

The complaint

Mr M complains that Bank of Scotland plc trading as Halifax told him that if he could provide a memorandum of sale, it would cancel his eviction. But when he provided that information, Halifax went ahead with the eviction anyway.

What happened

Mr M had a mortgage with Halifax that had fallen into arrears. In 2021, Halifax obtained a suspended possession order – and it enforced the order in September 2023. I understand Halifax agreed to put a hold on evicting Mr M to give him to sell the property providing he gave it a suitable memorandum of sale.

By December 2023, Halifax had not received a memorandum of sale. So in January 2023, Halifax enforced the order and set an eviction date for 19 March 2024.

On 18 March 2024, Mr M told Halifax he'd received two offers for his home for £145,000 and £154,000 – and he gave it a memorandum of sale. But on 19 March 2024, Halifax decided to go ahead with the eviction.

Mr M considers Halifax has not treated him fairly. He said that it was unfair that Halifax had gone back on its word and continued with the eviction even though he'd agreed a sale and obtained a memorandum of sale. Mr M considers that Halifax will now sell the property for less than the outstanding amount he owes, leaving him no choice but to declare himself bankrupt. Mr M also complains that Halifax has continued to apply the monthly payment to his mortgage.

The investigator said that Halifax should have explained more clearly that it would review the memorandum of sale and that it may cancel the eviction – but it would not necessarily do so. She thought Halifax should increase the compensation from £200 to £300 to reflect the distress, inconvenience and loss of expectation caused by the misleading information he was given. The investigator thought it was reasonable for Halifax to apply the mortgage payments to Mr M's mortgage.

Mr M did not accept what the investigator said. He made a number of points, including:

- The extra £100 is a slap in the face bearing in mind what Halifax did and the emotional stress it caused. He thought he'd managed to sort things out and would be debt free, but Halifax backtracked.
- He no longer owns the property so he did not understand why he should still be charged interest. He believed that went against government guidelines. Halifax is bankrupting him.

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.

Memorandum of sale

I was sorry to hear of the very difficult time Mr M has been through. I understand he experienced some very difficult personal circumstances that contributed to him being unable to maintain the mortgage payments. But in the circumstances, it was reasonable for Halifax to take action to take possession of the property

Halifax acted reasonably by giving Mr M time to sell the property. The focus of this complaint is events around the eviction in March 2024 – but I can see Halifax gave Mr M a reasonable amount of time before that to sell his home. As Halifax did not receive the proof it would need to see that there was a viable sale in place, it was reasonable for it to enforce the suspended possession in January 2024. The court granted that order despite hearing from Mr M and set an eviction date for 19 March 2024.

There were several phone calls between Mr M and Halifax the day before eviction was due. It is not in dispute that Halifax did not give Mr M clear, fair and not misleading information. In particular it did not make it sufficiently clear that if Mr M obtained a memorandum of sale, it would only consider whether to cancel the eviction or not. It led Mr M to believe that if he obtained a memorandum of sale that would guarantee the eviction would be cancelled.

I am satisfied that in these circumstances, Halifax reviews whether to suspend action on a case-by-case basis. It follows, that I could not say that Halifax acted unfairly by not accepting Mr M's memorandum of sale and continuing with the eviction. That was a reasonable decision for Halifax to take in the circumstances – and bearing in mind that the memorandum was only sent to Halifax at 7.27pm the night before eviction was due.

The mistake that Halifax made was in raising Mr M's expectations that by obtaining a memorandum of sale he could get the eviction cancelled. So I must consider what is fair compensation for that.

I don't consider that we have any evidence that Mr M suffered a financial loss because of what happened. While he provided a memorandum of sale with an anticipated sale price of £154,000 there was no guarantee either that the sale would have completed or that would have been the final sale price.

I accept that the repossession and eviction will have caused Mr M a significant amount of upset and stress. But I am only awarding compensation for the distress and inconvenience caused over a relatively short period by being led to believe that he could avoid eviction – not the overall impact on him of losing his home. In all the circumstances I consider the investigator's recommendation of £300 is a fair way to resolve this complaint.

Payments

Mr M is correct that he does not have to make any more mortgage payments once his home has been repossessed. But Halifax is entitled to continue to charge interest until the debt is repaid.

When Mr M took out the mortgage it was on a repayment basis. That meant when a payment was made part of it went towards reducing the amount originally borrowed (the capital) and part went to pay the interest applied to the outstanding balance.

I only have evidence of mortgage transactions up to May 2024. The evidence appears to show that following the repossession, Halifax continued to debit the contractual payment for

both capital and interest. I appreciate how this could cause some confusion. But I can assure Mr M that Halifax is only applying interest to his mortgage. While part of the payment is for the capital – that does not increase the underlying amount owed. Only the unpaid interest increases the balance. And I've already explained it is reasonable for Halifax to continue to apply interest.

My final decision

My final decision is that Bank of Scotland Plc should pay Mr M £300.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 3 October 2024.

Ken Rose
Ombudsman