

## **complaint**

This complaint is about a mortgage Mrs K held jointly with her late husband, and for which she has had sole responsibility since he died. Mrs K complains that the mortgage, which was taken out to consolidate Mr K's credit card debts, was lent irresponsibly, because Bank of Scotland Plc did not properly assess their ability to pay.

## **background**

Mr and Mrs K took out the mortgage in 2009, when Mr K was 69 years old, and in poor health. They borrowed a little over £45,500, most of which was used to repay debt that already existed, either in the form of an existing mortgage (approximately £6,400) or credit card debts (a little under £36,000). The additional borrowing of just over £2,000 was used on home improvements.

Mrs K has concerns about how their income was assessed. The majority of their income was in Mr K's name and, because he was already ill, a significant proportion of his income came from a health-related allowance.

The adjudicator who considered the complaint was not persuaded it should be upheld. He concluded that, based on the information presented to it, Halifax had not acted irresponsibly when it agreed the mortgage. Additionally, he explained that, other than the extra £2,000 used for home improvements, the decision to lend did not create new debt; rather it made existing debt more affordable.

Mrs K asked for her complaint to be reviewed by an ombudsman.

## **my findings**

I have considered afresh everything that Mrs K and Halifax have said and provided from the outset, to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I am afraid I am about to disappoint Mrs K again.

The application was made directly, without the involvement of an intermediary, but the offer of the mortgage was made on a non-advised basis. That means that responsibility for assessing affordability of the lending lay with Halifax, but responsibility for assessing the *suitability* of the lending lay with Mr and Mrs K.

When those principles are applied to the case at hand, it is reasonable to consider whether Halifax should have lent Mr and Mrs K £45,000 at their stage of life; but it is also correct that I question whether Mr and Mrs K should have borrowed it. At all times and notwithstanding the bank's duties, Mr and Mrs K had an obligation to manage their own financial affairs, and to make decisions that were in their own best interests.

Having looked at the circumstances that prevailed at the time the mortgage was granted, I am reasonably satisfied that neither Mr and Mrs K nor Halifax should be deemed to have acted irresponsibly. In reaching that conclusion, I have taken note of Mrs K's recollection that she was present with Mr K when they applied for the mortgage, as were their son and daughter.

In my view, the loan was, by any reasonable assessment, affordable at the time it was granted, and the age of an applicant should not, of itself, be an impediment to borrowing

money. For the most part, Halifax's decision to lend did not create new debt that did not exist before. Where a loan has been granted with the express aim of making existing debts more affordable, it is difficult to argue that a lender is acting irresponsibly.

Mr and Mrs K were under no obligation to seek credit facilities from Halifax but chose to do so. We generally take the view that where a person has enjoyed the benefit of money that they have borrowed, they will generally be considered liable to repay it. I see no reason to depart from that general principle in this case.

Lenders have a duty to treat consumers in financial hardship fairly. I understand that Halifax has indicated to the adjudicator that it is happy to have a dialogue with Mrs L to explore options for making the mortgage payment more affordable for her. The precise terms of any reduced payment arrangement are not for me to dictate to either party. That would be for Halifax and Mrs K to agree between them, based on a fair assessment of Mrs K's ability to pay. If Mrs K considered the bank was not treating her fairly in any subsequent discussions on a payment arrangement, she could make a new complaint, but of course I very much hope that will not be necessary.

### **my final decision**

It is apparent that Mrs K's financial circumstances are not the same now as they were when she and Mr K took out the mortgage. It is also quite likely that Mrs K now regrets the decision she and Mr K made in 2009. I am not unsympathetic to her current situation, but for all of the reasons I have 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**