

The complaint

Miss A complains that in July 2014 she paid off the original amount she borrowed on her mortgage with Bank of Scotland plc trading as Halifax (Halifax) but that she has now paid this sum twice as a result of Halifax taking court action against her in June 2023.

What happened

Miss A took out a mortgage with Halifax in 1991 for £41,500 (which she refers to as being £28,500 plus a £13,000 outstanding balance) to be paid on a repayment basis over 25 years. Further lending was taken out in 2002, 2003, 2004 2005 and 2007. This was also on a repayment basis and the outstanding balance was to be repaid in full by the end of the agreed term, which expired in 2016.

In 2010, the mortgage, including all of the further lending, was switched to interest-only. Although Miss A had made some part repayments, there was still a balance outstanding when the term expired in 2016.

As the balance was not repaid following the end of the term, Halifax commenced legal action to repossess the property and recover the debt. The mortgage was redeemed in June 2023 shortly before the court was due to hear the case.

Miss A says that when Halifax took legal action against her in 2023, the information it presented to the court was that the breach of the mortgage related to the £28,500 of the funds she had borrowed in 1991. However, she says that she made an overpayment in July 2014 which repaid the original amount borrowed (which she says was £28,500) in full. Miss A says that she paid another £28,500 in June 2023 to redeem the mortgage. She therefore complains that she has paid the mortgage twice and that she is owed £28,500.

Halifax says that the mortgage balance was reduced following overpayments made by Miss A in 2014. However, this was not enough to repay the mortgage in full as she had taken further borrowing out, which was an extension of the mortgage and formed part of the legal charge. It therefore says that it was entitled to take legal action when the mortgage was not repaid at the end of the term. Halifax says that the balance continued to reduce due to overpayments and that this was under £16,000 when the mortgage was repaid in full in June 2023.

Our Investigator looked into Miss A's complaint and didn't think Halifax needed to take any action. He found that there was no dispute that Miss A had made a lump sum payment in 2014 and that Halifax had applied this to the account. The additional borrowing formed part of the overall mortgage and the Investigator found that Halifax was entitled to take legal action to recover the remaining mortgage balance in 2023.

Miss A disagrees with this so the case has come to me to make a decision. She maintains that the £28,500 she borrowed in 1991 was paid in full in July 2014 and that Halifax took legal action in relation to this part in June 2023 which meant that she had to pay it again.

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.

In March 2013, Halifax wrote to Miss A as it had changed the way it managed her mortgage. This meant that the mortgage account number had changed and that Miss A was able to see the different parts of the mortgage as they were in different sub-accounts. The letter set out that, as of 8 March 2013, the balance of each of Miss A's the sub-accounts was as follows: 1 - £1,170.78, 2 - £8,604.35, 3 - £51,780.17, and 4 - £5,669.05.

I can see from the annual mortgage statement from 2013 that the outstanding balance for part 4 of the mortgage was £5,694.81 as of 16 May 2013. But part 2 also had a remaining balance of £7,312.10 and part 3 had a remaining balance of £52,015.42 at this point. So the total remaining balance for the whole mortgage was £65,022.33.

Miss A says that sub-account 4 related to the original mortgage and that she made a part-repayment of £5,786.56 on 28 July 2014 which cleared the original mortgage.

The annual statement for 2014 shows that, as of 31 July 2014, the outstanding balance for part 2 was £4,161.58, for part 3 was £40,011.37 and part 4 was £31.40. So the total remaining balance for the whole mortgage at this point was £44,204.35. The list of transactions showed that a payment of £13,015.44 had been received in respect of sub-account 3 and a payment of £5,786.56 had been received in respect of sub-account 4 on 28 July 2014.

In light of the above, I am satisfied that the payments Miss A made towards the mortgage in 2014 were correctly deducted from the balance at the time, and that the payment towards sub-account 4 almost cleared this part of the mortgage.

All of the sub-accounts were due to be redeemed in 2016, however sub-account 1 was redeemed in May 2013, 2 was redeemed in May 2018, and 4 was redeemed in February 2015. Sub-account 3 was redeemed in June 2023 when the mortgage was redeemed in full.

Miss A has provided a copy of the court documents issued on 13 June 2023. The Particulars of Claim for possession of the property set out that Halifax was asking for possession on the grounds that Miss A had breached the terms of the mortgage entered into in 1991 because she had failed to repay the sums due by the end of the term. The Particulars set out that the amount loaned in 1991 was £28,500.

Miss A cleared the balance of the mortgage on 16 June 2023 with a payment of £15,939.46. She therefore says that – as the legal action related specifically to the mortgage that she took out in 1991 – she had already paid this off in July 2014 and the payment she made in June 2023 means that she has now had to pay it again.

I can see that, after taking out the original mortgage in 1991, Miss A took out additional borrowing on numerous occasions between 2002 and 2007. This additional borrowing was an extension of the mortgage which already existed and therefore formed part of the secured charge against the property, which remains in place until all of the borrowing has been repaid.

It is my view that the letters accompanying the offers of further borrowing also made this clear. For example, all of the letters I have seen stated that, by completing the additional borrowing, Miss A would be agreeing that the mortgage was varied so would be governed by the new mortgage conditions instead of the old mortgage conditions which currently applied. Likewise, by way of example, the letter accompanying the Mortgage Offer for the additional borrowing in September 2005 set out that the total loan would be under a new mortgage contract secured by the existing mortgage deed operated under the same mortgage account number.

Halifax took Miss A to court over the remaining balance of the mortgage as a whole, not in relation to a specific sub-account. There is no dispute that Miss A made significant

overpayments in July 2014. However, whilst these reduced the balance, they did not repay the mortgage in full. This was because the mortgage balance had increased since she took out the mortgage due to the additional borrowing.

The fact that the court documents said that the mortgage had been taken out in 1991 was correct; this was when Miss A had initially borrowed the money from Halifax and when it had put the charge on the property. The further borrowing was on the same mortgage account and formed part of that charge, even though it was taken out later. By 2023, the mortgage had not been repaid as agreed, so Halifax was entitled to take legal action, regardless of whether this was the original amount lent or subsequent lending on the same mortgage and regardless of the fact that some sub-accounts had already been redeemed.

I have looked at the annual statements and transactions for the remaining period of the mortgage following the part-repayments in July 2014 and I am satisfied that these accurately reflect the reducing balance over the years, taking into account Miss A's further part-repayments over that time.

Overall, I am satisfied that Miss A owed the money which she paid to redeem the mortgage in June 2023 and that this did not represent a balance which had already been paid. The money she paid in June 2023 was in respect of sub-account 3, which was the only part with a remaining balance at that point. The fact that sub-account 4 had already been repaid by this point did not mean that Halifax was unable to take legal action for the rest of the money owed and I am satisfied that Miss A has not therefore repaid the original amount of £28,500 twice.

I know my decision will come as a disappointment to Miss A, but I can't say that Halifax has acted 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 Miss A to accept or reject my decision before 6 February 2025.

Rachel Ellis
Ombudsman