

The complaint

Miss A complains about the way Bank of Scotland plc trading as Halifax (Halifax) has handled her mortgage account following the breakdown of her relationship with the joint borrower, who I will call Mr W.

What happened

Miss A took out a mortgage with Halifax with Mr W in March 2019. They separated in January 2021 and Miss A says that it was initially agreed between them that Mr W would pay the mortgage, transfer the property and the mortgage into his sole name, and make a lump-sum payment to Miss A. However, this has not happened, and Miss A remains a joint party to the mortgage.

Mr W continues to occupy the property but has not maintained the mortgage payments. Miss A has agreed that the property could be sold but says that Mr W has refused to vacate the property or progress the sale, which means that the arrears are increasing every month. She would like Halifax to repossess the property – as opposed to her continuing to be liable for the mortgage – despite the potential impact of this.

Miss A says that she was the victim of financial abuse from Mr W throughout the relationship. She says that this is now continuing as she is liable for the mortgage which now has extensive arrears due to Mr W's financial mismanagement. Miss A says that this has been repeatedly explained to Halifax and that arrears are ongoing and have been escalating for more than three years.

Miss A's solicitor wrote to Halifax on 7 March 2024 in relation to these issues and requested that she be released from her obligations under the mortgage and paid her share of the equity. There was no response, so Miss A's solicitor wrote again to Halifax on 10 May 2024 to make a formal complaint and request a response to their original letter.

Miss A says that the situation has resulted in her continuing to be the victim of ongoing financial abuse at the hands of Mr W. This has affected her financially along with impacting upon her mental health. She would also like Halifax to remove any negative reporting from her credit file to remove, which she says would more accurately reflect her individual creditworthiness.

Halifax agreed that it had made an error in not responding to the letter sent by Miss A's solicitor dated 7 March 2024. However, it did not agree that it had made any errors in relation to the way it had handled the mortgage. Halifax said that it was unable to make either account holder take full responsibility for the mortgage account or make payments, as both are responsible for the payments jointly and individually. It said that it could only proceed with legal action to repossess the property once it had exhausted all other options, as it had a duty of care towards both parties on the mortgage.

Our Investigator looked into Miss A's case and concluded that it was not for Halifax to get involved in arrangements with the property where account holders have separated. It was her view that Halifax had acted fairly in terms of not taking repossession action sooner, as legal action should only be taken as a last resort. She also thought that the arrears reported by Halifax to credit reference agencies (CRAs) were in line with the conduct of the account and that she therefore did not have the grounds to say this should be removed from Miss A's credit file. However, our Investigator did not think Halifax had acted fairly in not responding

to the letter from Miss A's solicitor and recommended that Halifax pay Miss A £200 in respect of the distress and inconvenience caused.

Miss A disagrees with this so the case has come to me to make a decision. She says that the mortgage was unaffordable for Mr W even if he was able to clear the arrears and that he was actively blocking a private sale. She therefore maintains that Halifax should have brought legal proceedings much sooner.

I understand that since Miss A raised this complaint, Halifax has written to her to inform her that it has paid over £16,000 for unpaid ground rent/service charge in order to protect its security and that this has now been added to the mortgage account. As explained by our Investigator, this is a new complaint and Halifax needs to have the opportunity to investigate this issue. If Miss A is unhappy with the outcome, she can make a further complaint to this Service separately.

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.

When Halifax was notified of the separation of the parties by Miss A in January 2021 and the surrounding circumstances, it added an indicator to the account to make anyone dealing with the account aware of this. I think that this was reasonable in the circumstances.

When Miss A and Mr W took out the mortgage, they agreed that they would be jointly liable for repaying the debt in accordance with the terms. Whilst they have now separated, it is not for Halifax to get involved in any arrangements as to who pays the mortgage, as this would be a matter between Miss A and Mr W.

Halifax would not be able to simply remove Miss A from the mortgage; this would require an application by Mr W to transfer the mortgage into his sole name and would be subject to an affordability assessment. I can appreciate that this puts Miss A in a difficult position. However, I can't say that Halifax has acted unreasonably or unfairly in not removing Miss A from the mortgage.

Halifax says that the property has been on the market for sale, and where possible it would encourage a private sale rather than taking legal action. It says that Mr W is still living in the property and that repossession can only be considered as a last resort.

In respect of the legal action, I can understand why Miss A would like the property to be repossessed in the circumstances and that she is concerned about the amount of time taken for Halifax to instigate this given the increasing arrears. I also appreciate that she feels that Mr W was holding up any potential sale.

However, Halifax has to have consideration for, and act fairly towards, both of the mortgage account holders. Mr W remains living in the property and repossession proceedings would only be taken as a last resort where other measures to get the mortgage back on track had failed. I wouldn't expect Halifax to carry out an investigation into what is happening with the sale, but I would expect it to allow a reasonable time for this to proceed. I understand that Halifax has now commenced proceedings to repossess the property as there appears to have been no progress in respect of repayment of the arrears or the private sale of the property.

I can see that Halifax wrote to Miss A in June 2024 to say that it was starting legal action against her and Mr W due to the arrears on the mortgage account, which were almost £20,000 by this point. Having reviewed the contact notes and account history for the mortgage, I am satisfied that it was fair for Halifax to have waited to commence these

proceedings having regard to the interests of both parties. And I can't say that it has acted unreasonably towards Miss A in this respect.

In relation to the reporting of arrears on Miss A's credit file, I can appreciate why she is unhappy with this in the circumstances. However, lenders are obliged to report accurate information to CRAs. For the reasons set out above, Miss A remains jointly liable for the mortgage. The mortgage is in arrears and has been for some time, and Halifax has made Miss A aware of this on an ongoing basis. Therefore, it would not be appropriate for Halifax to remove this information.

In terms of the letter from Miss A's solicitor dated 7 March 2024, I can see that Miss A had to contact Halifax on a number of occasions as there had been no response to the issues raised. On 16 April 2024, she told Halifax that the situation set out in the letter was impacting her health. She also spoke with Halifax on 22 April 2024, 23 April 2024 and 1 May 2024. On 10 May 2024, Miss A's solicitor wrote to Halifax to complain as it had still not had a response. A response was eventually received on 30 May 2024.

Whilst I don't think Halifax responding sooner would have changed what happened in respect of the mortgage, I still think that it was unreasonable for it not to respond in a timely manner in the circumstances. It was clear that this was already a stressful situation for Miss A and the fact she (and her solicitor) had to repeatedly seek a response to the issues raised exacerbated this. In the circumstances of this case, I think that Halifax should pay Miss A £200 in respect of the distress and inconvenience caused.

Putting things right

For the reasons set out above, I uphold this complaint and require Halifax to:

- Pay Miss A £200 in respect of the distress and inconvenience caused (if it has not already paid this).

My final decision

For the reasons I've explained above, I uphold this complaint against Bank of Scotland plc trading as Halifax and require it to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A to accept or reject my decision before 14 April 2025.

Rachel Ellis
Ombudsman