

The complaint

Mrs P complains that Bank of Scotland plc trading as Halifax wrongfully charged her mortgage payments between 2011 and 2024 when the mortgage is invalid and wrongfully actioned court proceedings against her. Mrs P wants the payments and interest refunded to her.

What happened

In 2023 Mrs P phoned Halifax to make a Data Subject Access Request ("DSAR") but was told that her details weren't recognised, and that Halifax didn't have an up-to-date signature for her although she had recently signed a document when she took out a new mortgage product. Mrs P then experienced difficulties with getting the DSAR delivered. Mrs P enquired as to how the DSAR could have been supplied without her signature but got no satisfactory response. Mrs P stopped making her mortgage payments because of her concerns with the way Halifax was operating and the account went into arrears. Mrs P was concerned that Halifax couldn't produce to her documents including a Mortgage Note Document that she considered material to the mortgage. On 16 May 2024 Mrs P got a letter saying that legal action had started with a court date, so she paid the arrears. Although the arrears were paid, Halifax added litigation fees to the account. Mrs P wants a full refund of the mortgage payments from 1 May 2023 when the new mortgage product was put in place and refund of the litigation fees. Mrs P made a number of complaints which Halifax addressed in a number of final response letters:

- On 2 February 2024 Halifax responded to Mrs P's complaint about her mortgage account number and date of birth not existing on its system when she contacted it.
- On 14 February 2024 Halifax responded to Mrs P's complaint about Halifax's inconsistency in requesting a signature verification before supplying the DSAR but then supplying it in any case.

These final response letters contained referral rights to this service, and we could consider those complaints if brought to us with six months of the dates of the final response letters, but they were not, and our investigator said that under the rules that apply to us we could not consider them. Mrs P also complained that Halifax unfairly took repossession proceedings against her because she was withholding payments. Our investigator's view was that it was reasonable for Halifax to do that as she had decided not to make any payments. Mrs P also says that the mortgage is invalid because certain documentation is missing but our investigator's view was that as Mrs P had borrowed money from Halifax it was reasonable for Halifax to require Mrs P to repay it. So, our investigator didn't recommend that this complaint should be upheld. Mrs P disagreed saying in summary that Halifax hadn't yet provided the Mortgage Note (promissory) or the mortgage deed and although it was provided by our investigator, it had not come from Halifax.

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 understand that this mortgage was redeemed at the end of November 2024. This complaint began because Halifax failed to recognise Mrs P's details when she made a DSAR enquiry and the correspondence ends with Mrs P writing to us at the end of January 2025 requesting that we investigate a mis-sold mortgage and for Mrs P to get a full refund from Halifax including repayment of the mortgage money and compound interest and full refund of a £100,000 deposit. That's not how this complaint started which was about the lack of Mrs P's details on the system and the DSAR request. As our investigator pointed out we are prevented from considering the complaints referred to above as Halifax dealt with them in final response letters of February 2024 that gave Mrs P referral rights to bring those complaints to this service within six months of the date of those letters. As Mrs P didn't do that and there were no exceptional circumstances that prevented Mrs P bringing the complaint to us within that time period, we cannot consider those complaints.

We can consider Mrs P's complaint about Halifax's decision to issue legal proceedings against her because of her refusal to make a payment as Halifax had not produced the documents she had requested. I note that one of the documents she has asked for is a "*Mortgage Note Document*" and criticises a member of Halifax's staff for being unfamiliar with one. But I've never encountered a document in a mortgage transaction referred to as such before so I understand why that member of staff may be unfamiliar with it. Mrs P also at various times refers to a Promissory Note. As I understand it that may be the mortgage offer document but is never in my experience referred to as such and so again I can understand why a Halifax adviser may be unfamiliar with the terminology. I can see that during the course of the complaint Halifax has produced documents that Mrs P requested that were available to it. But in any case If Halifax didn't produce some documents that Mrs P wanted that it could produce, Mrs P's route was to take the complaint about that to us within the time allowed by our rules.

Instead, Mrs P decided to withhold her mortgage payments. I've seen a copy of a mortgage offer and further advance offer which are the documents I would expect to see when a mortgage offer and further advance is made. These indicate that Mrs P was advanced monies on the basis that she would repay it by agreed instalments. So, the evidence I have is that Mrs P borrowed money and agreed to pay it back but refused to do so. This was not a case where Mrs P was suffering from financial difficulties but was a refusal by Mrs P to make payments which she had agreed to make when she borrowed the money. I see nothing wrong with Halifax beginning legal proceedings to recover the payments due to it that Mrs P refused to make. I can't fairly uphold that complaint although I note that Halifax made a proactive offer to settle that complaint by refunding the litigation fees incurred.

The other issue is Mrs P's complaint that the mortgage is invalid and the money she paid and other money should be refunded to her. This was not part of the original complaint brought to us and doesn't appear on the complaint form Mrs P submitted. As our investigator has said our role is not to decide on the validity or otherwise of documentation – that's a matter for the courts – but what is fair and reasonable in all the circumstances. So, if someone borrows money on agreed terms we usually consider it fair that it be repaid on those terms. In any case, Halifax told us by email of 15 November 2024 that as Mrs P had not brought concerns about a mis-sale to it previously, that it would want to have the opportunity to investigate and respond to any allegation of a mis-sale as part of a complaint and it had yet to get the opportunity to do. So, at this stage if Mrs P wishes to pursue her complaint against Halifax that the mortgage was mis-sold she should write to Halifax in the first place outlining the basis of her complaint. But for the reasons set out above I can't fairly uphold the complaint that I can consider.

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 Mrs P to accept or reject my decision before 13 May 2025.

Gerard McManus
Ombudsman