

The complaint

Mrs M has complained about a mortgage that she held with Bank of Scotland plc trading as Halifax.

She's said that whilst she took out the original mortgage (in 2002), the two further advances (in 2008 and 2009) and remortgage (in 2017) were taken without her knowledge, understanding or consent.

What happened

I understand Mrs M bought the property in 2002 under a right to buy scheme. The mortgage raised to buy the property was for £13,200 and it was taken out in joint names with Mrs M and her son (who I will refer to as Mr X). Mrs M has said the mortgage was based on Mr X's income as she was retired, and he was living in the property at the time.

In 2008 a £10,000 further advance was taken out for debt consolidation purposes, and in 2009 a £5,500 further advance was taken out for home improvements.

In 2017 Mrs M and Mr X had a meeting with Halifax. By then there was only around £800 left from the original mortgage and two further advances, and an application was made for a remortgage to borrow just under £68,000 (so around an additional £67,000) over a 17-year term. The application was to give the funds to Mr X's partner so she could buy a property in her name.

Whilst a couple of direct debits were returned as unpaid in 2023, those were made up in the same month and, those aside, all the payments over the life of the mortgage were made in full and on time. I understand all the direct debits were collected from a bank account in Mr X's sole name.

Mrs M has told us that Mr X moved out of the property in around 2005 to live with his partner and their children, and after he moved out he began charging his sister rent as she still lived in the property with Mrs M. She said he collected all post with his name on it, and she wasn't allowed to open it.

Mrs M has said in the summer of 2023 she noticed more Halifax branded post was arriving, so she opened a letter that was addressed to her and Mr X, and that said the mortgage payment couldn't be collected, but she thought the mortgage had been repaid by then. Mrs M has said she ordered a mortgage statement and that showed there was an outstanding debt of around £48,400 and multiple missed payments. Following this Mrs M made a data subject access request to Halifax for all the mortgage paperwork.

Mrs M complained to Halifax in November 2023. She said over the last three years she had been dealing with a dispute with Mr X, which had escalated to a legal case as Mr X wanted the house sold, so the equity would be released. Mrs M said she had recently requested copies of all the historic mortgage statements and upon receiving them *"discovered that a further three mortgage advances had been taken against the property over the last fifteen years, without my knowledge, my understanding or my consent"*.

Halifax asked about the ongoing legal case and then said as that would have a direct bearing on the complaint, it wouldn't be in a position to respond to the complaint until the legal case had been resolved. That's because both Mrs M and Mr X mentioned the mortgage borrowings in their witness statements, and Mr X was seeking the transfer of the property into his sole name.

Mrs M and Mr X entered a Tomlin Order, in which the property was to be transferred to another family member and Mrs M was to pay £32,500 to Mr X.

The mortgage was repaid in April 2024.

On 6 August 2024 Halifax wrote to Mrs M's solicitor. It said:

- Whilst it appreciated Mrs M's concerns, those would have been part of the legal case being considered and formed part of the settlement that was reached.
- It understood the title to the property was to be transferred to a family member and no transfer/sale price is noted, which doesn't tie in with the solicitor's comments that Mrs M had to sell the property.
- There was nothing to explain why Mrs M had to pay £35,000 to Mr X or how the sum was calculated. It said, in light of the allegations made by Mrs M it was surprising she had to pay that sum to Mr X.

Our Investigator considered the complaint. They said they didn't think there was anything that would have alerted Halifax to any potential issues. The notes indicated that Mrs M attended face to face meetings for the further advances and remortgage, and she signed the declarations to apply for the loans. They also said the Tomlin Order was in full and final settlement of any claims between Mrs M and Mr X, and so even if they were to uphold the complaint there was nothing to direct Halifax to do as the dispute had been settled.

Mrs M didn't agree and so the case has been passed to me to decide.

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.

Although I've read and considered the whole file I'll keep my comments to what I think is relevant. If I don't comment on any specific point it's not because I've not considered it but because I don't think I need to comment on it in order to reach the right outcome.

Mrs M has said the two further advances and 2017 remortgage were taken without her knowledge, understanding or consent. But the paperwork from the time indicates all three were taken out on a face-to-face basis with both Mr X and Mrs M being present. And for the 2017 remortgage Mrs M has admitted she was present at the meeting, albeit she says she had no idea what the meeting was about and the adviser engaged in conversation with Mr X and his partner, with nothing being explained to her. She said if she'd known the meeting was about a remortgage then she wouldn't have signed anything.

It seems there was nothing in any of those meetings that would have highlighted to Halifax that Mrs M and Mr X's family relationship would later break down in the way it did, that Mrs M was being coerced into taking out the loans or that she was unaware they were being taken out. Whilst Mrs M was medically retired and reliant on her pension and benefits that, in itself, doesn't mean Halifax should have thought there was anything untoward going on. The

mortgage lending was based on Mr X's income and he was making the repayments in full and on time.

I acknowledge what Mrs M has said about the nature of her relationship with Mr X, and I've a great deal of sympathy for that. She has described a difficult relationship where Mr X was in control, and she did as she was told. But even in that context, it is difficult to see how Mrs M could have sat through an entire meeting about arranging a remortgage, without knowing a remortgage was being discussed. Even if the adviser was engaged in conversation with Mr X and his partner, Mrs M was still present and able to hear and see what was being discussed, and at any time could have asked if she needed to know what she was signing.

A mortgage meeting like that wouldn't have been quick, it would have involved a discussion about the amount to be borrowed, interest rates, mortgage length, reason for the remortgage, income and expenditure amongst others. And I can't see the mortgage adviser would have made Mrs M sit outside and not hear or see anything that was being discussed when Mrs M was a party to the mortgage and recorded as being present. On balance, I don't find it likely that Mrs M was completely unaware a remortgage was being arranged in 2017, which is what she is saying as the basis of her complaint (not that she was aware, but was coerced into agreeing to it).

Mrs M's representative has said that no evidence has been provided to demonstrate Halifax considered Mrs M's potential vulnerability or the possibility of coercion. They also said there is no evidence that Halifax recommended Mrs M seek independent legal advice as she wasn't benefiting from the funds being raised in the remortgage.

I have considered those points very carefully and whilst I acknowledge the points Mrs M's representative is raising, I'm satisfied I don't need to make a finding on them to reach a right outcome in this complaint. I'll explain why.

The 2008 and 2009 further advances were resolved in 2017 as even if Mrs M didn't receive the benefit of the funds, all the mortgage payments were made by Mr X and the balance was almost fully repaid by the time of the remortgage. So it seems Mrs M hasn't suffered a demonstrable financial loss in respect of those. Mr X borrowed the funds and Mr X paid them back. Whilst Mrs M says she paid money to Mr X over the years in rent, that isn't the same as making the mortgage payments; there's nothing to indicate Mr X still wouldn't have charged rent to Mrs M for her living in a property he partly owned even if there was no outstanding mortgage on it.

If I were to uphold the complaint that Halifax should have done more to protect Mrs M in respect of the 2017 remortgage (and to be clear, that isn't a finding I have made either way) and the mortgage was still outstanding, then the redress I would have ordered would have been for Halifax to not pursue Mrs M personally for the mortgage debt. But I would have said Halifax's charge could remain on the property to secure the debt for which it could pursue Mr X. So the full debt would have remained outstanding and secured on the property, but Halifax could only ask Mr X to repay it (not Mrs M).

That's because there's no dispute that Mr X borrowed the money from Halifax, so it is only right that he must repay it (plus interest) in line with the mortgage contract. The mortgage contract also allows for that debt to be secured over the property and again it would be right for that to remain, as Halifax would require security for that lending.

Normally in cases like this, we would then tell the parties that are in dispute that they need to resolve the equity situation between themselves either as part of the sale process, or through some other means (whether that be formally through a legal process, or informal mediation between themselves). Either way we would tell the lender they are entitled to their

money back when the property is sold, it would be up to the borrowers to then work out what that means for them in terms of who gets what remaining equity (if any).

I would not have told Halifax that it needed to write off any part of the debt, or that it couldn't keep the charge secured over the property to be fully repaid when the property was sold, transferred or remortgaged.

However, as the property was transferred into third-party ownership and the mortgage was repaid in April 2024 then the mortgage situation has already been resolved in line with what I would have told Halifax to do (if I'd upheld this complaint). There no longer is a mortgage for me to tell Halifax that it can pursue Mr X but not Mrs M for (albeit the charge could remain over the property) as it was repaid when the property was transferred. And as Mrs M entered into a Tomlin Order it seems the division of the equity in the property has also already been agreed.

If Mrs M feels the Tomlin Order she agreed to wasn't fair or wasn't right in her individual circumstances, then that is something she would need to take up with her legal representative and/or the court. The matters being argued in this complaint about Halifax, are the same arguments Mrs M raised as part of the process that led to the Tomlin Order, albeit through a slightly different lens (as here it is what Halifax could or should have done). But even taking that into account they are the same arguments that Mrs M didn't knowingly take out the remortgage and she didn't benefit from it, and the outcome of those arguments being raised through that legal process is that Mrs M agreed to sign the property over to a third party family member and that she would pay Mr X £32,500. I understand from Mrs M's submissions that the third-party family member paid off the outstanding mortgage that was in Mrs M and Mr X's name and provided the funds to pay the £32,500 to Mr X.

If Mrs M felt that didn't reflect a fair way to resolve the issues taking into account everything she's said about what happened and the nature of her relationship with Mr X, then she needed to make those arguments as part of the negotiations for the Tomlin Order or not agree the settlement.

I appreciate this will likely come as a disappointment to Mrs M. This decision doesn't intend to in anyway downplay or disregard her situation as I understand how distressing this must be for her. But even if I were to say Halifax should have done more (which isn't a finding I've made either way), for the reasons I've explained I wouldn't be ordering Halifax to do anything as the mortgage situation has already been resolved and the agreement reached in the Tomlin Order was outside of Halifax's control.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 26 November 2025.

Julia Meadows

Ombudsman