

The complaint

Mr T complains that Bank of Scotland Plc trading as Halifax has not treated him fairly in the way it administered his mortgage.

What happened

In 2007, Mr T took out a mortgage with Halifax. In 2023, Halifax obtained an order for possession of the mortgaged property. The court ordered that Mr T should pay Halifax £67,594.87 for the outstanding mortgage debt.

Mr T was later evicted from the property but he later reoccupied it. In 2024, Halifax obtained a Writ of Possession from the High Court and it later evicted Mr T from the property.

Halifax said it was concerned that Mr T would attempt to regain access to the property. It arranged for the property to be secured along with four security guards with dogs to guard the property.

The property sold at auction for £118,000 and completed on 30 July 2024. Halifax said that it incurred total costs of £433,653.25. Once the mortgage was repaid, that left a shortfall of £405,225.30.

Mr T complains that the fees applied in respect of his eviction are unfair.

I issued a provisional decision proposing to uphold the complaint in part. My provisional findings, which form part of this decision were:

Jurisdiction

At the ombudsman service we have to follow the rules in the Financial Conduct Authority's handbook. It sets out which types of complaint we can (and can't) look at and includes time limits for consumers to bring a complaint. I must apply those rules and decide whether a complaint is one we can look at.

Our rules say that I can't consider a complaint that is made:

- *More than six months after the date the business sent its final response.*

Unless:

- *The failure to comply with the time limits was as a result of exceptional circumstances; or*
- *The business consents to us looking at the complaint.*

Halifax has sent a number of final responses to Mr T, including on 9 April 2022 and 25 April 2024. The 2022 final response dealt with Mr T's complaint that the agreement he had with Halifax was invalid. The April 2024 response dealt with his complaint about the failure to comply with a DSAR request.

Mr T referred his complaint to us on 5 November 2024. That is more than six months after the date of the 2022 and April 2024 final responses. Halifax has not consented to us

considering the complaints. And I am satisfied there were no exceptional circumstances that prevented Mr T complying with our time limits. So I do not have the power to consider the complaints dealt with in the 2022 and April 2024 final responses – or any final response sent before 5 May 2024.

Repossession

Mr T was not paying his mortgage and it was significantly in arrears. He was not engaging with Halifax in a meaningful way. It was therefore reasonable for it to take legal action.

Halifax has provided evidence that the court granted a possession order, a warrant for eviction and a writ of possession. I am satisfied that Halifax was entitled to take possession of the property and evict Mr T.

I do not have the power to overturn any court order. The arguments Mr T has made about the validity of the court orders have no prospect of success. Mr T should take legal advice from a suitably qualified person if he wishes to explore any legal avenues that may be open to him in respect of the court orders or if he does not believe the correct process was followed by Halifax in obtaining any of those orders.

Fees

Halifax has given us copies of the invoices it incurred in evicting Mr T from the property. I am satisfied that it has incurred total costs of over £400,000. That may come as an unpleasant surprise to Mr T as our file reflects that he was only aware of the initial charges applied by Halifax of just over £155,000.

Usually a mortgage lender is entitled to pass on the costs it incurs in relation to the mortgage. Halifax's mortgage conditions said:

“23. Our expenses

23.1 You have to pay our expenses in full unless you can show that they were incurred unreasonably or that the amount of them is unreasonable. We will charge interest on the expenses from the date when we incurred them until the date when they are paid.

23.2 Examples of our expenses are:

(a) the costs of any legal proceedings in connection with the mortgage or the property (whether brought by, or against, you or anybody else);

...

(c) the costs we pay to recover any money you owe us, or to create or protect our security, or in using our legal rights and powers;

(d) our costs resulting from you breaking any of these conditions including any costs we incur in putting right any breach of these conditions by you.”

I am satisfied that Halifax was entitled to pass on the expenses it incurred in evicting Mr T from the property and protecting its security – providing those expenses were incurred reasonably and the amount of them was reasonable.

On the face of it the total expenses incurred by Halifax of over £400,000 seems very high. My initial thoughts were that its costs were excessive bearing in mind the outstanding mortgage was under £70,000 and the property was valued between £150,000 and £160,000. The amount of costs was disproportionate to both the debt and the value of the property – Halifax ought to have known that by taking the action it did its costs were likely to exceed the

amount that could be recouped by the sale of the property and would leave Mr T with a significant shortfall to repay.

I accept that it was reasonable for Halifax to instruct solicitors to obtain the possession order and any subsequent legal work necessary to evict Mr T from the property. Those costs are inevitably higher than for a straightforward eviction because the property was reoccupied and additional legal work was applied. Halifax has given us invoices from its solicitors and a breakdown of its standard litigation fees. Looking at the amount Halifax was charged for legal services it does not seem excessive or unreasonable in the circumstances. So I see no reason why it could not pass on those fees to Mr T.

Following the initial eviction the property was reoccupied. Halifax took steps to identify who was occupying the property. It was reasonable for it to do so to enable it to take further court action. I think the costs of £300 plus VAT was reasonable and not excessive. There were also additional costs for High court enforcement officers to carry out the eviction.

Halifax employed an agent to clear and look after the property. It was reasonable for the property to be cleared and for the contents to be stored. The amount of those costs are not out of line with what I have seen in other cases and do not seem excessive or disproportionate. So I consider it was fair and reasonable to pass on the costs of clearing the property and transporting and storing its contents to Mr T. – along with the usual costs it would incur in appointing an agent to take possession of the property and manage it until it was sold.

That leaves the costs for securing the property. It is not in dispute that following the initial eviction the property was reoccupied. Bearing that in mind and as Mr T refused to accept that the possession order was valid, I consider that Halifax had good reasons to consider that its security was at risk. It has provided evidence from its agents at the property that support that. I consider it was reasonable and proportionate to install security grilling and change the locks of the property to protect its security.

I am not persuaded that it was fair or reasonable to employ the number of security guards and dogs to protect the property for the length of time it did it did. If the property was reoccupied following the second eviction there were likely to have been further legal remedies available to Halifax such as an injunction against Mr T to protect its right to possession of the property. Halifax has not shown that it fully or properly explored what other legal remedies were available to it.

Halifax said the costs were a direct result of Mr T and “his associates” actions It said that continued threats were being made that Mr T would take the property back. It said that Mr T was a follower of the “freeman on the land” movement and that is why he believes the eviction was unlawful. Halifax said if we found it had acted “irresponsibly” then it could be seen as a “victory” for that movement and have a significant impact on further cases.

I am making my decision here on the individual circumstances of this case. I accept and understand the difficult position that Halifax was in. It legitimately wanted to protect its security. As I have set out above, I agree that Mr T is wrong that the court orders and the eviction were unlawful. I am not endorsing any arguments based on the ideas he has put forward. But I don't consider that Halifax has put forward a sufficiently robust or persuasive case that it was fair or reasonable to incur all of the costs it did in employing security guards to protect the property.

The average daily costs for employing security guards and dog units was between £3,852 for four guards and £4,802 for six guards. The balance of the mortgage at the time of the possession order was just over £67,000 but that does not take into account the legitimate

interest and costs incurred after that. Halifax knew by April 2024 that the expected sale price at auction would be up to £165,000. The best case scenario was that there was around £100,000 equity in the property – but there was a significant chance it was less than that. The cost of security guards would erode all of that equity in between 21 and 26 days. In view of the costs already applied at that time the actual time a shortfall would likely have arisen much more quickly than that.

I have to balance Halifax's legitimate aim to protect its security against the requirement for the costs to be incurred reasonably and for the amount of them to be reasonable. Further, Halifax had an obligation to pay due regard to Mr T's interests and to treat him fairly.

Overall I do not consider that Halifax has shown that it gave proper consideration to alternative legal routes to protect its security and it has not shown that it took proper account of how quickly the security costs would add up in relation to the outstanding debt and the likely value of the property. If it had done so it would have been apparent that it was likely to create a significant shortfall for Mr T.

In all the circumstances, I do not consider that the total cost of the security guards has been incurred reasonably or totalled a reasonable amount.

In saying that, in the circumstances, it seems likely and reasonable for Halifax to have had to employ security guards at some stages of the process – although not to the extent it did and with an eye to the overall costs. There would also likely have been further and additional legal costs.

After careful consideration, I consider a fair way to resolve this matter is for Halifax to give an undertaking not to pursue Mr T for the shortfall that arose as a result of this matter. I note that is an option open to lenders in any event under MCOB – and seems appropriate here bearing in mind it has not been able to justify the full level of costs it incurred.

Sale price

Halifax was required to market the property as soon as possible and obtain the best price that might reasonably be paid. A lender should instruct independent valuations.

In this case Halifax sold the property at auction. In the circumstances I consider this was reasonable. Bearing in mind it had to secure the property that would make marketing it through conventional channels difficult. And it had legitimate reasons to want a quick sale. There were likely to be additional ongoing costs if the property was not sold.

An independent surveyor valued the property at £210,000. The auction appraisal valued the property at £150-165,000.

When the property was first put up for auction there were no bids. When it was auctioned again the property sold for £118,000.

The property sold for less than the estimated value. But Halifax acted fairly by putting the property up for auction. It was open to anyone to bid for the property and that was the best price it was offered. While Halifax should try and achieve the best price possible, that has to be balanced against the reasonable objective for Halifax to sell the property quickly. Overall, I am satisfied that Halifax acted reasonably in achieving the best price in the individual circumstances of this case.

Data subject access request

I can only consider any subject access requests made by Mr T after the April 2024 final response. If Mr T thinks that Halifax has not fully complied with any subject access request he's made then that might be a matter that is better dealt with by the Information Commissioner's Office.

Halifax should, however, send Mr T a full breakdown of all the fees it applied in respect of the repossession and eviction.

Summary of Halifax's response

- It has given us copies of invoices to show a clear breakdown of the itemised expenses. Although the costs may seem excessive, they must be considered in the context of the eviction and the actions of Mr T and his associates.
- An injunction or other options would not have been appropriate. It was unlikely Mr T would have followed any injunction. The process would likely have been protracted increasing the risk of losing possession of the property before a sale could be completed, which would have resulted in higher overall costs. It would have been necessary to apply for an injunction against persons unknown, but courts are unlikely to grant such applications.
- It provided its timeline again focussing on the periods when the security was appointed and when it was stood down. It shows that the case was managed and reviewed internally at various points throughout the process and costs and actions were revisited because of the complex and unusual nature of this case.
- Threats of violence were made during the original eviction, Mr T had illegally reoccupied the property and there were concerns regarding associates of Mr T and the potential risk of violence.
- It could also have considered sale as mortgagee not in possession. But that would have taken longer and likely resulted in a lower sale price than achieved by auction. That might have attracted the presence of freemen on the land, which would have prevented a sale. And Mr T was in the property and would have challenged that strategy.
- It could have appointed receivers, but that would have introduced further fees and the receivers would likely have faced similar challenges as Halifax.
- While Halifax has written off or waived post eviction costs in other cases it reviews each case on its merits. It would usually agree such a write off because of a customer's individual circumstances such as their health.
- The fees have not been charged in error and were not excessive or unreasonable given the circumstances of this specific case. It has not wilfully overspent on securing the property. The costs were reviewed to make sure the level of security was required and appropriate. Halifax explored options to mitigate its costs and acted on all recommendations in order to resolve this matter as quickly as possible. From eviction to sale was 96 days.
- The costs have been incurred as a direct result of Mr T's actions.

Summary of Mr T's response

- Mr T identified what he believed to be a number of legal and procedural issues with the

provisional decision.

- The name we sued for him and referring to him as “Mr T” were “corporate fictions and not “lawful identifiers” of him.
- There was no verified mortgage deed with “autograph” and no lawful assignment under section 136 of the Law of Property Act 1925. No sealed court order or warrant number has been produced and Halifax and its agents have failed to prove title. I had “relied on assertions contrary to DISP 3.3.4R.”
- I should not have relied on unverified copies and typed summaries.
- I said I had now power to examine court orders yet declared then lawful. This was “void reasoning”.
- Halifax had unlawfully and unjustifiably enriched itself by claiming costs of over £400,000 on a debt of under £70,000 destroying his equity of over £100,000. That was a breach of FCA Principle 6 and MCOB 2.5A.1R.
- There was no warrant number or “sworn officers” present for the eviction and the deployment of security guards with dogs without lawful authority breaches the Public Order Act 1986.
- We had concealed contracts, fee schedules and records and had not acted fairly and transparently.
- Use of the label “freeman on the land” is prejudicial and defamatory. I’d not been impartial.
- There had been no independent verification of security or legal invoices.
- He had further evidence available.

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 am aware Mr T does not use a prefix with his name. But we are required to publish our decisions in such a way that consumers will not be identified. In the circumstances, I will refer to Mr T throughout this decision

I am satisfied that we have followed a fair process in line with our usual procedures. I set out my reasons for upholding the complaint in part in my provisional decision. And despite Mr T being able to provide a three page response to my provisional decision within the deadline, I gave him more time to provide additional evidence if he wished.

We are an informal dispute resolution service. My role is to decide what is fair and reasonable in the individual circumstances of this complaint. I am required to take into account any relevant law; regulators' rules, guidance and stands, codes of practice; and what I consider to have been good industry practice at the relevant time.

I've already explained why we can't consider the complaint about whether the agreement Mr T had with Halifax is valid or not. He has referred it to us outside the time limits in our rules. That is not to say whether his arguments had any merit or not.

Halifax has provided copies of court documents including the possession order and the High Court writ. As far as I can see all of the paperwork is in order and in line with what I would expect to see in the circumstances. It is reasonable for Halifax to act on those orders. I do not have the power to overturn the orders. So even if I was to examine them and find that there might have been a technical or legal error in how they were made (and for the avoidance of doubt there is no evidence of that), I could not tell the courts they were wrong to make the orders they did. Mr T would need to go to court to overturn or appeal the orders. He should seek legal advice from a suitably qualified person.

I am satisfied that the evidence Halifax has given us reflects the amounts it was charged by its agents for legal and other costs relating to taking possession of Mr T's property. I say that because, putting aside the overall fairness of Halifax's actions. the amounts charged are not out of line with what I would expect for the services provided.

I did not refer to Mr T as a "freeman on the land". I quoted what Halifax had said. Nevertheless, that is relevant to some extent. Halifax has given that as a reason why its action was reasonable and proportionate. It said that Mr T "*is a follower of the 'Freeman of the Land' belief, and his basis for believing the eviction to be unlawful is based on this. This is an ongoing movement in which there is a large online following regarding the belief that evictions are unlawful, and we feel that any decision in which it is agreed that the bank have acted irresponsibly could be considered as a 'victory' for the movement and have a significant impact on other cases and the wider industry.*"

Amongst other things, Mr T refers to himself as a "plenipotentiary judge", does not believe that we should refer to him as "Mr", has provided documents with a fingerprint as signature, and makes pseudo legal arguments why his mortgage contract is not valid. All of those things are similar to arguments made by the freeman on the land movement. So I do not think it was necessarily unreasonable for Halifax to consider that Mr T follows those beliefs.

One of the reasons given by Halifax to support that the steps it took were reasonable was because of Mr T's belief in freeman on the land type ideas. It said that if we upheld this complaint it would be seen as a "victory" for the movement and have a significant impact on other cases and the wider industry. I can only consider the individual circumstances of this case. My decision doesn't set any precedent and should not be interpreted in that way.

In saying that, I do not consider it to be fair for Mr T to be made an example of just because of his rather misguided beliefs. It would not be fair for Halifax to take the steps it did in this case to send a message to the freeman on the land movement more widely.

Halifax has also said that the security guards at the property were told that they were linked to a *"controversial YouTube influencer who regularly posts videos encouraging viewers to join hm in doing an 'eviction' of properties that have 'falsely' been taken by lenders. One of the...video specifically mentioned taking back a site [in the county] where the property is located, and that gave it cause of concern."*

By that stage Halifax already had six security guards placed at the property and the above was one of the factors that influenced its decision to maintain the security at that level. I don't consider that was entirely reasonable. There was very little to reach that conclusion other than a statement by a security guard and statements made in videos that did not relate specifically to Mr T's property other than it mentioned the same county.

Nevertheless, even putting aside the above, I keep coming back to the fact that Mr T's debt was under £70,000. The costs Halifax incurred were over £430,000. On the face of it, it is disproportionate for a lender to spend over six times the amount of the debt in protecting its security.

The evidence provided by Halifax does not show that there was a suitably thorough consideration of the rapidly growing costs against the amount of the debt or that it fully explored what other options were available to it at the time. I might have expected it to be able to show that it had thought about all of the options available to it and compared the likely costs of each option in different scenarios – and to regularly review that when circumstances changed.

Halifax had a duty to avoid causing foreseeable harm. I accept that it was not required to prevent all harm and it was reasonable for it to believe that Mr T had understood and accepted the risk that he would be liable for any reasonable costs that arose in protecting his security. But the costs incurred by Halifax were significantly more than the debt or the value of the property – and there was clearly a risk of additional harm to Mr T if the cost of Halifax protecting its security exceeded the value of the property.

While I appreciate the very difficult circumstances for a mortgage lender, Halifax has not shown that it sufficiently paid due regard to Mr T's interests or treated him fairly. The evidence it has provided shows there was limited consideration of how the total overall costs were escalating, and a failure to fully explore all alternatives and the relative costs of each option. There was a lack of sufficiently detailed justification carried out at the time to justify why the costs overall were appropriate placing sufficient weight on its duty to treat Mr T fairly and pay due regard to his interests.

After very careful consideration I see no reason to reach a different conclusion than I did in my provisional decision.

My final decision

My final decision is that Bank of Scotland Plc trading as Halifax should:

- Give an undertaking not to pursue Mr T for any shortfall balance on his mortgage.
- Send Mr T a full breakdown of its costs in repossessing the property, evicting Mr T and selling the property.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 6 January 2026.

Ken Rose
Ombudsman