

## **The complaint**

Mr and Mrs U complain that Bank of Scotland plc trading as Halifax is pursuing them for a shortfall on their mortgage following the sale of their property.

## **What happened**

In 2008 Mr and Mrs U took out a mortgage with Halifax. They borrowed £64,000 to buy a property valued at £65,000. It was a repayment mortgage with a 35 year term.

Unfortunately Mr and Mrs U experienced some financial difficulty around ten years later. In 2019 the mortgage was in arrears and Mr and Mrs U told Halifax they intended to sell the property, and that it was on the market for £62,500.

However, the property didn't sell. Mr and Mrs U let it out to tenants – without obtaining Halifax's consent.

In October 2021, Mr and Mrs U asked Halifax about a voluntary surrender (handing the property over to Halifax to sell without a formal repossession taking place). Halifax sent Mr and Mrs U the relevant forms to complete but they didn't return them.

Mr and Mrs U told Halifax that their tenant had caused significant damage to the property. Their insurer had rejected a claim. The property was now uninhabitable.

In early 2023, Mr and Mrs U agreed to sell the property to their local authority for £46,000, with a deadline for completion of 30 June 2023. This would leave a shortfall on the mortgage balance of around £6,000. Mr and Mrs U asked Halifax to agree to a shortfall sale. Halifax said the property would need to be valued, and its valuer said it was worth £47,500. Mr and Mrs U disputed this. Halifax accepted the valuer hadn't assessed the internal condition – it agreed to carry out a revised valuation.

In August 2023 Halifax told Mr and Mrs U's estate agent it would need a memorandum of sale. Once this was received, it agreed to a shortfall sale on 4 October 2023 – subject to Mr and Mrs U signing a shortfall agreement. Mr and Mrs U sent back the signature page on 17 October, but Halifax told them it would need the full document. This was received on 1 November, and Mr and Mrs U's solicitors told Halifax that the sale would complete on 4 December.

However, the sale did not complete. The local authority had withdrawn its offer because of the time taken. Mr and Mrs U therefore went ahead with voluntary surrender, and Halifax took possession of the property on 30 May 2024.

Halifax obtained valuations from a surveyor and estate agent, and marketed the property for £32,000. It received several offers, accepting the highest of £41,685. The sale completed in October 2024, leaving Mr and Mrs U with a shortfall after interest, fees and the costs of sale had been added of around £22,600.

During this time, Mr and Mrs U made several complaints to Halifax. It sent them the following

final responses:

- 12 May 2023 – Halifax said it wouldn't accept an offer to sell a property in negative equity unless it was on the open market, and it would need to value the property to check the sale price.
- 28 July 2023 – Halifax accepted its valuer hadn't considered the internal condition of the property, and said it would reconsider the valuation.
- 21 September 2023 – Halifax accepted a recent phone call hadn't gone well. It said it was still waiting for the memorandum of sale.
- 28 April 2025 – Halifax said it had provided all necessary information for the sale to proceed but the local authority had decided not to go ahead. Now the property had sold with a shortfall, Mr and Mrs U were liable for the shortfall.

Mr and Mrs U did not bring the earlier complaints to us within six months of the final responses. Our investigator therefore said that we could only consider the matters covered by the last final response – which essentially meant he could only consider what had happened since 21 September 2023.

He went on to review that part of the complaint, and said that he didn't think it should be upheld. He had no evidence that the local authority's offer had been extended past its deadline of 30 June 2023 – and even if it had been, he wasn't persuaded that Halifax had caused any unreasonable delay after 21 September, in the period he could consider. He said that the shortfall balance had increased because Mr and Mrs U had made no payments since early 2023. He said that Halifax had acted reasonably in marketing the property in line with the valuations it received, and it had accepted the best offer it could get. In those circumstances, he said it wasn't unreasonable that Halifax held Mr and Mrs U liable for the shortfall, and he didn't think their complaint should be upheld.

Mr and Mrs U didn't agree with that. They said that we should consider the whole of their complaint, not just matters since 21 September 2023. Halifax had continued to engage with them following the earlier responses, so they were not "final" responses. It was reasonable for Mr and Mrs U to believe their complaints were still open and ongoing. It would be unjust to refuse to consider their earlier complaints. And they didn't agree that Halifax had acted fairly. It had caused delay and sent them incomplete paperwork. The local authority's offer was still live in October and November 2023, and could have completed if Halifax had not delayed. Had that sale been completed, the property would have sold for more and the balance would have been less – so any shortfall would have been much less. The shortfall will cause Mr and Mrs U significant hardship, and that needs to be taken into account too.

### **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'm sorry to hear of everything Mr and Mrs U have experienced. They've been in financial difficulty for some time. Their property is a flat, and there were significant problems with the roof of the block requiring repair, as well as the internal damage caused by their tenant. That meant their property declined in value – at the same time as they were experiencing problems in paying the mortgage which meant the balance increased.

I'm afraid I agree with the investigator that we can't consider anything covered by the first three final responses Halifax sent. The rules of the Financial Ombudsman Service say that a

complaint must be referred to us within six months of a final response, as the letters themselves made clear, and those complaints weren't. I appreciate Mr and Mrs U were still in contact with Halifax about the progress of their sale. But I don't think that amounts to exceptional circumstances which prevented them bringing their complaints to us. That means I can only consider what happened from 21 September 2023 onwards.

I think it's clear that the local authority's offer to buy the property had lapsed since then. Mr and Mrs U say it hadn't. But the evidence they've provided doesn't persuade me. The emails from the time don't refer to an extended timeframe. And an email Mr U recently obtained from the local authority, dated 1 September 2025, says:

"We offered to purchase your property in February 2023. We were aiming for a completion date no later than 30th June 2023.

I understand there were delays with your mortgage provider agreeing to the sale due to negative equity and as a result we weren't able to complete within the timescale.

When you contacted us again in late 2023 we were no longer in a position to purchase. This was almost a year since you initially made contact with us in December 2022."

This email therefore confirms (i) that the offer did lapse on 30 June and wasn't extended; (ii) that there was no contact between Mr and Mrs U and the local authority once it had expired until late 2023; and (iii) that by then the offer had been withdrawn and the sale did not go ahead.

I've looked at what happened after 21 September 2023, the period I said I can consider. At this time, Halifax was waiting for the memorandum of sale from the estate agent Mr and Mrs U were using. It wasn't unreasonable that it wanted to go via an estate agent – in agreeing to a sale below the mortgage balance, it wanted to make sure the best price was being obtained, which meant selling the property on the open market via an estate agent not just agreeing to a private sale.

Halifax received the memorandum of sale in early October, confirmed it would agree to the sale, and sent the paperwork to Mr and Mrs U and their solicitor for completion and return. Mr and Mrs U only returned the signature page, not the full document. I don't think it's likely that Halifax failed to send them the full agreement; this was an important document confirming they accepted responsibility for the shortfall. On balance I think it's more likely than not that Mr and Mrs U returned what they thought was the important part, than it is that Halifax only sent part of the document in the first place. Halifax received the full document at the start of November, at which point it agreed to the sale completing.

I don't therefore think that Halifax acted unfairly or caused unreasonable delay. It needed details of the sale, and it needed Mr and Mrs U's agreement to the shortfall, before it could finally consent. And in any case, even if Halifax had caused unreasonable delay at this time it would have made no difference – there was no longer a sale in prospect, because the local authority's offer had lapsed on 30 June and not been extended. However quickly Halifax responded that wouldn't have changed.

When it was clear the sale wouldn't go ahead, Halifax allowed some time for Mr and Mrs U to decide what to do next, and then it agreed to a voluntary surrender. Once that happened, a sale completed in a reasonable time, with Halifax accepting the best offer it had received – a price broadly in line with Mr and Mrs U's own expectations, and with the local authority's offer.

I'm afraid I don't therefore uphold this complaint. In the period I can look at, the local authority's offer was no longer available and so nothing Halifax did or didn't do changed the fact that this sale had fallen through. It then gave Mr and Mrs U time to decide what to do next, and sold the property for the best price it could obtain. I appreciate the shortfall is difficult and worrying for Mr and Mrs U. But the reason for the shortfall is because of the condition of the property and their problems paying the mortgage, not because of anything Halifax did wrong. Mr and Mrs U will need to engage with Halifax to discuss what happens next – and it will need to treat them fairly and sympathetically in collecting the shortfall.

### **My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr U and Mrs U to accept or reject my decision before 18 November 2025.

Simon Pugh  
**Ombudsman**