and in declining to pause legal action.

Mr S disagrees with this so the case has come to me to make a decision. He maintains that Halifax has not complied with the necessary steps before taking legal action.

## **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.

Having looked at the evidence, I agree with the Investigator's view for broadly the same reasons and I've explained my reasons further below.

I've given careful consideration to all the submissions made by both parties, but I won't address each and every point that has been raised. I'll focus on the matters that I consider most relevant to how I've reached a fair outcome in keeping with the informal nature of our service.

### **Decision to take legal action**

A lender is expected to exhaust all other options before commencing legal proceedings to take possession of the property. The Ministry of Justice has set out in the Mortgage PAP what action it expects lenders to take before starting possession proceedings. This sets out, amongst other things, that a lender shouldn't start possession proceedings where the account has been in arrears for less than three months; the borrower is taking reasonable steps to sell the property themselves; or other settlement options are being explored.

Mr S believed that Halifax hasn't complied with the steps set out in the PAP before taking legal action and that it hasn't exhausted all options.

I have considered the history of the mortgage account as set out below. In August 2022, Mr S applied for a payment holiday as he was planning to put the property up for sale and this was subsequently granted for September and October 2022.

As a result of the payment holiday, the contractual monthly payment (CMP) was recalculated to incorporate the missed payments into the balance, which resulted in an increase to the CMP. Following this, arrears began to accrue on the account as the full CMP was not being covered. I can see that Halifax sent Mr S letters to inform him of the arrears which were accruing. Over this period, interest rates were also increasing and Halifax sent rate change letters including details of the new CMP.

Mr S contacted Halifax on 4 January 2023 following a text alert. He said that he had made a payment the previous day and was not aware of the arrears but was receiving letters and paying what they stated. By this time the arrears were approximately £1,500. Mr S advised that the property was on the market but that there was not yet an offer. Halifax asked if Mr S wanted a plan on the account to provide options but he said that he did not have time to do an I&E review and would pay the arrears when he received another letter and could check the exact amount of the shortfall. The arrears were cleared in February 2023.

The CMP was not made at all in March or April 2023. Letters were sent to Mr S to inform him of the arrears and Halifax attempted to call him on 31 March 2023. An amount lower than the CMP was received in May 2023. Halifax sent a further letter and attempted to call Mr S on 23 May 2023 in relation to the arrears. There had been no contact from him since 2 February 2023 despite the letters asking him to get in touch.

On 2 June 2023, Mr S contacted Halifax and informed it that he was not working due to caring for his partner after an operation. He said that he was not living in the property so had not received his mail for about three months. He did not provide an alternative address. Mr S said that he was going to sell the property as he couldn't afford to keep it. He said that he would either gather the information together to do an I&E review over the phone or would do it online and call back. He asked for up to two weeks to do this. However, Mr S did not call back within the two weeks he had asked for.

On 31 July 2023, Mr S applied online for an interest only period of six months under the Mortgage Charter. The application was declined as the account was by this stage over £2,800 in arrears. Following this, payments completely stopped. Letters were sent to Mr S asking him to call Halifax, along with texts being sent and calls being made.

On 5 September 2023, Mr S contacted Halifax and said that he had got an offer in principle for a buy to let mortgage and was awaiting a valuation. The adviser agreed a 30-day hold to allow time to see if the re-mortgage would go through as this would mean that the mortgage and arrears would be cleared in full. It was agreed that Mr S would keep Halifax updated on or before 5 October 2023 when the hold expired.

Mr S did not provide an update within the 30 days or make any payment. Halifax therefore sent him a final warning letter on 17 October 2023. By this stage, the arrears were over £7,500 and the letter said that Halifax would start legal action if it hadn't heard from Mr S in the next 15 working days.

On 3 November 2023, Mr S called Halifax to advise that he expected the property to be sold by the end of the month. However, on 6 November 2023, he made a request for consent to let the property. This application was declined on the basis of the level of arrears on the account and also as Mr S still stated that he was hoping to redeem the mortgage by the end of the month. On 7 December 2023, Halifax sent a statement for the last two years to Mr S to explain the arrears on the account. No payments had been made and there was no further contact from him.

In January 2024, the account was reviewed and Halifax decided that it was appropriate to commence legal action. Halifax sent Mr S a letter confirming this on 10 January 2024.

Whilst Mr S says that the letters Halifax sent to him did not constitute discussions with a view to resolving the matter, I am satisfied that Halifax made repeated attempts to have discussions with Mr S to try and resolve the matter by way of letter, texts and calls. I understand that Mr S was going through a difficult time as he had needed to stop working to care for his partner. However, he failed to meaningfully engage with Halifax in order to address the increasing arrears.

Having considered the evidence and the history of the account, I don't think Halifax was unreasonable to instruct solicitors to take legal action. The account was over £12,000 in arrears by this point with no payments having been made since a payment of £160 was made in July 2023 (the CMP being over £1,500). Mr S had previously said that he was trying to re-mortgage but had not provided an update in relation to this or contacted Halifax back to carry out an I&E by 5 October 2023 as agreed. He had also subsequently said that the sale of the property was due to complete by the end of November 2023 but there was no update in relation to this and no evidence to demonstrate that the property was in the process of being sold (and he had mentioned selling the property since 2022). Mr S said the mortgage was unaffordable for him, yet he declined to complete an I&E on a number of occasions and there were no plans in place to clear the arrears.

Halifax cannot be expected to continue to take no action, as this would mean that the increasing arrears would reduce the available equity in the property should Mr S sell it. I note that Mr S had repeatedly alluded to his plans to redeem the mortgage (and clear the debt) – either by re-mortgaging or selling the property – over many months without providing any suitable evidence to support and without addressing the arrears existing on the account. Therefore, I don't think it was unreasonable for Halifax to start legal action.

#### Payment holiday

Mr S is unhappy that Halifax started court proceedings whilst he was on an agreed payment holiday. Halifax says that there was no such payment holiday in place and no arrangement on the account.

He says that Halifax granted him a three-month payment holiday in October 2023 and explicitly instructed him to disregard any letters he received during this period. He says that this is why he did not make payments or contact Halifax during November and December 2023 to provide an update, as it was aware he was awaiting the sale of his house.

Mr S says that the information on the claim form regarding payment requests being made on 1 November 2023, 1 December 2023 and 1 January 2024 is therefore untrue as he was on an agreed payment holiday and so there were no missed payments.

Mr S relies on the letter dated 16 November 2023 from Halifax refusing him consent to let. The letter says:

*“This is because of one or more of the following reasons:*

- You’ve got a payment holiday in place.*
- Your account has been open less than 6 months.*
- Your account is in arrears.”*

Mr S has annotated this document to highlight the first bullet point, suggesting that this evidences the fact that he had a payment holiday in place. However, it’s clear from the letter that one or more of the bullet points might apply, not all of them. Given that the account had been open for more than six months, clearly the second bullet point did not apply. However, the account was in significant arrears of over £9,000 by this point. Halifax has confirmed that the consent to let was declined due to the arrears and the fact that the property was expected to be sold by the end of that month.

The letter does not provide any support for the fact that there was a payment holiday in place and I have seen no other evidence to suggest that this was the case.

As set out above, during the call on 5 September 2023, the account was put on hold for 30 days for Mr S to provide an update on the buy to let re-mortgage application by the end of this period. I have listened to this call and it was reiterated at the end of the call that Mr S should get in touch on or before 5 October 2023. However, he did not do this and there was no further contact until 3 November 2023. There was no mention of a payment holiday during this call.

#### Notice period

Mr S says that Halifax failed to provide him with the 15-day notice period before proceeding to court.

He refers to a leaflet from the National Homelessness Advice Service (NHAS) provided by Halifax’s solicitors which sets out information about the PAP and states *“If you have made an agreement with your lender and you have not kept to it, your lender must warn you, in writing, that they plan to start court action. They must send you a letter that gives you 15 working days’ notice of the action they plan to take”*. He says that this has not been done.

For the reasons I have explained, I am satisfied that there was no agreement in place on the account in the form of either a payment holiday or an arrangement to pay a certain amount towards the arrears. So there was no agreement which Mr S had not kept to, which would necessitate Halifax sending him a new notice.

As set out above, notice of impending legal action was sent to Mr S on 17 October 2023, setting out that Halifax would start legal action if it hadn’t heard from Mr S in the next 15 working days. No payments were made during this period and legal action was commenced more than 15 working days after this letter so I am satisfied that Halifax has complied with the timescales in this regard.

#### PAP Checklist

Mr S says that Halifax has misled the court with the statements it provided on the PAP Checklist, which is dated 27 January 2024. Although Halifax has accepted that there were deficiencies in the form, Mr S remains unhappy that it has not provided an explanation regarding these errors which he says could potentially lead to the unjust loss of his home.

The Investigator has provided a more detailed explanation in relation to Mr S's queries with the Checklist and I don't intend to provide any further detail here as it does not affect the outcome of the case. Halifax has accepted that the PAP Checklist could have contained more detail and, having reviewed the form, I would agree. However, the fact that the checklist contained a lack of detail does not mean that the decision to take legal action was incorrect.

The purpose of the Checklist is to ensure steps have been followed before a lender issues proceedings. The fact that the information on the form is incomplete is clearly unfortunate, however that in itself doesn't mean the steps haven't, in fact, been followed. For the reasons set out, I am satisfied that Halifax did follow the appropriate steps and that it was not unreasonable for it to commence proceedings when it did.

#### Resolving the matter outside court

Mr S complains that Halifax has not made genuine efforts to resolve the matter outside of court. He refers to the NHAS leaflet which states "*If you have tried to come to an agreement about changes with your lender and they have refused, they must let you know in writing why this is. Your lender must give you their reasons for not accepting your proposal within 10 working days*". Mr S says that Halifax has not responded to his written proposal for payment submitted to it on 5 February 2024 or provided a written acceptance, refusal or explanation regarding his offer.

I have considered Mr S's email to Halifax's solicitors dated 5 February 2024. Within the email he stated "*To demonstrate my commitment to resolving this matter, I am willing to explore the possibility of making partial payments towards the arrears. I believe that by negotiating an arrangement promptly, we can avoid the need for court intervention. I propose engaging in negotiations this week and subsequently informing the court of our intention to adjourn the hearing for a period of six months*".

I am not satisfied that this is a proposal for payment; it is – at best – a proposal to discuss the possibility of coming to a payment arrangement at some time in the future. I note that Halifax spoke with Mr S the following day, 6 February 2024, and again on 8 February 2024 and he declined to complete an I&E on both occasions and no payment proposal was put forward. So I do not consider this to be a payment proposal which would necessitate Halifax giving reasons for not accepting the proposal.

Mr S also says that Halifax denying him permission to let the property so he could use the money to pay his mortgage constitutes it rejecting a proposal for repayment. However, I disagree with this. As the time he requested consent to let, he had also said that the property would be sold by the end of the month, which would have meant that the entire mortgage was redeemed. However, the property was not sold and Mr S failed to keep Halifax updated during December and until legal proceedings were issued. Again, I do not consider this to be a payment proposal which would necessitate Halifax giving reasons for not accepting the proposal.

For the reasons set out above, I am satisfied that Halifax did make efforts to resolve the matter before issuing legal proceedings.

#### Property being sold

Mr S says that Halifax proceeded with court action despite knowing that the property was in the process of being sold.

Mr S says that Halifax was aware that the property was listed for sale and that a sale was underway. He says that Halifax didn't provide him with sufficient time to sell the property and refers to the NHAS leaflet which states "*If your home is up for sale and you are doing everything you can to sell it, your lender must consider delaying taking any action and give you time to sell your home*".

Firstly, I note that Mr S had first indicated to Halifax that he was intending to sell the property in August 2022. In November 2023, he told Halifax that he hoped the property would be sold by the end of the month. Following this there was no further update until after legal action was commenced. So I can't agree that Halifax hasn't provided sufficient time for Mr S to sell the property before taking legal action.

Mr S says that at no point before filing the court papers did Halifax ask him for a MOS or completion date; he says that he was completely unaware that this would have resolved the matter so didn't offer these documents. He says that when he did provide Halifax with the MOS and buyer's mortgage offer, it rejected them. He says that Halifax said it would only put the court proceedings on hold for the sale if he had a MOS on headed paper from an estate agent, which it knew he would be unable to get as he is selling the property privately.

Mr S says that his conveyancing solicitor updated Halifax's solicitor about the progress of the sale on 16 January 2024. Halifax's notes show that it asked Mr S's solicitors for a MOS once the contracts had been exchanged.

Clearly, this was after Halifax had already commenced legal action. I don't think it was unreasonable for Halifax to request a MOS – as independent evidence that the property was in the process of being sold – before agreeing to put the legal action on hold. This is particularly bearing in mind the length over which the arrears had been accruing and over which the property had apparently been on the market.

The next contact was not until 5 February 2024 when Mr S emailed Halifax's solicitors requesting that the legal action be paused as he believed that it was "*crucial to explore alternative options before resorting to court action*". Mr S explained that he had found a buyer but that there had been significant delays in completing the sale due to awaiting documents from the freeholder and a cyber-attack on his solicitors which meant they couldn't carry out conveyancing work for several weeks. He said that he was confident that the sale would be completed within three months but asked for no legal action to be taken for a six-month period.

On 6 February 2024, Mr S said that he would send the MOS. He contacted Halifax's solicitors again on 8 February 2024 to indicate that he had sent the MOS and that because he was selling the property privately the MOS would not be on headed note paper and he had written it up himself. On 9 February 2024, Halifax indicated that it would not postpone the hearing as the MOS was not deemed to be acceptable.

I have seen a document titled "*Memorandum of Sale: Updated 26 Jan 2024*" relating to Mr S's mortgaged property. However, this is not on headed paper and shows the expected date of completion to be 16 February 2024.

I don't think it is unreasonable for Halifax not to accept a MOS which is not on headed paper from someone independent of Mr S in the circumstances. Whilst I accept that Mr S would not have an estate agent if he was selling his property privately, he would need a conveyancer and I would expect that they would be able to provide a MOS on their headed paper. So, again, I do not think it was unreasonable of Halifax not to postpone legal action at that time as it still didn't have sufficient proof of the proposed sale going ahead. I note that the hearing itself was due to take place the next working day, on 12 February 2024. The hearing on 12 February 2024 went ahead but was adjourned to take place on 8 April 2024, when it was again adjourned.

Redemption statements have since been requested by Mr S's conveyancer but they have still not provided an acceptable MOS so Halifax was unable to put the court action on hold. Following the hearing in April 2024, Halifax was sent a further MOS which was still not acceptable as it was also not on headed paper and contained a completion date which had already passed. Again, I do not think it is unreasonable for Halifax not to hold the legal proceedings without independent evidence of the sale.

I know my decision will come as a disappointment to Mr S, but I can't say that Halifax has acted unfairly or unreasonably in the circumstances of this case and I don't uphold this complaint.

### **My final decision**

For the reasons I've explained above, I don't uphold this complaint and don't require Bank of Scotland plc trading as Halifax to do anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 27 January 2025.

Rachel Ellis  
**Ombudsman**