complaint

This complaint is about a mortgage Mrs B has with Bank of Scotland plc trading as Halifax. The mortgage was originally taken out on an interest-only basis, backed by an endowment policy. The endowment policy did not run its full term. It lapsed several years ago following a waiver of premium claim Mrs B made to the policy provider. This meant the amount the policy paid out was not enough to repay the mortgage. The crux of the complaint before me here is about the steps Halifax has taken to recover the shortfall.

background

The adjudicator who considered the complaint was not persuaded he should recommend upholding it. He was satisfied that the debt was valid, and that Halifax was reasonably entitled to pursue Mrs B for it.

He accepted there had been mistakes (these include the duplication of administration charges in connection with management of the arrears, continuing to pursue Mrs B after saying it would put action on temporary hold, and an allegation that a payment made in 1994 had not been accounted for). He also recognised difficulties Mrs B had in clearing the bank's telephone security process when trying to speak to it.

Overall, however, the adjudicator considered Halifax had responded reasonably to these shortcomings, and did not recommend further redress be paid to Mrs B. Mrs B did not agree, and so the complaint comes to me to 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.

The circumstances surrounding the endowment policy, and how it came to produce less than was needed to repay the mortgage, have been considered elsewhere in this service. So I do not revisit them in any way in this decision. Here, I focus on Halifax's treatment of Mrs B in its efforts to seek recovery of the debt left over after the endowment policy ended.

The starting point is that the original mortgage contract is not completed when the original repayment period is reached and passed. It is completed when Mrs B has repaid, in full, all of the money advanced under the contract, plus interest. In the case at hand, for the reasons already alluded to, the endowment policy that was intended to repay the mortgage in full did not. In that context, I am satisfied that there is still a residual debt to be repaid.

The basis on which the residual debt should be repaid is still, ultimately, governed by the original mortgage contract. A contract can, of course, be varied, and in this case, Halifax did so by switching the residual debt to a capital repayment basis. Separately, and for un-related reasons, Halifax has also changed the account number of Mrs B's mortgage. In my view, that is no more than a procedural matter, and has no bearing on the validity of the debt, or Mrs B's contractual obligation to repay it.

I have made a finding that Mrs B still owes Halifax a valid debt under the mortgage, and although she has paid some money since the original maturity date passed, the account remains in arrears. So I have next considered the action Halifax has taken (or may take in the future) to recover the debt. The starting point here is that a lender is entitled to recover

money it has lent in good faith. Where the lending is secured on land, the steps available to the lender include recovering its security (usually by way of possession proceedings in court), selling it and applying the sale proceeds in reduction of the outstanding debt.

Generally speaking, we take the view that the decisions a lender takes in this regard, and the internal procedures it follows, are the legitimate exercise of commercial judgement, and for the most part we will not interfere with that, subject to the requirement that lenders act fairly and reasonably in all the circumstances.

Mrs B has strongly argued that Halifax should not continue to send her arrears correspondence whilst the complaint is with this service. I do appreciate her strength of feeling on the point, but the plain fact is that we have no power to order a business to do that. We often receive complaints where action to recover a debt is already underway.

Typically, we will ask the business – as a courtesy - to place such action on hold, so that we can consider the complaint. In most cases, a business will comply with our request, but we cannot insist that it does so.

Here, Halifax did agree to hold recovery action, but then continued with it for a period. Clearly, that should not have happened, but Halifax has since recognised that, and has offered what I consider is appropriate compensation for the effect of its error.

I do not for one moment underestimate the distress Mrs B feels at the prospect that, conceivably, she could lose her home. She is in poor health, and I understand she also cares for her autistic son, who lives with her. But I am unable fairly to say that Halifax cannot pursue such a course of action, should it become necessary.

I would however say that it really should be possible for the parties to reach an agreement for the mortgage arrears to be paid without Halifax having recourse to its ultimate remedy. But I stress that for that to happen, both parties have to engage proactively with each other without recrimination over what has gone before, and seek to agree a repayment arrangement that strikes a reasonable balance between Mrs B's difficult financial circumstances and Halifax's right to recover a legitimate debt.

The terms of any such arrangement are not a matter for me, but for the parties to negotiate between them. If Mrs B and Halifax accept my findings, it would not bind either party to any particular arrangement.

Mrs B also complains about *how much* Halifax considers she owes it. Part of this stems from a payment she says went missing in 1994. We have made no formal findings on this (in reality, the passage of time would present considerable practical difficulties to us determining the point one way or another). But in any event, we do not need to, because Halifax has agreed to give Mrs B the benefit of the doubt. It has credited the mortgage account with the disputed sum, plus interest for the intervening 20 years. That is what we would have ordered Halifax to do if we had investigated this point and had found in Mrs B's favour.

I note Mrs B continues to challenge the accuracy of Halifax's accounting, and is unhappy that we have not given further consideration to her own rendition of the mortgage account. I understand that Mrs B remains unconvinced, and it does seem that her confidence in Halifax's accounting procedures may have diminished. But that, of itself, is not enough for me to find that there is anything fundamentally wrong with her mortgage account, such that she is owed redress for financial loss.

The Financial Ombudsman Service does not provide an account checking service and it is not our role to make consumers' complaints for them. If Mrs B remains of the view that she has suffered financially from Halifax's administration of her mortgage account, it is for her to arrange for the account to be independently audited and the evidence of the audit used as the basis for a new complaint. Mrs B would have to meet the cost of the audit, albeit if errors *were* found, we would then expect Halifax to reimburse the cost of the audit as well as taking any corrective action the audit revealed to be necessary.

But as things stand, the evidence available to me to consider does not persuade me that Mrs B has suffered a material financial loss flowing from Halifax's calculation of her mortgage account.

my final decision

My final decision, for the reasons set out above, is that I uphold this complaint in part. In full and final settlement, I direct Bank of Scotland plc trading as Halifax, to:

- refund arrears administration charges totalling £145, back dated for interest purposes to the dates they were applied; and
- pay (not credit) Mrs B £600 compensation.

I make no other order or award.

Jeff Parrington
ombudsman