DRN-4403863

The complaint

Mr H gives several reasons why he's unhappy with how Bank of Scotland trading as Halifax (BoS) treated him during his period of financial difficulty. His main concern is that it took too long for BoS to take possession of his property and that it unfairly charged him interest during that time – leading to a shortfall after the property sale. Mr H doesn't think that he should be held liable for this shortfall.

What happened

Mr H has provided a detailed account of events leading up to, and following, the complaint he made to BoS. I may not have listed everything here that has happened, but I've highlighted what I consider to be the key milestones in the timeline.

Mr H held a joint mortgage account with BoS since June 2005 on an interest only basis. In 2017, Mr H seperated from his ex-wife. Following the separation, his ex-wife left the property and stopped paying towards the household bills – including the mortgage. Mr H stayed living at the property with their young son. Mr H was working part-time and on a limited income.

Mr H struggled but was generally able to make the mortgage payments on time up until December 2019. In December 2019, Mr H had to have an operation for a heart condition. From then, the mortgage account fell into arrears for a sustained period.

Mr H told BoS that it was his intention to sell the property to repay the mortgage as it had become unaffordable for him. Mr H's ex-wife agreed to this, so the property was marketed for sale. However later in May 2021, she changed her mind, and the property was withdrawn from the market.

Subsequently, Mr H discussed other possible options for repaying the mortgage with BoS. In December 2021 he requested voluntary repossession – also referred to as voluntary surrender of keys (VSOK).

BoS sent Mr H the necessary information and paperwork to commence with the VSOK on 6 September 2022. The property was subsequently taken into possession on 5 December 2022.

The property was listed for sale which subsequently completed on 27 March 2023 for a sale price of £120,000. This left a shortfall of around £26,000 which Mr H was informed of via letter in April 2023.

Mr H complained to BoS. He felt that there were unreasonable delays throughout the VSOK process which led to a large shortfall owed and he complains about the lack of contact from BoS during the process.

Mr H said that he was told by BoS that his ex-wife would be held liable for any shortfall remaining following the sale of the property and that he would be the sole beneficiary of any equity. This didn't turn out to be the case and as such he disputed that he should be held liable to repay any of the shortfall. He was also unhappy with the support offered by BoS

during the process and he felt that interest should have stopped accruing after he told BoS about the situation with his ex-wife.

BoS didn't uphold the complaint. It didn't agree that it had treated Mr H unfairly or that it had caused any unavoidable delays. And it confirmed that it was right to hold both him and his ex-wife liable for the shortfall amount.

Mr H was unhappy with BoS' response and referred his complaint to our service. One of our investigators reviewed the complaint and didn't uphold it. He explained the key considerations behind the outcome he'd reached and that he was satisfied that BoS hadn't treated Mr H unfairly.

Mr H didn't accept our investigator's view. He reiterated that he was told that the payments he'd made on his own towards the mortgage would be taken into account in relation to the shortfall and that his ex-wife should be liable as a result. He said BoS didn't offer him enough help or support while he was struggling to meet the payments and through the VSOK process.

Mr H asked for his case to be referred to an ombudsman for a final decision.

What I've decided – and why

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

Having done so, I don't think this complaint should be upheld. I realise this will be disappointing for Mr H. But I hope the reasons I've set out below will help him to understand why I have come to this conclusion.

I've given careful consideration to all the submissions made by both parties, but I won't address everything that has been raised. I'll focus on the matters that I consider most relevant to how I've reached a fair outcome – in keeping with the informal nature of our service.

I've also kept in mind what Mr H has told us about his personal circumstances and the significant difficulties he has faced, particularly in the years since his separation from his ex-wife.

I won't go into the specifics – as it's important Mr H is unidentifiable from my decision – but Mr H has been very honest about the abuse he has endured. And I appreciate how very difficult it must have been for Mr H to express this. I can see Mr H has been through a difficult time and I do empathise with his circumstances.

I'll deal with each of Mr H's concerns in turn. In doing so, I must note that because this is a jointly held mortgage, without the consent of the joint party, the information I can consider and/or disclose about this mortgage is relatively limited. For example, I can't disclose the details of any conversations or correspondence which took place between BoS and Mr H's ex-wife.

Did BoS treat Mr H fairly when he told it he was struggling to pay the mortgage and did it unnecessarily delay possession of the property?

Ultimately, a lender is entitled to expect the debt to be repaid in line with the agreed mortgage contract. In situations where a customer is in financial difficulty, we expect a lender to act fairly towards the customer – taking into account their circumstances. We'd expect a

lender to discuss their customer's situation with them and try to help get the mortgage back on track. This can sometimes be by way of offering an affordable and appropriate concession. Repossession should always be a last resort. And it's important that the customer also engages with the lender to keep it up to date with their situation.

Where a dispute exists between joint borrowers is concerned, a mortgage lender is a neutral party. The mortgage contract is between the lender and both borrowers. When Mr H's mortgage was taken out, both parties agreed they would be jointly and severally liable to pay back what they owe. It isn't for a lender to involve itself in the particulars of how the borrowers decide to meet those payments between them. It follows that, where there is a dispute, the lender cannot interfere. And it has to ensure that its actions don't have an adverse financial impact on either party. As any concession a lender makes on a mortgage could adversely affect one or both parties, a lender will generally need the consent of both borrowers before putting any arrangement in place.

I can see from the contact notes that Mr H contacted BoS in January 2020 and explained that he was no longer able to make the full monthly mortgage payments on his own and that he expected his ex-wife to contribute half. He was reminded that the mortgage is a joint liability and therefore both parties are held liable for the full monthly payment. He was told that arrears would build if the full payments weren't met and both he and his ex-wife's credit file would be impacted.

It was agreed that Mr H would pay whatever he could towards the mortgage whilst he considered his options. BoS also agreed to try to contact his ex-wife in the meantime. But as the full monthly mortgage payments weren't being covered, an arrears balance began to build.

Mr H's ex-wife agreed to put the property on the market. And Mr H continued to pay what he could towards the mortgage. Subsequently BoS allowed time for the property to be sold. Mr H was taking positive action to repay the mortgage and his ex-wife, at the time, was in agreement with his plans. So I don't think BoS had any reason to take further action at this time.

When Mr H told BoS that his ex-wife had later changed her mind about selling the property, BoS told him that repossession action might be the next step. At this point, there was no clear indication that things might improve, so even if a concession could be agreed by both parties, it was unlikely to be appropriate in the circumstances as it would probably prolong things rather than lead to a solution.

However, Mr H told BoS that he was still trying to contact his ex-wife to see if she'd agree to sell the property to avoid the need for repossession. With this in mind, I accept that it wasn't the right time for BoS to begin possession action, as Mr H was engaging with it and actively looking to resolve the situation. As I mentioned earlier, repossession should be a last resort. As such, I'm satisfied BoS treated Mr H fairly here by not taking further action at that time.

Mr H believes the prospect of VSOK was discussed during his conversations with BoS in May and June 2021. And therefore, he feels the process should have started sooner. But I don't see that was the case. These conversations touched on the process of BoS instigating legal proceedings and how that process might work. VSOK is different however, as this doesn't require the lender to take legal action against the borrower in the same way possession proceedings would. VSOK is the borrower voluntarily surrendering the property to the lender and giving it the keys. So the legal possession process for the lender is far more straightforward. As such, I've not seen anything to suggest that Mr H asked to begin the VSOK process at this point. And therefore I don't agree that BoS caused unreasonable delays to the possession process.

Mr H also says he was told that if BoS took repossession action he might be able to use the notes on BoS' system as evidence to argue his case in court about who should benefit from any equity or be liable for any remaining shortfall. But he says he was never given this opportunity and he consequently feels he was given the wrong advice. I don't agree. As I've said, the processes of forced repossession and VSOK are very different. Mr H was correctly advised that a repossession hearing may go to court whereby he'd have the opportunity to raise any issues and present evidence. But, with VSOK, there is no need for a court hearing. So I don't agree that Mr H was given the wrong information when discussing the prospect of repossession with BoS or that he was told he wouldn't be liable for any shortfall.

In December 2021, Mr H contacted BoS to discuss giving up the keys to the property. Mr H was advised that due to the dispute, VSOK couldn't be guaranteed as BoS would also need his ex-wife to agree. Other options, such as renting the property and repossession were discussed. Mr H confirmed he wanted to look at VSOK so BoS agreed it would try to proceed on this basis.

BoS attempted to call both Mr H and his ex-wife a number of times in December 2021 and January 2022 without success. As such, it closed down the VSOK request.

In August 2022, following contact from Mr H's ex-wife, a second VSOK request was made. BoS sent the VSOK forms by post to Mr H on 6 September 2022. BoS received all the necessary completed VSOK forms by 27 September 2022 and it subsequently instructed solicitors to process the VSOK. The solicitors had to complete their checks and all the relevant paperwork in order to take possession of the property. It's not unusual for this to take some time. BoS took possession of the property on 5 December 2022 – which I don't consider to be an excessive timeframe. The property then needed to be marketed. The property sale completed on 27 March 2023 for a sale price of £120,000.

Altogether, I don't think the time it took for BoS to action the VSOK, take possession and sell the property was unreasonable.

Did BoS make reasonable attempts to contact Mr H following his VSOK request in December 2021?

BoS attempted to call both Mr H and his ex-wife a number of times in December 2021 and January 2022 without success. BoS did manage to speak to Mr H a couple of times in January 2022. On both occasions though, Mr H said he was at work so he couldn't speak. He asked for a call later in the evening. BoS said it couldn't guarantee a call in the evening but advised Mr H to call back if he didn't receive a call. As neither party responded to BoS, it closed down the VSOK request.

Mr H feels that BoS didn't do enough at this point to speak to him. Mr H says he was promised a call back after 5:30pm but this didn't happen. He says that, due to his vulnerability, BoS should have been more conscious of his needs and contacted him when he asked it to.

I've not seen any evidence to suggest that BoS promised a call back in the evening. And although I acknowledge that Mr H was a vulnerable person, I don't reasonably expect BoS to have called him after normal office hours. Mr H had demonstrated that, aside from time constraints due to work, he had no difficulty speaking on the phone. And BoS had asked him to call it back to discuss the VSOK which he himself had requested. I don't think that is unreasonable in the circumstances.

When the second VSOK request was made in August 2022, BoS called Mr H and left a voicemail message. A further three attempts were made to contact Mr H and explain things. More voicemail messages were left. At this point, Mr H hadn't attempted to make contact with BoS since the brief conversations he'd had in January 2022 when he said he couldn't talk at work.

To avoid further delay, BoS sent the VSOK forms by post to Mr H on 6 September 2022. This was on the basis that Mr H had previously clearly expressed his wish to surrender the property. Mr H says these forms arrived "*out of the blue*".

Mr H told us that he didn't know what was happening and he was "*sick with worry*" during the period between December 2021 and September 2022 while he was waiting to hear from BoS. But I don't think BoS treated Mr H unfairly here. As I've established, BoS attempted to contact Mr H several times in December 2021, January and August 2022. And it's important to note that it was Mr H himself who asked for the VSOK. As such, I think it's reasonable to expect him to attempt contact with BoS himself also, rather than wait to hear from it – especially as BoS asked him to call back when he could.

Mr H says that although he didn't fully understand what was happening, he "*took a chance*" and returned the completed VSOK forms. I think the correspondence Mr H received about the VSOK was clear. The cover letter stressed the importance of knowing how the VSOK might impact Mr H. It enclosed a FAQ document and advised Mr H to contact BoS to discuss the VSOK if he had any questions. It also advised Mr H to take independent legal advice.

Mr H signed and returned the form. If Mr H had any doubts, he could have contacted BoS on the number it provided on the documentation. The correspondence encouraged him to do so. However, Mr H didn't do that. So, I can't hold BoS responsible for him not making contact to clarify anything that he feels he may not have understood.

Is it fair that BoS holds Mr H and his ex-wife jointly and severally liable of the shortfall?

Mr H complained that he wasn't aware of the process and that BoS didn't keep him updated following his return of the VSOK forms. So he was shocked to receive a letter from BoS in April 2023 explaining that his property had been sold for around £26,000 less than the outstanding mortgage balance. And therefore this needed to be repaid.

The VSOK form Mr H signed also included information about liability for the shortfall amount. The relevant sections of the form say on page two:

> *" 11 I/we understand that if the property is sold at a loss then I am/we are liable to repay the shortfall. I/we understand that debt collection agents and/or solicitors will be instructed to pursue me/us to recover any shortfall…*
>
> *12 I/we understand that giving you voluntary possession of the property does not release me/us from my/our liabilities under the mortgage".*

I appreciate why Mr H doesn't feel it's fair that he should have to repay the shortfall after struggling to make the mortgage payments himself with no input from his ex-wife. But this unfortunately doesn't change the fact that both parties are jointly and severally liable according to the mortgage contract. And therefore, I can't conclude that Mr H and/or his ex-wife shouldn't be pursued for the outstanding debt.

After Mr H signed and returned the VSOK form in September 2022, he'd voluntarily given up the property. So BoS didn't need to keep him updated with the possession process and sale of the property. Mr H signed the VSOK form to say he'd read and understood all the

information he'd been sent. The VSOK documents explained the process and that he would next hear from BoS, or a third party, if there was a shortfall when the property sold. Following return of the VSOK documents, if Mr H was unsure of anything, he could have contacted BoS to ask.

Should BoS have stopped charging interest?

I understand Mr H feels BoS should have stopped charging interest after he had informed it of the difficulties he was experiencing. BoS has acknowledged Mr H's very difficult circumstances. However, BoS was entitled to charge interest whilst the account remained active. This is in line with the terms and conditions of the mortgage that both parties agreed to at the outset. As such, I don't agree that BoS should have stopped charging interest to the mortgage account.

Should BoS have sent arrears letters addressed to both Mr H and his ex-wife

This complaint point didn't form part of Mr H's initial complaint to BoS, so ordinarily I'd suggest he refer this issue to BoS first. That said, I'm satisfied I can answer this concern for Mr H here.

It isn't unusual in the circumstances that arrears letters are sent in joint names – even if the letters are being sent to separate correspondence addresses to that of the mortgaged property. This is because it is a joint mortgage. So, although I appreciate it wouldn't be nice for Mr H to receive a letter with both his and his ex-wife's name on it, I can't say it's unreasonable for the letters to be addressed this way.

My final decision

My final decision is that I don't uphold Mr H's complaint against Bank of Scotland trading as Halifax.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 4 April 2024.

Arazu Eid
Ombudsman