

The complaint

Mr M complains that Bank of Scotland plc trading as Halifax made errors regarding the title to his property. He asks that Halifax corrects the title or refunds all mortgage payments.

What happened

Mr M has owned his property – a first floor flat – since 1996. He bought the ground floor below his flat in 2007. He sold part of the ground floor and retained part. Mr M recently found out there's an error with the property title at the Land Registry.

Mr M says he's unable to re-mortgage or sell the property or raise finance to invest in his business. He says he's paying legal fees to correct the matter. Mr M says the Land Registry told him it will take between three and five years to have the title corrected. Mr M has told us that this has taken a toll on his health and he's unable to work.

Mr M re-mortgaged his property with Halifax in 2008. He says Halifax and its solicitors are responsible for the situation as they didn't check the property title was correct before the mortgage completed.

Our investigator said Halifax didn't know the title was incorrect and hadn't done anything wrong.

Mr M said Halifax should have carried out due diligence before offering the mortgage. Mr M says he's been advised that Halifax's charge only applies to parts of his property. He considers he's already paid more in mortgage payments than the value of this part of the property and questions what he's now paying for. Mr M says it's wrong for Halifax to continue to hold an incorrect charge and not do anything to correct the situation.

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.

Where the evidence is contradictory or incomplete, I make a decision on the balance of probabilities – that is, what I think is most likely to have happened based on the available evidence.

Mr M took out a mortgage with Halifax in 2008. The loan was secured by a charge (the mortgage) on his property. The charge is registered on the title to Mr M's property at the Land Registry.

Mr M says the property title isn't correct. Based on the available evidence, it seems likely the errors with the title came about when Mr M bought the ground floor property or when he later sold part of it.

The re-mortgage application submitted to Halifax by Mr M's broker in 2008 said the security property was on the first floor. There's no mention of the ground floor property or changes to the title related to the purchase and sale of part of the ground floor property.

Halifax instructed a valuation of the property. There's nothing in the valuation report to suggest a possible problem with the property title.

After the mortgage offer was issued, solicitors were instructed to carry out the legal work necessary for the mortgage to complete. Halifax said the solicitors didn't raise any concerns about the title.

When Mr M raised a complaint about the title being incorrect, Halifax referred the matter to the solicitors. The solicitors told Mr M they hold no records regarding the matter, due to the time that has passed.

Halifax offered Mr M a mortgage – a loan secured on Mr M's property. If Mr M doesn't repay the mortgage Halifax can take possession and sell the property to recover the debt. Halifax has an interest in the property title being correct – any problems could affect its ability to sell the property to recover the debt.

I think it's unlikely Halifax would have offered the mortgage to Mr M if it had known in 2008 there was a problem with the property title. I think Halifax would have declined to lend until Mr M had arranged for the title to be corrected. I think Halifax offered and completed the mortgage unaware of any problem with the property title.

Mr M says he's been advised that Halifax's charge only applies to part of the property title, so it wouldn't be able to take possession of his property as a whole. He also questions what he's paying Halifax for if the charge is only on part of the property. From what Mr M has said, I think he might have the impression that he doesn't need to make mortgage payments or that there'd be no consequences if he stopped making payments. In fairness, I need to tell Mr M that's not the case. Withholding mortgage payments could have consequences that could leave Mr M in a worse position.

When Halifax lent the money to Mr M it did so on the basis Mr M would repay the loan (with interest) in accordance with the mortgage terms and conditions.

If Mr M stops making mortgage payments Halifax can, ultimately, take possession and sell the property to recover the debt. Problems with the title or the charge could increase Halifax's costs in doing this. Halifax could add these costs to the mortgage balance. That would include any legal costs it incurs in correcting the property title to enable the property to be sold. If the amount that the property is sold for isn't enough to repay the mortgage balance, Halifax can ask Mr M to pay the shortfall. It's likely any missed mortgage payments and arrears would be recorded on Mr M's credit file which could make it difficult for him to access credit in future.

With this in mind, Mr M should consider carefully any decision to withhold mortgage payments. He might want to take independent advice before deciding what to do.

I understand Mr M's frustration about the situation he's in. At the moment, he can't sell or re-mortgage the property. The property title will need to be corrected so that he can do this, and to reflect his ownership of the property. From what Mr M said this will take some time and he will incur legal costs.

Based on the available evidence, I can't fairly find that Halifax was responsible for the problems with the property title or that it knew – or should have known – there was a problem with the property title in 2008. It follows that I don't think it's fair and reasonable to require Halifax to refund mortgage payments, to correct the title to Mr M's property or to pay Mr M's legal costs for correcting the title.

My final decision

My decision is that I do not uphold this complaint

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 14 March 2025.

Ruth Stevenson
Ombudsman