

The complaint

The estate of the late Mr W, represented by his executor Ms W, complains that Bank of Scotland plc trading as Halifax wrote off Mr W's outstanding mortgage by removing the charge over the property only to go back on that.

What happened

The late Mr W had a number of accounts with Halifax. These included an equity release mortgage called a retirement home plan (RHP) – a form of interest only mortgage with no fixed repayment date for repaying the capital but a requirement to make regular interest payments.

Sadly Mr W passed away in 2006. His daughter (and executor) Ms W continued to live in the property and pay the monthly interest payments. Under the terms and conditions, the mortgage was repayable in full within 18 months of the death of the borrower, but this didn't happen.

In 2017, Halifax said that the mortgage must now be repaid and cancelled the direct debit, which led to arrears accruing. Ms W later complained to the Financial Ombudsman Service and her complaint was considered by another ombudsman. She noted that the arrears had since been repaid. But she didn't think that Halifax had acted unreasonably in seeking to bring the mortgage to an end and secure repayment – as should have happened ten years earlier. She said that Halifax couldn't fairly be expected to let Ms W take over the existing mortgage, and Ms W would either have to arrange alternative finance herself or find another means – such as sale of the property – of repaying the outstanding balance. She said that Halifax should give Ms W a further six months to make arrangements to repay, but she didn't otherwise uphold the complaint.

In 2023, Ms W brought this further complaint. She said that the Land Registry had written to her in June 2023 notifying her that Halifax's charge over the property had been removed. She confirmed that was correct and then arranged for the property to be transferred to her name and put it on the market for sale. She said that Halifax then contacted her asking how the mortgage would be repaid. She complained to Halifax, which said that the mortgage had not been paid off and was still outstanding and that it had not agreed to the removal of the charge. She said that this might have caused the property sale to fall through and had caused her significant financial loss.

Halifax said that it had removed a charge from the property, but that this charge related to a separate secured loan taken out by Mr W in 1996, and not the mortgage. It said that loan had been repaid in 2015 but the charge hadn't been removed at the time so Halifax corrected that in 2023. It hadn't removed the separate mortgage charge, which remained on the property title because the balance hadn't been repaid. Halifax said that Ms W was aware of the separate secured loan and as the notification from the Land Registry referred to a charge taken out in 1996 (not the RHP mortgage from 1989), it didn't think Ms W could reasonably have believed that the mortgage charge had been removed when she hadn't made payment. It didn't think it had done anything wrong or that it was responsible for Ms W being unable to complete the property sale.

In the meantime Ms W was able to complete the property sale, and the mortgage was paid off in January 2024.

Halifax offered to pay £300 compensation for not making the position clear to Ms W when she first complained – it had wrongly said it hadn't had any contact with the Land Registry – and for not notifying her itself that it was removing the secured loan charge itself and why. Our investigator thought this was a fair offer but Ms W didn't agree and asked for her complaint to be reviewed by an ombudsman.

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.

I'm sorry to hear of all the difficulties Ms W has faced. I've carefully noted and taken into account everything she's said – even where I've only summarised the points she's made, I have considered them in full. But I'm afraid that having done so I find that I agree with the investigator that Halifax's offer is fair and reasonable in all the circumstances.

I'm not persuaded that it was reasonable for Ms W to conclude, just from the letter from the Land Registry, that the mortgage had been written off and the property was now mortgage free.

I think Ms W did know about the other secured loan, because I've seen that she was making payments towards it until it was paid off in 2015. However, I can also understand why – that loan having been paid off eight years before – it didn't come to mind when she received the letter from the Land Registry, and that instead she assumed that Halifax had removed the mortgage charge.

But even if it was reasonable for Ms W to think that the Land Registry letter referred to the mortgage charge, rather than the long-past secured loan, I'm not persuaded that it was reasonable for her to assume that the mortgage had been paid off.

Ms W says she took advice about that from third parties – though the only evidence she's provided of that is a letter from the manager of her local branch of the bank, which merely acknowledges what she's said without agreeing with it. Ms W also says that she contacted the Land Registry to confirm. I've seen that it did write back confirming that Halifax had removed a charge, though it said this was a charge registered some years after the mortgage was taken out. I've not seen evidence that Ms W tried to check this with Halifax's mortgage centre – until she complained when her solicitor dealing with the sale told her the mortgage charge was still on the property.

Ms W has given us a copy of the title entry itself – but the copy she has given us is blank where the charges section on page 1 would be, and doesn't include the remainder of the charges section on page 2. Even if the mortgage charge had been removed from the title entry, it should still show the charge in favour of a third party who lent Ms W money to clear the mortgage arrears in 2017 – but it doesn't. Whereas the copy of the title entry provided by Halifax shows both that entry and the mortgage charge.

I'm pleased to note that the property sale did go through in the end, so the confusion around the charge didn't result in Ms W's sale falling through. But despite that Ms W says that she has still suffered a loss – because she agreed a reduced sale price in the belief that she would not have to pay the mortgage balance on sale, and because when she believed the mortgage charge had been removed she understood she now took ownership of the property which led to a reduction in her benefits income.

But I'm not persuaded by this. As I say, I can understand Ms W having some initial confusion when she received the first letter from the Land Registry. But even if it was reasonable for her to understand that the charge had been removed, it doesn't follow that it was reasonable for her to conclude that the mortgage had been paid off and wouldn't need to be repaid when the property was sold.

Ms W knew that the mortgage still existed. She knew she hadn't paid it off. And she knew that was still the case after the June 2023 letter from the Land Registry, because she continued making the monthly payments to the mortgage for the rest of 2023. If she believed the mortgage had been written off and no longer existed, it's difficult to see why she continued to make payments. And it's also difficult to see why, if she did believe that, she didn't question why Halifax continued to collect those payments.

I'm not therefore persuaded that it was reasonable for Ms W to conclude that the mortgage no longer existed and had been written off. I'm also not persuaded that this was the only reason she agreed to a reduction in the property sale price – given she has also said that she wanted to ensure a quick sale.

For the same reasons, I don't think Halifax is responsible for any drop in her benefits income. I haven't seen evidence of any impact on her income. But I don't think it's the case that Halifax's removal of the charge – even if it had removed the mortgage charge too, which it didn't – had any impact on the ownership of the property. It was always owned by Ms W as the beneficiary of her father's estate, whether or not the legal title had been formally transferred to her. Any question of the impact of that on her benefits income is a matter between Ms W and the Department of Work and Pensions. In any case this isn't something I can require Halifax to compensate Ms W for even if there was financial loss, since this complaint is brought by Mr W's estate – but this is Ms W's income, separate from Mr W's estate.

Putting things right

In conclusion, I do think Halifax shouldn't have just removed the charge relating to the old secured loan by writing to the Land Registry without notifying Ms W of what it was doing. And I think it ought to have identified that it had done so when she first complained – rather than simply telling her that the mortgage charge hadn't been removed. That was correct, but didn't explain what it had removed.

But I don't think it was reasonable for Ms W to conclude that the mortgage had been written off, knowing that she hadn't repaid it and was still making monthly payments. And so I don't think Halifax is responsible for any actions Ms W may have taken in that belief.

In saying that, I've also taken into account that this is not Ms W's complaint. Ms W is not and never has been Halifax's customer in relation to this mortgage. It is the complaint of the late Mr W's estate, brought by Ms W representing the estate as the executor – not brought by her in her own capacity. That being the case, I can only award compensation for financial loss suffered by the estate, not Ms W – and, as I've explained, I don't think there is any. I can also only make an award of compensation for non-financial loss caused to the estate – not caused to Ms W herself in her personal capacity.

I can therefore only require Halifax to pay compensation to the extent that its actions had an impact on Mr W's estate, for example by reducing its value or putting it to further expense. I can't make an award for any upset caused to Ms W herself.

In all the circumstances, I think its offer of £300 compensation for the inconvenience caused to Mr W's estate is reasonable, and I don't think there is any financial loss Halifax needs to

compensate Mr W's estate for in addition to that.

My final decision

My final decision is that Bank of Scotland plc trading as Halifax has made a fair and reasonable offer to settle this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr W to accept or reject my decision before 13 August 2024.

Simon Pugh
Ombudsman