

## **complaint**

This complaint is about a mortgage account Ms G held with Bank of Scotland plc trading as Halifax. The mortgaged property has been re-possessed, and sold to repay the mortgage debt. Ms G is unhappy about this, and about Halifax writing to pursue what it says is a shortfall debt following the sale.

## **background**

The circumstances of this complaint, briefly, are that in 2012, following a build-up of mortgage arrears, Halifax took legal action against Ms G seeking possession of her property. The case went to court, and a possession order was granted. Halifax sold the property and applied the sale proceeds in reduction of the mortgage balance. There remained a shortfall of approximately £3,000 which Halifax is presently asking Ms G to pay. Ms G maintains she should not have lost her home, and disputes owing Halifax any more money.

The adjudicator who considered the complaint did not recommend it should be upheld. She explained that where a lender is owed money and the loan is in arrears (as this one was) the lender is entitled to take steps to recover the debt. In Ms G's case, the shortfall following sale arose from the litigation costs that Halifax had added to the mortgage balance.

The adjudicator also explained that a linked complaint about an endowment policy had already been looked at by the Financial Ombudsman Service, and a final decision had been issued. The adjudicator established that Halifax had complied with our decision on that complaint, and had paid the relevant compensation to Ms G's mortgage account at the time.

Ms G did not accept the adjudicator's findings, so the complaint has come to me to review and determine.

## **my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

Under the rules of the Financial Ombudsman Service, we do not investigate a complaint that we have already looked at before. That is the case in respect of Ms G's complaint about her endowment policy. This was the subject of a decision by one of our ombudsmen in 2011. The ombudsman rejected the main thrust of the complaint, but ordered Halifax to refund to the mortgage account arrears charges of £375, with interest. That refund, which totalled £510.52, was credited in May 2011, and appeared on the annual statement sent to Ms G in October 2011.

As far as the current complaint is concerned, where a debt is secured on property, and the borrower is in arrears on their repayments, one of the remedies available to the lender is to re-possess the property and sell it to recover the debt. Unless a borrower surrenders possession voluntarily – which does happen sometimes – a lender must take legal action to try and obtain possession. The court will then decide whether possession should be granted.

Where a court has ruled in favour of the lender by granting a possession order, the Financial Ombudsman Service will not interfere with the court's decision. If a borrower believes a possession order was granted wrongly, they can only ask the court to revisit the decision.

The possession process is costly, and unless the court specifically orders to the contrary, the lender will add the costs of litigation to the mortgage debt. This is permitted under the conditions of the mortgage agreement.

In Ms G's case, the addition of litigation costs to her mortgage balance meant that the selling price of her former home did not cover the outstanding debt in its entirety. A shortfall remained, and it is this shortfall that Halifax is currently asking her to repay.

I appreciate that this is a very distressing situation for Ms G, but the debt is a legitimate one, and ultimately, Halifax is entitled to look to her for reasonable repayment proposals. That is what Halifax is doing in its current communications to Ms G. I cannot order Ms G to engage with Halifax to agree a payment arrangement, but I do recommend that she does so.

Provided Ms G does that, all I would then add is a reminder to Halifax that it has a duty to treat Ms G fairly in any negotiations to reach a payment arrangement. In the event Ms G considered Halifax was not treating her fairly, she could make a fresh complaint to that effect, to the bank first and then to us if need be.

### **my final decision**

For the reasons set out above, my final decision is that I do not uphold this complaint, or make any order or award against Bank of Scotland plc trading as Halifax.

Jeff Parrington  
**ombudsman**