

complaint

Mr and Mrs G complain that Bank of Scotland Plc trading as Halifax ("Halifax") acted unfairly by not contacting Mrs G sooner about a mortgage shortfall debt. Mrs G wants compensation for not being contacted earlier about the debt.

background

Mr and Mrs G had a mortgage with Halifax, but Mrs G said that she believed it had been dealt with when her property was sold, Mrs G was contacted by a debt collector in 2018 and told that there was still money due from the mortgage, together with interest ("the shortfall"). Mrs G thought that this was a mistake and was unhappy that no-one had contacted her earlier.

Mrs G complained to Halifax. It said that when the property was sold in 2013, enough money wasn't raised to pay the mortgage in full; this led to the shortfall. Halifax said Mrs G knew this at the time and agreed to repay the shortfall. It also said that since 2013, various debt collectors had attempted to collect payment, which was why Halifax hadn't been in contact. Halifax said Mrs G still owed the money and was liable the balance to pay in full. It confirmed that it had previously refunded fees and charges following a mortgage review in 2017.

Mr and Mrs G complained to us, saying that no debt collector had been in contact with Mrs G before May 2018. Mrs G also said that she did know about the shortfall at the time her property was sold and her ex-husband had paid his share of the debt. The adjudicator's view was that Mrs G had known that the mortgage hadn't been paid in full and the evidence showed that when the property was sold, she agreed to pay the shortfall; she even proposed a repayment plan in 2013. The adjudicator said that Mrs G had been written to by debt collectors in 2014, and then again in 2018. He thought that Halifax had acted fairly as Mrs G had been aware of the mortgage shortfall, and owed the money.

Mrs G disagreed. She said her complaint wasn't about owing Halifax money, but about how long it took someone to contact her about the debt. She denied receiving a letter from the first debt collector in 2014 and said it shouldn't have taken four years for the matter to be followed up. Mrs G noted that she would end up paying more than Mr G due to interest. The adjudicator said that his view hadn't changed and noted that Mr G responded to the debt collector in 2014, unlike Mrs G, which was why he paid less interest. He pointed out that all a lender had to do was make contact within six years, which Halifax's agents had done, and that Mrs G had known about the debt and taken no action. Mrs G felt she shouldn't pay more than Mr G towards the debt.

my findings

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

It's important to point out that this service isn't a court of law. If Mrs G wants to get legal advice about the agreement reached between Mr G and Halifax, and whether the same amount should be agreed with her, that's a matter for her, not this service. All I can look at is whether Halifax acted fairly in contacting Mrs G through its agents to ask her to pay the outstanding debt.

As a matter of law, limitation hadn't expired on the debt by May 2018. This means Halifax was entitled to ask for payment. Was it fair to do so in 2018? I think it was. First, Mrs G knew about the shortfall debt – she signed an agreement to pay it in 2013 and made an offer, which she didn't follow through. I'm satisfied that Mrs G knew the debt existed and remained outstanding from the evidence available to me. It's also clear from Mrs G's account that she didn't take any action to deal with the debt, which led to the interest claimed by Halifax. The terms and conditions of the mortgage required Mrs G to pay the shortfall in full.

Next, I'm satisfied from the evidence available to me that the first debt collector tried to contact Mrs G in 2014. It wrote to the correct address; the debt collectors aren't responsible for the delivery of post, but I think it's more likely than not that the letter was delivered. Mrs G asks why she wouldn't have dealt with the matter then – I don't know what was happening at the time, but I do know that Mrs G knew the debt was outstanding, that she was legally required to pay it, and that she didn't do so.

I also know Mr G did contact the debt collectors and reached an agreement. This is why the interest he's paid is lower than the amount sought from Mrs G. This is fair as Halifax didn't have to wait so long for its money.

Mrs G feels that it's unfair nothing was done between 2014 and 2018. I understand her view, but it isn't accurate. Mr G was reducing the debt and paid off the agreed sum by late 2017. The debt was then passed to another debt collector who promptly contacted Mrs G. And as all Halifax had to do was contact Mrs G within six years of the shortfall arising, which it did both in 2014 and 2018, I can't say that Halifax has acted unfairly in the circumstances.

my final decision

My final decision is that I don't uphold the complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs G to accept or reject my decision before 15 November 2019.

Claire Sharp
ombudsman