

complaint

This complaint is about a Halifax-branded mortgage Mr and Mrs S hold with Bank of Scotland plc. They're unhappy with how Halifax behaved when a problem arose with the title registration of the mortgaged property. They say Halifax's responses caused them undue stress and caused them to incur extra legal costs.

background

The events leading up to, and arising out of, the complaint are complex. I've read everything, and it's apparent that some parts of the evidence are less relevant to the underlying case than others. There are also a lot of duplication and repetition of arguments. In what follows, I have, by necessity, summarised events in rather less detail than has been presented, using my own words to do so.

No discourtesy's intended by that. It's a reflection of the informal service we provide, and if I don't mention something, it won't be because I've ignored it. It'll be because I didn't think it was material to the outcome of the complaint. This approach is consistent with what our enabling legislation requires of me.

It allows me to focus on the issues on which I consider a fair outcome will turn, and not be side-tracked by matters which, although presented as material, are, in my opinion peripheral or, in some instances, have little or no impact on the broader outcome. Another reason I have left out a lot of the detail is to avoid the risk of identifying the consumers when my decision is published.

The property Mr and Mrs S were buying with the mortgage from Halifax was hitherto unregistered. The legal work in connection with the purchase was placed in the hands of a firm I'll call "M". A problem arose with the first registration of the property title with HM Land Registry, prompting Mr and Mrs S to dis-instruct M and instead instruct a firm I'll call C. However, M continued to try and register the title and the mortgage (legal charge); the initial application was rejected by HM Land Registry, but registration was eventually completed in late March 2019.

Meanwhile Mr and Mrs S were unhappy with M continuing to work after having been dis-instructed. They wanted Halifax to provide documents to assist in the registration by C, but found Halifax's response unsatisfactory. It did provide some documents but these were of poor quality, and each time they contacted the bank, found themselves talking to different people and having to explain everything all over again.

Halifax offered Mr and Mrs S £300 compensation for the time, trouble and upset they experienced. When Mr and Mrs S referred their complaint to us, our investigator considered that £450 was a more appropriate level of compensation for the shortcomings in Halifax's response to the situation. Mr and Mrs S have asked for the complaint to be reviewed by an ombudsman.

my findings

I'll start with some general observations. We're not the regulator of financial businesses, and we don't "police" their internal processes or how they operate generally. That's the job of the Financial Conduct Authority. We deal with individual disputes between businesses and their customers. In doing that, we don't replicate the work of the courts.

We'd only refer something to the FCA ourselves if we'd received a large number of individual complaints against the same business about the same issue, indicative of a systemic problem or potential regulatory failing. That's not the case here.

We're impartial, and we don't take either side's instructions on how we investigate a complaint. We conduct our investigations and reach our conclusions without interference from anyone else. But in doing so, we have to work within the rules of the ombudsman service, and the remit those rules give us.

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. As I said earlier, if I don't comment on any specific point it's not because I've failed to consider it but because I don't think I need to comment on it in order to reach what I think is the right outcome in the wider context.

I don't have to answer every question posed of me; my remit is to take an overview and decide what's fair "in the round". I'm also constrained by what the rules of the ombudsman service allow me to consider in a complaint against Halifax.

I can only consider this complaint in relation to Halifax's regulated activity of lending money secured on land, and activities ancillary to that, including registration of the legal charge. Unless and until Halifax terminated its retainer, M was entitled to continue to act for Halifax, but it was Mr and Mrs S's decision to dis-instruct C in relation to registration of the title. Unlike registration of the legal charge, the conveyancing work involved in registration of title isn't a regulated activity and therefore not something which falls within our remit.

The other thing I have to keep in mind is that, although Mr and Mrs S were perfectly entitled to terminate M's retainer, M had two clients, and Halifax had not terminated its retainer. Unless and until it did, M was still acting for Halifax and was under an obligation to Halifax to ensure the legal charge was properly registered against the title. But I accept that here the waters were muddied by this being a first registration, and also by M's difficulties in completing the task (these being what prompted Mr and Mrs S to dispense with their services).

Nonetheless, it might reasonably be argued that M couldn't fulfil its obligations to Halifax to register the legal charge without also registering the title. I appreciate the difficulties created by M with Mr and Mrs S in this respect, because they'd terminated their retainer, but ultimately that was between Mr and Mrs S and M and nothing to do with Halifax.

The dispute between C and M over the registration of title didn't help either, but is of no relevance to this complaint. M was certainly under no obligation to take instructions from C about how to deal with a client (Halifax) which has no connection with C.

This is the situation that Halifax was drawn into. I can appreciate Mr and Mrs S feeling frustrated that Halifax wasn't as helpful as they wanted it to be, but it wasn't really Halifax's dispute to resolve; its legitimate primary concern was the perfection of its security. Overall, though, I do agree that compensation for trouble and upset is appropriate here (I'll come back to the amount shortly) but that's all that's warranted.

Mr and Mrs S have already complained to the Solicitors' Regulation Authority about M. But they are also free to complain to the Legal Ombudsman about M if they believe they've incurred costs in relation to having to instruct C to act for them on registration of the title.

Because that's not an activity covered under our rules, we can't comment further on that. Even if we could, Mr and Mrs S haven't provided any evidence of the costs they incurred.

I said I'd return the amount of compensation that is due. I've no doubt Mr and Mrs S have found the entire episode a distressing one. But it's important to keep in mind that there were several parties involved in this situation, and I can only award compensation for shortcomings on Halifax's part in relation to activities covered under our rules. Mr and Mrs S say this is a matter of unfair treatment; that's their prerogative of course, but I'm afraid I don't agree. This was, in essence, a customer service issue and in all the circumstances, I agree with the investigator that £450 is fair.

Mr and Mrs S don't have to accept my final decision, and if they don't, neither they nor Halifax will be bound by it. Subject to any time limits or other restrictions a court might impose, Mr and Mrs S's right to take legal action against Halifax in respect of the matters covered in this complaint won't have been prejudiced by our consideration of it.

my final decision

My final decision is that I uphold this complaint in part only. In full and final settlement, I direct Bank of Scotland plc to pay Mrs and Mr S £450 compensation. I make no other order or award.

My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further discussion of the merits of it. Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs and Mr S to accept or reject my decision before 20 February 2020.

Jeff Parrington
ombudsman