

## **complaint**

Ms H complains that Bank of Scotland plc, trading as Halifax, hasn't made any attempt to come to an arrangement which would allow her to get her mortgage payments up to date and avoid losing her home.

## **background**

In 2008 Ms H and her husband took out a 20 year interest and capital repayment mortgage for around £158,000. In 2009 Mr H left the family home and they have since divorced. Mr H hasn't paid anything towards the mortgage since 2009. Between 2009 and 2014 arrears of around £27,000 accrued. Ms H lives in the property with her young children. She is currently working part-time and studying for a professional qualification. The contractual mortgage payments (CMP) are around £1,200.

Throughout the time Ms H has had financial problems she has kept in touch with Halifax. She has put forward various proposals for managing her monthly payments and reducing the arrears. Her parents have given her some financial support and remain willing to help out if they can.

In 2013 Ms H asked Halifax if it would be willing to convert the mortgage to interest-only. It didn't respond to that request. It has since told Ms H that it no longer offers interest-only mortgages.

In April 2014 Ms H complained about Halifax's failure to reply to letters she had written in January and February asking if she could extend the term of the mortgage. Halifax upheld the complaint in part and paid her £150 for distress and inconvenience.

In May 2014 possession proceedings were adjourned so that Ms H and Halifax could come to an arrangement. Halifax didn't respond to the numerous attempts Ms H made to do this. When Ms H complained about Halifax's failure to respond to her efforts to come to an arrangement, Halifax upheld the complaint. It offered her £200 compensation for distress and inconvenience in October and another £150 in November. But it still hasn't done anything to try and reach an agreement with her.

The adjudicator who looked at the complaint recommended it should be upheld. She asked Halifax to waive all the legal costs and arrears charges applied to the account since May 2014. She said Halifax should pay Ms H £650 for the trouble and upset caused by its lack of communication. Halifax agreed to this.

The adjudicator also recommended that Halifax should give serious consideration to capitalising the remaining arrears and extending the term of the mortgage so that the monthly payments remained at £900 which Ms H has been paying since May 2014. The adjudicator thought it would be fair and reasonable for Halifax to appoint a dedicated adviser to deal with Ms H's mortgage account and someone should arrange a home visit to discuss the options with Ms H and her parents.

Halifax rejected these suggestions. It said that any decision about extending the mortgage term or capitalising arrears could only be made after its internal procedures had been followed. It said Ms H would need to make the full CMP for six months and such an arrangement would be a concession that would need to meet all their criteria. Halifax told the adjudicator it couldn't provide a personalised service as this wouldn't be fair to its other

customers. Nor could it offer a face to face meeting with Ms H as all its dealings by the collections team take place over the phone. Halifax asked for an ombudsman to review the case.

### **my provisional decision**

I issued a provisional decision making detailed provision for Halifax to implement the undertakings its representative had given Ms H at court. I took the view that its conduct of this case fell a very long way short of the response Ms H was entitled to expect following the hearing in May 2014. I was particularly concerned by its rigid adherence to internal procedures which it appeared to use as a means of obstructing Ms H's request to come to a sensible arrangement regarding the management of her mortgage.

Halifax took over a month to respond to my provisional decision. It accepted the financial recommendations I made. However it persists in sticking to its normal process in relation to conducting a review of the mortgage. It says it's willing to review Ms H's mortgage with a view to capitalising the arrears and/or extending the term but the procedure by which it proposes to do so wouldn't involve a face to face meeting with a dedicated adviser, only a telephone call. The concession it makes is to say that this call could take place at one of its branches, if Ms H and her parents wished. No reason for ignoring the clear recommendations is given. Halifax also insists that no change to the terms of the mortgage can be made without the consent of Mr H.

Ms H, for reasons I fully understand, sees this attempt to dilute my recommendations as evidence that there is no real will on the part of the bank to abide by the spirit of the discussion that took place in court in May 2014 or enter into a constructive discussion with her. This is particularly disappointing, given Halifax's previous appalling conduct and the efforts that Ms H has made to improve her situation in very difficult circumstances. I can see no reason to deviate from the conclusions I previously reached in relation to this complaint. If anything Halifax's response only reinforces my concerns about the way in which it has handled this matter.

### **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Ms H has given a detailed account of what happened at the court hearing on 9 May 2014 which I accept is accurate. She says it was agreed that she would contact Halifax to get things moving. Halifax's solicitor agreed with the judge that a face to face meeting with Ms H and her parents was a good idea. The judge suggested this could easily be arranged at a branch and Halifax's solicitor agreed.

The hearing was adjourned until 4 July. No doubt the judge envisaged that it would be clear by then whether agreement was possible.

Ms H wrote to Halifax on 12 and 15 May, sending the letters by recorded delivery. They set out what happened during the hearing and confirmed her willingness to find a way forward. No response to either letter was ever sent. Ms H also made phone calls and sent emails to Halifax on 20 May, 22 May, 28 May, 29 May, and 6 June. She sent Halifax details of her income and expenditure and the court order relating to the divorce settlement. On 13 June

Ms H wrote another letter of complaint stressing the urgency of the situation as the case was due to come back to court soon. She sent another urgent letter on 17 June.

Halifax didn't respond to Ms H's request for a meeting or discussion. It did nothing to set up a payment arrangement with Ms H. The only thing it did do was to get the hearing on 4 July adjourned. This meant that there was no opportunity for Ms H to draw the court's attention to Halifax's failure to keep the promises made by its solicitor in May.

On 4 August the CAB wrote to Halifax on Ms H's behalf putting forward settlement proposals in line with those discussed at the hearing on 9 May:

- Payment of £16,000 against the outstanding arrears;
- Reduced monthly payments of £900 to be reviewed after six months;
- Extension of the mortgage term by fifteen years.

That letter also received no reply. In its response to Ms H's complaint dated 21 October 2014, Halifax accepted that it hadn't responded as it should have done. It offered £200 for distress and inconvenience and £50 to cover her expenses. The letter said someone would phone her. Nobody did. Halifax sent a further final response letter on 25 November. It accepted that in its previous letter it had promised someone would call but this hadn't happened. It gave Ms H a number she could ring and offered a further payment of £100 for distress and inconvenience.

In the meantime on 28 October, having ignored every effort Ms H had made to come to an arrangement, Halifax asked a different firm of solicitors to issue possession proceedings against her. The hearing for 28 November was adjourned once the history of the matter became clear.

There is a note on Halifax's file for 6 November: *'scope to extend term but will require full situation notes and i&e figures to show what is affordable long term, need to speak with Mr H'*.

By this time Ms H had brought her complaint to us. Nothing further has happened since then. Halifax says it can't do anything until we have completed our consideration of the complaint.

The history of this matter, which I have set out in some detail, speaks for itself. I am satisfied that at the hearing in May 2014, Halifax's solicitor gave Ms H a reasonable expectation that, as long as she got in touch with Halifax immediately, the proposals she was putting forward would be accepted, subject to minor changes. This approach was endorsed by the court which envisaged a timeframe of two months for negotiations to take place.

Ms H did everything she possibly could to make sure that time scale was met. In addition to the repeated attempts she made to discuss settlement proposals with Halifax, she sent in details of her income and expenditure and the court order confirming the position in respect of Mr H. She also increased her monthly payments to £900. I'm satisfied that, if Halifax had responded in line with the approach taken by its solicitor, an arrangement would have been put in place by the time the case was due to come back to court on 4 July. This would have meant a payment of £16,000 would have been made against the outstanding arrears.

I also think it's likely that an extension of the mortgage term would have been agreed. The current term is due to end over ten years before Ms H's state retirement age. Her commitment to obtaining a professional qualification, along with her current employment in

the same area, suggest that, over the long term, her financial situation is likely to improve. Halifax acknowledged in its note of 6 November that an extension could be considered, subject to an assessment of Ms H's situation.

The only argument that Halifax has put forward in support of its refusal to consider Ms H's proposals is that it must comply with its internal processes. While I accept the need for consistency in the way it treats its customers, there will always be situations where it's fair and reasonable to depart from an established procedure. I think this is one of them. Halifax has done nothing since January 2014 to help Ms H manage her mortgage and the arrears, despite her best efforts, those of the CAB, the court and its own solicitor. I would like to think that this is not how Halifax normally treats its customers and so is able to recognise that the case is unusual and so deserving of special treatment.

In addition to ensuring Ms H has the benefit of a dedicated adviser who will set up a face to face meeting with her and her parents, I require Halifax to carry out an urgent review of Ms H's circumstances with a view to agreeing an extension of the term of the mortgage and consequent reduction of monthly payments. As long as the affordability criteria are met, I would not expect Halifax to impose any conditions such as the requirement that Ms H pays the full CMP for six months. Ms H will need to complete an updated income and expenditure form but this can be done at the meeting with the dedicated adviser.

Any arrangement should be backdated to 1 August 2014 on the basis that it would have been in place within 28 days of the second court hearing on 4 July 2014. The outstanding balance on the account should be recalculated on the basis that a payment of £16,000 had been made by that date.

Finally Halifax has now raised the issue of obtaining Mr H's consent as a further obstacle to varying the terms of the mortgage. Ms H has provided both the bank and this service with a copy of the court order dated 13 October 2013. This deals with the financial arrangements following her divorce from Mr H and states:

*'And Upon it being recorded that the Respondent Husband consents to the terms of the mortgage being extended or varied so that the monthly repayments are reduced in accordance with any revised terms and conditions that the Halifax may offer'.*

I can see no reason why Halifax cannot rely on consent given and recorded in a court order which is clearly drafted to meet precisely this situation.

I very much hope that the matter can now be resolved without the need for Ms H to raise any further complaint.

### **my final decision**

I uphold the complaint. I require Bank of Scotland plc, trading as Halifax, to:

- Appoint a dedicated advisor to deal with Ms H's mortgage account for twelve months following the date of appointment;

- Arrange for the dedicated advisor to have a face to face meeting with Ms H and, if she wishes them to attend, her parents. The meeting is to take place within 30 days of the date of the final decision at a branch or other venue of Ms H's choice;
- Pay Ms H £1,500 for trouble and upset;
- Waive all arrears charges and legal fees applied to the account from 1 May 2014;
- Waive any interest applied to the arrears from 1 August 2014 and recalculate the mortgage account accordingly;
- Within 30 days of the face to face meeting, complete a full review of Ms H's mortgage account with a view to agreeing:
  - An extension of the term of the mortgage;
  - Reduced monthly payments of £900 or more, with provision to review the level of payment in twelve months time;
  - Provision for Ms H to switch to a fixed rate or other mortgage product after an agreed period;
  - Capitalisation of the current arrears on the account;
  - Payment of £16,000 towards the arrears within 30 days of the date of the agreement with credit for the payment backdated to 1 August 2014 and the mortgage account recalculated accordingly;
- The results of the review are to be confirmed in writing and a copy sent to Ms H within 14 days of the review being completed.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H to accept or reject my decision before 30 December 2015.

Melanie McDonald  
**ombudsman**