

The complaint

This complaint's about a mortgage Mr and Mrs D hold jointly with Bank of Scotland plc trading as Halifax. The complaint includes how Halifax treated a promissory note Mr D presented to it in 2022, debt recovery action (including referring the account to a third-party recovery agent) and how Halifax handled a data subject access request (DSAR) that Mr D made to it.

What happened

In 2010, Mr and Mrs D took out an interest only mortgage with Halifax. The mortgage fell into arrears in around July 2022.

Mr and Mrs D complain Halifax:

- Failed to address a "lawful promissory note".
- Kept false records of a complaint. They never received the correspondence it claimed to send in February and September 2022 – and it was not included in Halifax's DSAR response from September 2022.
- The debt had been unlawfully passed to a debt recovery agent. At that time Halifax had been served a "final notice of dishonour and notice of enforcement". The referral is a breach of fair treatment and the FCA's CONC rules.
- Despite being on notice and subject to DSAR failings, Halifax has continued to allow unauthorised debits that had been formally challenged under the direct debit guarantee scheme.

A colleague made a decision on which parts of the complaint we could and could not deal with. They said that the complaint about the promissory note had been time barred.

The investigator did not think the complaint should be upheld. Mr and Mrs D did not accept what the investigator said.

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.

Mr and Mrs D have made various arguments about the validity of the agreement they have with Halifax. I will deal with specific points below. But many of the points Mr and Mrs D have no prospect of success. They entered into a contract with Halifax and they have had the benefit of the funds from the mortgage. It is reasonable therefore for Halifax to look for the mortgage to be repaid in line with the agreed terms. I would encourage Mr and Mrs D to seek advice from a legally qualified person or a reputable debt advice service.

Where there is a dispute about what happened, I have based my decision on the balance of probabilities – in other words, on what I consider is most likely to have happened in the light of the evidence. That is the test I will apply here. I note Mr and Mrs D consider that Halifax should provide much more detailed evidence to support what happened. But I am satisfied that I have enough information to make a decision on balance.

Promissory note

Halifax has produced a copy of a final response dated 7 September 2022. But we have evidence that it was not sent on that date. Therefore, it is not clear that Mr and Mrs D had the full six months to refer a complaint to us – and therefore the final response was not valid.

I explained to Mr and Mrs D and Halifax that I was intending to consider the complaint about the promissory note. But I did not consider the complaint had any prospect of success as Halifax was not required to accept the promissory note. I said a promissory note isn't legal tender. It isn't money at all. It's simply a promise to pay a sum at some unspecified future date. Halifax already has such a promise in the form of the agreement Mr and Mrs D signed, so another promise doesn't add anything.

I was satisfied the letters of February and September 2022 were sufficiently clear that Halifax had not accepted the promissory note. For the avoidance of doubt, I am satisfied on balance that evidence we have supports the letters were generated and sent. I am satisfied the evidence I have is sufficient for me to make a decision about that.

Mr and Mrs D consider that Halifax did not treat them fairly because it did not return the promissory note or provide evidence to show what had happened to it. But the promissory note had no monetary value. So there is no financial loss because it was not returned to them. And in view of that I can't see that any concern about what happened to the promissory note could cause them any material distress or inconvenience that would warrant any compensation.

Bearing in mind I have found that the promissory note had no monetary value and Halifax has not accepted it, I see no reason why Halifax should return it to Mr and Mrs D. The note was created by Mr and Mrs D and they have a copy of it. In all the circumstances, I don't see how I could fairly require a lender to provide detailed evidence to show what happened to the document.

In any event, as Mr and Mrs D have pointed out, the promissory note contained Mr D's personal data. If Halifax did retain a copy then it seems it should have been provided with the DSAR. Therefore, if it was not included, then it seems more likely than not the promissory note has been disposed of.

Debt recovery

Halifax was required to treat Mr and Mrs D fairly when their mortgage was in arrears. But it is a two-way street. There is little a mortgage lender can do to help if a borrower will not meaningfully engage with it.

In the circumstances here, it was reasonable for Halifax to appoint an agent to visit Mr and Mrs D in an attempt to understand more about their circumstances. That reflected that the mortgage was in arrears and repossession should be a last resort. It is in line with good industry practice for a mortgage lender to appoint an agent to visit a borrower's home in an attempt to engage with them. I don't consider Halifax acted unfairly or unreasonably by instructing a field agent to visit Mr and Mrs D at their home.

Halifax is obliged to record true and accurate information about the way Mr and Mrs D have conducted their mortgage account. I have not seen any evidence that the information it has recorded is incorrect.

I am satisfied that Mr and Mrs D took a mortgage with Halifax and they had the benefit of the funds that were lent. It is reasonable therefore for Halifax to look for the mortgage to be repaid as agreed. There is no requirement for it to provide all of the information Mr and Mrs D believe they are entitled to – it makes no difference to their liability for the mortgage debt.

DSAR

It is really for the information commissioner's office to decide if Halifax failed to comply with a DSAR. But Halifax has accepted that in its DSAR response on 22 September 2022 it did not provide a copy of the letters dated 22 February 2022 and 7 September 2022. It has provided that information as part of an updated DSAR dated 11 April 2025 and paid Mr and Mrs D £100. I consider that to be a fair way to settle this complaint.

Halifax is entitled to expect Mr and Mrs D to make the repayments due under the agreement even if Halifax had not fully complied with a DSAR. I would add that even if Mr and Mrs D were to make a claim under the direct debit guarantee it does not affect the contract they have with Halifax – they would still owe Halifax the money due under the mortgage agreement.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs D to accept or reject my decision before 24 February 2026.

Ken Rose
Ombudsman