

The complaint

Ms M complains about how long it has taken Bank of Scotland plc trading as Halifax to repossess a property which is mortgaged with it.

What happened

Ms M told us she and her former partner had a joint mortgage with Halifax. In 2020 she separated from that partner. Since then, he'd refused to pay the mortgage. And Ms M told us she had struggled with the payments. She wanted the property to be repossessed by Halifax, and she said everything left could then be shared out. But she said her former partner was refusing to allow the property to be sold.

Ms M complained to our service about this in November 2023. She said it had taken more than three years, and the property still wasn't repossessed. Since then, the property has finally been repossessed, in April 2024.

Halifax didn't think it had done anything wrong. It wrote to Ms M on 31 October 2023 and said even though an outright possession order had been granted on 21 August 2023, it still wouldn't apply for an eviction date right away. It would try to reach some sort of agreement with Ms M or her partner first. It asked her to contact Halifax to discuss her options.

Ms M complained again, and Halifax wrote again on 9 November 2023. In that letter, it sought to explain why the property hadn't been repossessed earlier. Halifax said that even after a repossession order was granted, it was still obliged to follow the correct protocol and policies before it could enforce the order. It said those pre-enforcement checks were nearly completed, and it expected the matter to go back to the court shortly.

Halifax said when arrears start to accrue on a mortgage, it will try to work with the parties to agree repayment. And it said when the Covid-19 pandemic happened in 2020, the Government stopped any legal action from taking place on mortgage accounts which were in arrears. That restriction wasn't lifted until March 2021. In 2021, Ms M was trying to sell her property and taking legal advice about her situation, so Halifax said it would've worked with her during this process. But it can't get involved in disputes between joint mortgage holders.

Our investigator didn't think this complaint should be upheld. I won't set out her reasoning here, as I haven't adopted it.

Ms M replied, to say that Halifax already had a court order, and she didn't think that order required any further court action. Because no agreement was reached, this case came to me for a final decision. And I then reached my provisional decision on this case.

My provisional decision

I issued a provisional decision on this complaint and explained why I did propose to uphold it. This is what I said then:

Although this complaint is about a mortgage held jointly, Ms M has explained that her

separation from her partner was not amicable, and in the circumstances of this particular case, our service agreed to consider the complaint she brings alone.

When this case came to me, I could see Ms M had been keeping Halifax up to date with discussions with the other joint mortgage holder. And I thought what Ms M had told Halifax about those discussions, did suggest it was unlikely that Ms M, or her former partner, were going to be able to reach any agreement with Halifax to repay the mortgage arrears, or to sell the house themselves to repay the mortgage. So I wasn't clear that Halifax's efforts to support the parties to reach agreement with it, were appropriate here.

I thought that, from what I'd seen of Ms M's contact with Halifax, it ought to have been clear to Halifax that an amicable solution was unlikely, a bit earlier than it was. Arrears were continuing to accrue throughout this time. So I thought that Halifax should probably have moved to repossess Ms M's property somewhat earlier than it did.

I wrote to Halifax, and explained that I thought, once Ms M had told Halifax there was now a dispute over the split of proceeds from the sale which was preventing her and the other person named on the mortgage from moving forwards, Halifax ought to have realised that an amicable solution to the arrears was not at all likely. So I thought, in order to prevent the accrual of further interest charges on this mortgage, Halifax ought to have acted then. I also said that if Halifax had started repossession in early November 2021, I thought this ought then to have been completed in early 2022.

Halifax has reviewed this case, in the light of the comments I'd made and the contact with Ms M that I drew to its attention. And it has reached a revised view. Halifax said it now agrees that this property should have been repossessed in the early part of 2022. So it wanted to offer to waive the interest from early 2022, until the date the property was finally taken into possession.

Halifax hasn't suggested any date for this. I think it's reasonable to conclude from the file that this property could have been repossessed by 10 April 2022, which is five months after Ms M had told Halifax of the latest dispute over the property. So I will ask Halifax to waive interest on this mortgage from then, until the property was repossessed on 17 April 2024. I think this waiver of just over two years of interest on this mortgage would form part of a fair and reasonable solution to this complaint.

I understand that the house is now in Halifax's possession, and is listed for sale.

My decision doesn't prevent Halifax from starting to charge interest again from the date of repossession, in the normal way. Interest is usually charged on a repossessed property until the property is sold. And if Halifax had acted sooner, Ms M would still have faced some further delay after April 2022, and incurred a little more interest on the mortgage, while waiting for this house to sell.

I should say, for the purposes of clarity, that I make no decision here on whether Halifax has acted promptly and fairly after the repossession, including in organising this sale. I don't have any information on that, and this would need to be considered as part of a future complaint if Ms M does then have concerns.

Halifax also said it wanted to pay Ms M £1,000 in compensation, to recognise the distress and inconvenience the delay in repossessing the property has caused to her. I think this, taken with the offer to waive interest that I have set out above, does provide a fair and reasonable resolution to this complaint. So that's what I currently propose to award.

I invited the parties to make any final points, if they wanted, before issuing my final decision. Both sides replied.

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.

Halifax said it was happy with the proposed resolution, which broadly reflected its recent offer.

Ms M replied, to say she was pleased that I had acknowledged Halifax hadn't acted fairly. But she didn't think I had appreciated the full impact this had on her, over the past few years. She set out for us details of how this had impacted her. She told us this had affected her health, and set back her recovery from a medical condition. She felt the contact from Halifax during this time amounted to harassment, and said Halifax kept pushing her to come to an arrangement, which she couldn't do. Ms M said that even after Halifax agreed to stop calling, it still sent letters, and did call again.

Ms M said she missed a family holiday to attend the court hearing for repossession, and she hoped then that the property would be swiftly repossessed, but it still took a further eight months.

Ms M said she felt Halifax just didn't understand her situation, although it had been informed of the nature of the separation between herself and her former partner. She said what Halifax had done, allowed problems to continue unresolved. Ms M said Halifax should treat situations like hers differently.

Ms M said that this had also affected her financially. She told us that in 2020 she'd paid for the property to be prepared for sale, and she'd faced further solicitors costs in trying to get her former partner to agree to a sale.

She also said she'd had to pay utility bills, and was asked to pay council tax for an empty property. She said she was in considerable arrears, and didn't think she should have to pay all of this, if the property ought to have been repossessed sooner.

Ms M said Halifax always knew there was no chance of a resolution and repossession would be the only answer. She didn't feel the compensation offered was adequate, given the many thousands she had paid, and still owed, especially for expenses in the last two years.

I wrote to Ms M, in advance of finalising my decision, to ask if she wanted to send our service any additional evidence.

In that letter, I stressed that my provisional decision was based on the finding that Halifax should have started to repossess the property in late 2021, and the repossession would have been complete in April 2022. I didn't think it ought to have been clear to Halifax from the very outset that it wouldn't be possible to reach any agreement here.

I said I did appreciate this has been a very difficult experience for Ms M, and I was very sorry to hear about the impact it had on her. But I noted that, unfortunately, it can take longer to dispose of a property when one party isn't cooperating with the process. And some of the things Ms M mentioned, including the costs of engaging a solicitor to attempt negotiations with her former partner, and the costs of maintaining the property before April 2022, didn't seem to me to be costs that would have been saved, if Halifax had acted sooner.

I said that if there were costs that Ms M had incurred in connection with the property after 10 April 2022, then I would invite Ms M to tell us more about these.

I also noted that Ms M was concerned the property's value may have diminished in this time. I understand the property is now on the market, but hasn't yet sold, and most importantly, a complaint hasn't yet been made to Halifax about the eventual sale price. So I said if Ms M would like to complain about that in future, our service may be able to consider that for her in due course, but I couldn't add this in to her current complaint.

I asked Ms M to get back in touch with us within a couple of weeks, if she wanted to add further evidence or argument. Ms M wrote again, with bills for utilities, council tax and solicitors' costs. She stressed again the impact this had on her, and said she didn't feel able to bring a further complaint about the selling price of the property.

I've considered what Ms M has said, and I appreciate why she feels that £1,000 in compensation doesn't make up for what she's been through. But I think the concerns Ms M has set out for us now, are a mix of issues.

There are points where I think Halifax should have done better, most obviously by repossessing the property sooner.

There are also areas where I can understand that Ms M found things upsetting, for example Halifax's attempts to keep in touch with Ms M before the property was repossessed, which I don't think were just a mistake. Although Halifax ought not to have called Ms M again if it had agreed not to, I would expect Halifax to keep Ms M informed of the position of her mortgage, and to keep in touch with her about her efforts to agree a sale. I appreciate that this would be difficult for Ms M, but I don't think that is harassment by Halifax.

I should also note that there are other issues here which have clearly affected Ms M, issues which I think arise more out of Ms M's former relationship, rather than problems Halifax caused with the sale of this property. So I don't think I can ask fairly and reasonably ask Halifax to pay compensation for the full impact that the last few years of seeking to dispose of this property have had on Ms M, because I don't think Halifax is responsible for all of that.

Considering all of the above, I do still think that a payment of £1,000 in compensation in this case provides part of a fair and reasonable outcome here.

I understand why Ms M may not wish to start a fresh complaint right away, over the sale price of her property. Further advice on time limits for complaints made to a lender, then on time limits for referring that complaint to us, is available on our website. I would also note that Ms M can appoint a representative, such as a friend or family member, to manage the complaint for her, if she would like.

Our service has also received evidence of further costs that Ms M has incurred. I think these fall under three heads – solicitors costs, utilities, and council tax.

The solicitors' costs that Ms M has evidenced appear to have been incurred before 2022. I understand Ms M thinks this property should have been repossessed right away, but that's not the decision I reached here. And it's the outcome of these negotiations, done through Ms M's solicitors, that made me think Halifax should then have realised there was no prospect of agreement between the parties. So I don't think these costs would have been avoided if Halifax had acted as I think it should have. That means I can't fairly ask Halifax to cover those as part of this complaint.

Ms M also showed us she paid for utilities to the property, until she had those services cut off. I do think it was Ms M's decision not to cut off the supply straight away, to a property she told us she wasn't living in. So again, I don't think I can fairly ask Halifax to meet these costs.

But I've reached a different view on the council tax charges for the financial years 2022 to 2023, and 2023 to 2024. These costs are considerable.

Although this is a joint mortgage, this complaint is in Ms M's sole name. However Ms M has shown our service that she alone is being pursued by the council for these amounts.

I wrote to Halifax to say that I was minded to ask it to pay the council tax charges for 2022 to 2024, which came to a total cost of about £4,278.82. Halifax has replied saying it is willing to cover these costs, so I will now include that in my award.

Aside from the addition of a payment for council tax, I haven't changed my mind on the appropriate outcome here. I'll now finalise my decision.

My final decision

My final decision is that Bank of Scotland plc trading as Halifax must waive interest on the mortgage to which Ms M is a joint party, from 10 April 2022 until 17 April 2024.

Bank of Scotland plc trading as Halifax must also pay Ms M £4,278.82 in respect of council tax charges between April 2022 and March 2024, and pay Ms M £1,000 in compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 1 August 2024.

Esther Absalom-Gough

Ombudsman