

The complaint

Ms E's complaint is that, because Bank of Scotland PLC trading as Halifax failed to respond to her Data Subject Access Request (DSAR) made in September 2023 in a timely manner, she lost the opportunity to present documentation to the court which she believes would have allowed her to defend and counterclaim in mortgage possession proceedings. As a result, Ms E was evicted from the property on 13 October 2023.

Ms E wants Halifax to compensate her for her losses, which she estimates to be in excess of £280,000.

What happened

The evidence in the case is detailed, running to several thousand pages of documents. I've read everything, and it's apparent that some parts of the evidence are less relevant to the underlying case than others. There are also a lot of duplicated documents and repetition of arguments.

I must also explain that the Financial Ombudsman Service is independent of both consumers and the businesses they are complaining about. This means that we don't act for consumers, nor do we take instructions either from consumers or businesses, or allow either party to direct the course of our investigations; were we to do so, it would compromise our independence and impartiality. It's up to us to determine what evidence we need in order to investigate a complaint.

I've noted the questions which Ms E would like answered and her directions to our service on how she would like the investigation to be conducted. However, I am not required to take instructions from Ms E, or from Halifax.

No discourtesy's intended by that. It's a reflection of the informal service we provide, and if I don't mention something, it won't be because I've ignored it. It'll be because I didn't think it was material to the outcome of the complaint. This approach is consistent with what our enabling legislation requires of me. It allows me to focus on the issues on which I consider a fair outcome will turn, and not be side-tracked by matters which, although presented as material, are, in my opinion peripheral or, in some instances, have little or no impact on the broader outcome.

Briefly, Ms E had a mortgage with Halifax on a property held jointly with her former husband, Mr E. A possession order was granted in March 2019. In January 2018, prior to the possession order being granted, Ms E's solicitors were in correspondence with the bank's solicitors in relation to her claim that the bank wasn't entitled to possession. The solicitors were provided with documentation in relation to the mortgage. Notwithstanding Ms E's resistance to the bank's claim, the court was nevertheless satisfied that Halifax was entitled to a possession order.

In 2023 Halifax sought to take possession of the property and a warrant of eviction was issued by the court, which was due to be executed on 13 October 2023. Ms E made an application to the court suspend the warrant, and requested documentation from Halifax to assist her in her application. The documentation wasn't provided within the timescale Halifax had given. The application to suspend the warrant of eviction was unsuccessful and the eviction went ahead on 13 October 2023.

This has resulted in this current complaint. Ms E says that if the court had had the documentation she'd requested from Halifax, the eviction would not have gone ahead.

Initially Ms E was dissatisfied at the outcome reached by the Investigator on her complaint, saying that she had focussed on the wrong issues. Ms E clarified that the crux of her complaint was in relation to Halifax's failure to provide the documentation she'd requested in her DSAR in September 2023. Ms E says that this means she wasn't able to provide the court with what she said was critical evidence to defend the bank's mortgage possession claim.

In its final response letter dated 4 December 2023 Halifax explained that some of the documentation Ms E had requested had never existed. The bank also clarified that its solicitors had sent Ms E such documentation that did exist on 17 November 2023, and that those documents had also been sent to the solicitors instructed by Ms E in January 2018.

A different Investigator looked at the delay in responding to Ms E's request for documentation – which Ms E has identified as being the main complaint point she wanted us to consider – and, having done so, thought that Halifax should pay Ms E compensation of £400. This is because Halifax had given Ms E a timescale within which it said it would provide her with an answer to her request for documentation, but didn't meet this timescale.

Halifax agreed to pay the £400 compensation. Ms E didn't accept it. Ms E said that £400 is inadequate for the distress and inconvenience she suffered after being evicted from the property. Ms E says that if the bank had acted transparently, no court would have granted the bank possession of the property.

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 confirm I've read everything provided by Ms E and Halifax, and I've listened to Ms E's phone conversations with us about her complaint. Ms E has made it quite clear that the only issue which she wants us to consider is Halifax's failure to provide her with documentation she requested in September 2023 which she needed for her application to suspend the warrant of eviction. Therefore, whilst I've noted Ms E has raised peripheral issues – for example, whether or not Mr E paid off a credit card bill in 2009 – I'll only be looking at the issue Ms E says is at the heart of her complaint, which is the delay in Halifax responding to her request for documentation which she made in September 2023.

I will begin by explaining that I have no power to interfere with or change a decision reached by a court. I note Ms E provided the court with a detailed witness statement explaining why she needed the documentation, including Ms E's allegations that Halifax had breached the General Data Protection Regulation (GDPR). The court was therefore aware of the basis of Ms E's GDPR claim against Halifax. In the circumstances, if the court had considered there was documentation it needed to see that would, or could, have changed the outcome, it was within the discretion of the court to request this.

Given this, because the court decided the eviction was to go ahead, notwithstanding everything Ms E had said in her witness statement, any dissatisfaction Ms E has about the eviction going ahead is something Ms E would need to refer to the court. It's not something I will comment on here.

After Ms E made her request for documentation in September 2023, Halifax told Ms E that it could take about a week to access the account, and then a further three to five working days to send the documentation to her. However, Halifax didn't respond within that timescale, and the bank confirmed it had recorded a GDPR breach as a result of this.

I agree with the Investigator that the responsibility for deciding whether or not Halifax has breached GDPR lies with the Information Commissioner. I don't have any regulatory powers, and so it's outside my remit to determine this.

In the circumstances, I'm satisfied that Halifax's delay caused Ms E some distress. Ms E was under the misapprehension that there might be some documentation that could have been the "*smoking gun*" that would have prevented the eviction from going ahead. As I said above, this was a matter for the court to determine.

Putting things right

I note Ms E is claiming damages from Halifax in excess of £280,000. However, we don't award damages in the way a court would. Instead we consider the impact of the bank's actions in relation to the specific issue we are being asked to consider.

I think Ms E would, or should, have been aware from the information provided to her solicitors in January 2018 (which I would assume her solicitors had shared with her at the time) what documentation existed in relation to Ms E's mortgage borrowing with the bank. But I think when Ms E requested additional documentation in September 2023 the bank could have clarified sooner than it did – and prior to the court hearings in October 2023 – that the additional documentation Ms E was requesting had never existed (and never needed to exist). The bank could also have provided her with the copies of the existing documents at an earlier stage. These weren't sent to Ms E until the bank's solicitors emailed them in November 2023.

In the circumstances, a payment of compensation for distress and inconvenience is justified. I'm satisfied that £400 is fair, reasonable, and proportionate for the delay in the bank's response. I am conscious that this is very far off the £280,000 Ms E is claiming. However, as I stated above, we don't award damages, and so it remains open to Ms E, if she rejects this decision, to pursue her claim against the bank through the courts, should she wish to do so. I would suggest Ms E takes advice from a solicitor before embarking on any legal proceedings.

My final decision

My final decision is that Bank of Scotland PLC trading as Halifax must pay Ms E compensation of £400. I make no other order or award.

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 Ms E to accept or reject my decision before 6 February 2025.

Jan O'Leary
Ombudsman