

## **complaint**

This complaint is about a mortgage Mr F formerly held with Bank of Scotland plc trading as Halifax. Mr F, who is represented by his sister Mrs G, complains that Halifax lent him money he could not afford to repay, and took possession proceedings against him rather than take money from his savings to pay the debt under the right of setoff.

## **background**

Mr F took out the mortgage in 1997. He took out further advances from time to time, culminating in a £12,000 further advance in 2011 that brought his total debt to a little under £50,000. Shortly after this, Mr F fell behind with his payments and Halifax took possession proceedings leading to Mr F being evicted from his home.

With help from Mrs G, Mr F was able to repay the debt and retake possession of his home. Some money was overpaid and needed to be returned to Mr F. This money was initially sent to the solicitors dealing with the sale, but after it was returned to the bank, the money was credited directly to Mr F's current account.

Mrs G complained about Halifax's decision to lend Mr F so much money. She says Mr F is of limited intelligence, and the debt added up to almost five times his income. Mrs G also questions why the bank took possession action when it could have taken money from Mr F's savings to clear the debt.

The adjudicator who considered the complaint was not persuaded it should be upheld. She observed that up until the last further advance in 2011, Mr F had maintained the mortgage payments apparently without any difficulty. Whilst he had found it hard to manage the payments after the 2011 further advance, the adjudicator explained that the loan was itself taken out to consolidate existing debt on more affordable terms.

Looking into the question of Mr F's savings, the adjudicator identified that his account was held with a different bank, and so the money was not available to Halifax to draw on.

Mrs G did not agree with the adjudicator, and so the complaint comes to me to decide.

## **my findings**

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

When considering whether to lend money, banks have a duty to assess whether customers will be able to afford to repay it. Balanced against that, where a person has enjoyed the benefit of money that they have borrowed, they will generally be considered liable to repay it.

When those duties and principles are applied to the case at hand, it is reasonable to consider whether Halifax should have granted all of the further advances Mr F applied for; but it is also correct that I question whether Mr F should have borrowed it. Having looked at the circumstances that prevailed at the time Halifax granted the loans, I am reasonably satisfied that the bank should not be deemed to have acted irresponsibly.

In my view, the earlier further advances were reasonably affordable at the time they were granted. The position is less clear in connection with the last loan in September 2011. Mr F

was by that time clearly in difficulties with his finances, and was heavily overdrawn on his current account. But he had also taken out a substantial credit commitment with another lender, which had a substantial and detrimental effect on his income and outgoings. I understand Mrs G is pursuing a separate complaint about the sale of that loan.

The September 2011 further advance was recommended with the intention of consolidating that loan, along with the overdraft and, as I understand it, a credit card balance. Where lending is recommended with the intention of making existing debt more affordable, rather than creating new debt that does not already exist, it would be difficult for me to conclude that the bank acted irresponsibly. Mrs G has alluded to savings that Mr H could have used to clear his debts instead of consolidating them. It seems the account that held these savings was maintained elsewhere, and there is nothing to suggest Mr H mentioned it to the advisor when the further advance was arranged.

Mrs H has also argued that Halifax could have taken money from Mr F's savings to clear the arrears rather than take possession proceedings. I make the same point as in the preceding paragraph, that there is nothing to suggest Halifax knew Mr F had savings. But if he did, then presumably Mr F could have offered to pay the arrears from his savings. Also, if Mr F had mentioned his savings during the possession hearing, the court could have taken it into account when deciding whether to grant a possession order.

At all times and notwithstanding the bank's duties, Mr F had an obligation to manage his own financial affairs, and to make decisions that were in his own best interests. In making that observation, I do note Mrs G's point about her brother's ability to understand financial matters. But it was open to Mr F to seek help if he considered he needed it.

In Mr F's case, the decision of the court was to grant a possession order in Halifax's favour. Additionally, the court order was a money judgment; that is, one that specifies the amount of the debt owed. In other words, the court order had the effect of validating the debt. Ultimately, it is not for me to "second guess" or otherwise interfere with a decision taken by a court. That is what I would have done if I had reached a different conclusion from the one I have about the lending decisions.

Lastly, I have considered the weekly payments of £50 Mr F was making over the counter at his local branch, ostensibly for credit to the mortgage account. Mrs G says he stopped making these payments because staff told him they did not know where the money was going. Halifax denies that any of its staff would have told Mr F they did not know where his payments were going, and having looked at his mortgage statements, I am satisfied the money was going to where it should.

### **my final decision**

I am not unsympathetic towards Mr F. Losing his home in the way he did must have been extremely upsetting for him, even if, with Mrs G's help, he eventually got it back again. But for the reasons I have set out above, I do not find that his situation was either created, or made worse, by any unfair treatment on Halifax's part. That is why my final decision must be that I do not uphold this complaint.

Jeff Parrington  
**ombudsman**