

The complaint

Miss S's complaint arises out of a mortgage with Bank of Scotland plc trading as Halifax. Miss S is unhappy that Halifax omitted to inform her that she could put her property on the market to sell it after Halifax's Assisted Voluntary Sale (AVS) process fell through.

What happened

I won't set out the full background to the complaint. This is because the history of the matter is set out in the correspondence between the parties and our service, so there is no need for me to repeat all the details here. In addition, our decisions are published, so it's important I don't include any information that might lead to Miss S being identified.

So for these reasons, I will instead concentrate on giving a brief summary of the complaint, followed by the reasons for my decision. If I don't mention something, it won't be because I've ignored it; rather, it'll be because I didn't think it was material to the outcome of the complaint.

In 1992 Miss S took out a mortgage with Halifax. The mortgage is in joint names with Miss S's former partner, but she has lived in the property alone since at least 2016. The property is a shared ownership property, with Miss S and her ex-partner owning 50% of the property (purchased with the Halifax mortgage) and the remaining 50% owned by a housing association, for which rent is payable.

The mortgage was taken out on an interest-only basis, and the term ended more than five years ago, in September 2019. At that point, the outstanding balance was just under £34,000. The outstanding balance is now just under £40,000 and no payments have been made since January 2019.

Since the mortgage term expired, Miss S has been liaising with Halifax through the End of Term and AVS teams. Miss S was also trying to sell her property on the open market, as a result of which Halifax agreed to hold off on any further action to recover the outstanding debt.

However, Miss S didn't sell the property herself, and the AVS process didn't proceed either. By August 2023 Miss S was told no further holds would be granted by Halifax. The AVS process was considered again, but Halifax deemed this to be unsuitable, given Miss S's circumstances, and the difficulty of both Miss S and her former partner needing to instruct the same solicitor.

Miss S asked Halifax several times from March 2024 onwards to take possession of the property. In September 2024 Miss S complained, saying that Halifax had never made it clear to her that she still have been trying to sell the property herself after the bank declined any further holds. Halifax didn't uphold the complaint, saying that it wasn't under any obligation to give Miss S advice about this.

Dissatisfied with the bank's response, Miss S raised her complaint with our service. An Investigator looked at what had happened, but didn't think Halifax had treated Miss S

unfairly. The Investigator explained that, whilst he accepted that Halifax didn't tell Miss S that she could continue to try to sell her property pending litigation action, the bank wasn't required to do so. He therefore didn't think Halifax was responsible for Miss S not marketing the property while the bank was considering litigation action.

Miss S disagreed with the Investigator and asked for an Ombudsman to review the complaint. Miss S said (and I summarise) that people are indoctrinated from an early age that professionals know better. Miss S said that she wanted extra time to submit documentation that she'd asked Halifax to provide to her relating to a Data Subject Access Request, but the Investigator explained that he would pass the complaint to an Ombudsman, who would request the call recordings if required.

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.

Generally, where there is a joint account, we require both parties to join in the complaint. However, I have discretion to disregard this where it is appropriate to do so. I'm satisfied that this is such a case and that I can consider the complaint in the sole name of Miss S.

I've noted Miss S's request to submit further documentation and for call recordings to be listened to. It's up to me to decide what evidence I need, and it's not part of our process to allow either consumers or the businesses they are complaining about to dictate how we investigate complaints, or what evidence we must consider. If this were to happen it would compromise our independence and impartiality. I'm satisfied that I have sufficient evidence to be able to reach a decision on this complaint.

The crux of this complaint is that, after Halifax said it wouldn't apply any more holds (which it had granted to allow Miss S to try to sell the property), it didn't tell her that she could continue to market the property in an attempt to sell it herself.

Halifax doesn't dispute that it didn't give Miss S this information. But Halifax isn't required to give Miss S advice about selling the property. I note that there had been considerable difficulties in Miss S trying to sell over a long period of time after the mortgage term expired, with one sale falling through. I don't doubt Miss S has done her best to sell, and that issues with the co-owner have impacted on this, but ultimately the outstanding mortgage debt remains payable.

Miss S knew by September 2024 that she could try to continue selling the property pending any court action. It doesn't appear that Miss S is actively taking steps to market the property through an estate agent at the present time. If it was, I'd expect to see it listed on the online portals. Given that Miss S's complaint is that Halifax didn't tell her she could continue to market the property privately, but then later found out she could, do so it is surprising that there is no active listing for it.

There is nothing to stop Miss S from trying to sell the property, and if she is able to do so, Halifax will need to see persuasive evidence of this, such as confirmation from solicitors that contracts are due to be exchanged. But given that the mortgage term expired more than five years ago, and the outstanding balance hasn't been repaid, and is continuing to accrue arrears, then I don't think it's unreasonable for Halifax to proceed with legal action.

I think it is also important to explain here that lenders will generally agree to put recovery action on hold whilst we look at a complaint, but they don't have to and we can't force them to. If the Financial Ombudsman Service had that power it would undermine our impartiality

between the parties to a complaint. It would also create the potential risk of consumers using our service to bring complaints with the intention of obstructing businesses that were trying to take legitimate action through the courts to recover money owed to them.

The power of the court to suspend possession where a mortgage term has expired is very limited indeed and so I think it might be helpful for Miss S to take advice from a solicitor, or from one of the free debt advisory services such as Citizens Advice, StepChange or Shelter, so she is fully aware of the options available to her. Miss S can find details of solicitors on the Law Society website and we can provide her with contact details for the other agencies, if she'd like us to do so.

In conclusion, whilst I have considerable sympathy for the position Miss S is in, overall I'm unable to find Halifax has treated her unfairly. Miss S remains free to market and sell the property privately, but I'm unable to tell Halifax to put any legal action on hold while this happens, given that Miss S has already had five years to repay the balance.

My final decision

My final decision is that I don't uphold this complaint.

This final decision concludes the Financial Ombudsman Service's review of this complaint. This means that we are unable to consider the complaint any further, nor enter into any discussion about it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 16 January 2025.

Jan O'Leary
Ombudsman