

## **The complaint**

Mr P complains that Bank of Scotland plc (trading as Halifax) have treated him unfairly which has resulted in them taking possession of his property.

Mr P is being represented on this complaint.

## **What happened**

Mr P has a mortgage with Halifax. He had fallen into arrears which were not reducing so a court order was issued on 18 October 2018 to take possession of the property. However the court order wasn't enforced, and Halifax agreed a payment arrangement with Mr P instead. Over the next four or so years, Mr P maintained his monthly payments and tried to reduce the arrears by making some payments towards those. The payment arrangement ended in March 2022, so Halifax started the collections process and started to send Mr P letters and contacted him by telephone to move matters forwards.

On 4 March 2022, Halifax's Customer Financial Assistance (CFA) team sent Mr P a letter letting him know that they hadn't received his mortgage payment and he had to make up this payment before the next one was due in April 2022. A letter was sent to Mr P on 5 April 2022 explaining that he had the option to consolidate the arrears on the mortgage as an option.

A further letter was sent to Mr P on 25 April 2022 by the CFA team who let Mr P know that he hadn't kept in line with the terms and conditions of the possession order that was previously issued so they instructed solicitors to apply for an eviction date. They asked Mr P to contact them.

On 5 September 2022 the CFA team contacted Mr P again with the same information and asked him to contact them. As they didn't hear from him, they issued a letter on 10 October 2022 informing Mr P that they had now instructed their solicitors to enforce the possession order. The direct debits which were set up to collect the contractual monthly payments (CMP) didn't go through for August, September, October and November 2022. This resulted in the arrears increasing from £5,523.98 to £8,062.21. By this point Mr P still hadn't made contact with Halifax so their solicitors were appointed in October 2022 to enforce the possession order.

An eviction date was set for 14 November 2022, but this date didn't go ahead, and a new date was set for February 2023.

Mr P said there was a problem with the direct debits, but he didn't notice this at first. He said he realised in November 2022, so he went into a branch of Halifax to rectify the issue and reinstate them.

Mr P said the branch staff couldn't help him, but they put him through to their mortgage servicing team (MST). Mr P said the adviser on the phone confirmed the direct debit had been cancelled but assured him they would reinstate it. But the MST team didn't make Mr P aware that an eviction date had been set - so Mr P said he just assumed everything was fine.

Mr P said he didn't get any warning about the eviction notice and that he had the funds in his account for the months that he had missed the direct debits. He said due to his work commitments, he is away a lot, so he didn't know he had been evicted on 20 February 2023. He said he returned home from work and initially thought he had been burgled and didn't

realise straight away that Halifax had enforced the possession order. Mr P said he was under the impression that since speaking to the adviser on the telephone in November 2022, who said they would reinstate the direct debit, that everything was fine.

Halifax said that when Mr P spoke to the MST in November 2022, they should have in fact of transferred him to the CFA team instead so that they could discuss the missed payments with him. But they said it was Mr P's responsibility to keep up to date with the payments. Halifax also confirmed they did write to Mr P about the missed payments and the legal action they were taking. They accepted that they should have put him through to the correct team and that the adviser he spoke to on the telephone should have made him aware of the eviction date and the action to repossess, so they awarded Mr P £75 for the trouble and upset he was caused.

Mr P wasn't happy with how Halifax had treated him, so he brought the complaint to the Financial Ombudsman Service where it was looked at by one of our investigators.

Our investigator thought that the action Halifax took was unfair. He said that Mr P had kept up to date with the payment arrangements that were set and had reduced the arrears up until August 2022 – when the direct debits didn't go through. He didn't think that Halifax had done enough to understand why the payments didn't go through and didn't attempt to contact Mr P but instead, started legal proceedings. He said that Halifax didn't consider any forbearance or other options with Mr P and proceeded with eviction – which should be a last resort. And had Mr P been told when he spoke to the MST in November 2022 that an eviction date had been set or that legal proceedings had started, that Mr P could have discussed options with them. He thought it was unfair for Halifax to start legal proceedings when Mr P had been maintaining his contractual monthly payments until the direct debits stopped going through. And he didn't think they did enough to understand why and should not have proceeded with eviction.

The investigator said that Halifax should make good any changes or damage to Mr P's property as a result of the eviction – at their own expense and return the property to Mr P. He said Halifax should re-instate the direct debit and allow him to make up the payments that haven't been collected since February 2023 and discuss a new arrangement with Mr P to repay the arrears in an affordable way – including those missed from 2022.

The investigator also said that Halifax should remove all legal costs and fees charged in connection with the action taken in 2022 and 2023 including any interest charged on them. He also said that Halifax should re-imburse Mr P with accommodation and travel costs incurred as a result of him being evicted and pay him £2,500 for the trouble and upset he has been caused.

Halifax didn't agree with our investigator. They provided us with evidence that they attempted to contact Mr P on several occasions to understand what was happening. They said a field agent had been sent to Mr P's property on 15 September 2022 and a card was left to say that a visit had been attempted.

Halifax also said they instructed a trace to be undertaken on 17 October 2022 and no new contact details for Mr P were available. They said the contact numbers provided to them by Mr P were either dead or temporarily out of service which isn't their fault. They said it's concerning that Mr P says he didn't receive the letters they had sent to him including the hand delivered court correspondence and felt they had made every effort to let Mr P know of the current situation. They said Mr P knew he has missed mortgage payments and that a court order was in place and the court order is valid for six years so can be enforced at any time.

Halifax said that a court had reviewed the conduct and status of Mr P's mortgage in January 2023 and issued an eviction order. They said that the Financial Ombudsman Service is overruling a court order that was issued on 16 January 2023 granting Halifax possession of the property and do not agree that we have the remit to overrule a court.

They confirmed that Mr P had continued to make his contractual mortgage payments until August 2022, but he knew the direct debits were not being collected and it would have been reasonable for Mr P to contact them to discuss it. Halifax agreed that Mr P should have been put through to the CFA team, but he also didn't ask to be transferred to them.

The investigator responded to Halifax and asked them if they had made the court aware in January 2023 that Mr P was making his full monthly payments. Halifax responded and said the N325 form – which is a legal document used to request a Warrant of Possession of Land – only asked them to confirm the balance due.

They said the information requested by court relates to the balance of the mortgage and not whether the customer is making their monthly payments. They said that Mr P wasn't maintaining the threshold payment amount (TPA), so he was not reducing or contributing to the arrears on the mortgage.

They said the TPA amount is required in order to repay the arrears over the remaining term and Mr P didn't have an arrangement to make certain payments either as the previous arrangement had expired. They said if Mr P had engaged with them, they would have confirmed what the TPA amount would have been. They said based on lack of contact from Mr P – the right course of action had been taken. However, Halifax did say that in terms of relinquishment of the property, Mr P would need to be able to afford the TPA which is currently £837.29 in order to manage the mortgage and for them to hand the property back to him. Halifax still maintained no error had been made on their part.

Our investigator went back to Halifax and confirmed that Mr P was in fact able to pay the TPA as he had been sent recent payslips which confirmed Mr P's income. He also confirmed that DISP 3.3.4A (3) gives the Financial Ombudsman Service the discretion to dismiss a complaint where 'the subject matter of the complaint has been the subject of court proceedings where there has been a decision on the merits'. The investigator confirmed this is a discretion and it's for us to decide whether it's appropriate to consider the complaint where there has been court action. He explained in this case, Mr P's complaint is that it wasn't fair for Halifax to evict him at a time when he was making his monthly payments and Halifax didn't make the court aware that he was doing so – therefore this was not a matter on which the court made a decision on the merits.

Halifax responded and said they didn't agree that the Financial Ombudsman Service have the power to overrule a court when a repossession has been granted purely by assuming a judge would have reached a different conclusion had other information been submitted. They said this is for a court to consider upon appeal and is relevant to DISP 3.3.4 (B).

Halifax said they provided sufficient evidence in order to defend their right to refer to court and it's for the court to make a ruling as they see fit. Halifax said they would still consider relinquishing the property if Mr P met their criteria.

At this point, Mr P told our investigator that he wanted his property back but was also very unhappy that they kept him out of his property for several months and the impact that this has had on him. So if Halifax didn't agree to what our investigator had said, then he wanted this to be referred to an ombudsman to decide.

Halifax also responded and said that after further consideration they are unable to commence the TPA as the basis for relinquishment of the property back to Mr P. They said there is set criteria that must be met for this and in order for them to do this, it must be in Mr P's best interests.

Halifax said there have been a number of recent interest rate rises which will impact the TPA as it stands currently and going forwards. Mr P hasn't been in a position to repay the arrears in full to date, even when the opportunity to avoid eviction was outlined in their solicitor's letter dated 25 January 2023. So they said they have concerns about handing the property back with over £8,000 worth of arrears still outstanding with an increased CMP. They didn't

feel it was in Mr P's best interests as it could in fact prolong financial difficulties with a return to litigation and further costs at a later date.

Halifax also asked for this complaint to be reviewed by an ombudsman. As both parties disagreed, this has now been passed to me to decide.

### **My provisional decision**

I issued a provisional decision on 15 August 2023. I said:

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

Mr P and Halifax have provided a lot of information about this complaint, and I know both parties feel very strongly about it. I can confirm I have read and understood the comments made in their entirety. I trust that Mr P and Halifax will not take the fact that my findings focus on what I consider to be the central issues, and that they are expressed in considerably less detail, as a discourtesy. The purpose of my decision isn't to address every point raised. The purpose of my decision is to set out my conclusions and the reasons for reaching them.

Having considered everything very carefully, I have come to the same outcome as the investigator on this case. I'll explain why.

MCOB 13.3.2A says that possession proceedings should be a last resort and should only be taken where all other reasonable attempts to resolve the situation have failed. I don't think that Halifax have exhausted all attempts to try and understand what had happened in this case therefore I don't agree that enforcing the court order when they did, was reasonable.

Halifax have said that the Financial Ombudsman Service doesn't have the power to overrule a court when a repossession has been granted purely by assuming a judge would have reached a different conclusion had other information been submitted. I am not in any way over-ruling what the court has decided, however what I am looking at here are the actions of Halifax and how they dealt with this situation. I don't think that enough has been done here to understand the situation surrounding the missed direct debits and my current thoughts are that repossession action should have been a last resort – as the mortgage rules say – and I don't think it was. This is what I am considering and not what the judge has decided. I understand that Mr P's property hasn't been sold as a hold has been put in place until our service has decided this complaint. And I also note that at one point Halifax was considering relinquishing Mr P's property and open to handing it back to him. These options are still open and a large part of my considerations.

A court order was issued on 18 October 2018, but Halifax didn't enforce this. They agreed a payment arrangement with Mr P.

Mr P had a payment arrangement with Halifax which ended in March 2022. I can see up to this point he was making his CMP and paying a bit more off the arrears.

I've also seen a letter that was sent to Mr P by Halifax dated 5 April 2022 which acknowledged that Mr P had maintained his mortgage payments over the last six months (while being on the arrangement) and offered him the chance to consolidate the arrears on his mortgage. It doesn't appear that this happened and I'm unsure why at this point, however, it was an option open to Mr P based on how he conducted his mortgage up until that point.

Once this payment arrangement ended, Mr P was making his full CMP payments but wasn't contributing to the arrears – but he was paying what was expected against his CMP until the direct debits didn't go through in August, September, October and November 2022.

Mr P has told us that he works away a lot, so he isn't around all the time. He said his partner was keeping an eye on his property. I have taken note that Halifax did send letters to Mr P and did try to contact him during this period, but they were unable to speak to him to find out what was going on. So I do understand why they may have had some concerns – but I still don't think that meant they should have enforced the possession order when they did. And even if they felt they had to because there was lack of contact by Mr P – there was a chance to rectify that when Mr P visited a branch of Halifax in November 2022.

Mr P has told us he didn't realise straight away that his direct debits were not going through and once he did, he went into a local branch to find out what was going on. The branch staff couldn't help him, so they asked him to call the MST which he did.

I have listened to this telephone call and Mr P was assured that the direct debit would be set up – but Mr P wasn't told that an eviction date had already been set for 14 November – which later changed to February 2023. Mr P asked for confirmation that the direct debit had been set up on this call and he was assured that it had. He also asked the adviser to make a note that he had been in touch as he explained he had found it difficult to get through to them as he only has a short lunch break and found himself on hold for a long time whenever he tried to call. The adviser again reassured Mr P that he would do this. Halifax acknowledged that the MST should have transferred him to the CFA team because the mortgage account was in arrears – but they didn't.

What happened in November is a key consideration to this complaint. While I understand that Halifax did try to contact Mr P about the arrears and the fact that they were enforcing the court order, it's reasonable to suggest that Mr P wasn't aware of this. He didn't receive the letters and Halifax were unable to get through to him on the telephone. It's not Halifax's fault that he didn't receive them and it's not clear what happened here but listening to the telephone call it's evident that Mr P didn't know that the eviction notice had been sent to him in October 2022. And on balance I strongly believe that had he of been told in November 2022 on the telephone call that an eviction date had been set, then I think that other options could and would have been discussed to avoid the situation going any further.

Mr P ended that call in November 2022 thinking that everything had been sorted. And I can see that his direct debits went through for the full CMP in December 2022 and January 2023. No payments went through after this date as Halifax didn't appear to collect them due to the eviction date – which is standard practice.

I believe that had Mr P of been told about the eviction notice then I think it's likely that he would have wanted to discuss it with someone to see what could be done about it. Halifax was aware of the pending eviction and had he of spoken to the right department, I would hope that they would have told him about it. But they didn't, and Mr P didn't know so I don't think it's fair to say he could have asked to speak to the CFA team. As far as he was concerned, there was an issue with his direct debit, he called Halifax, which is what we would expect him to do, and this got resolved. Mr P therefore wasn't presented with the opportunity to do something about the pending eviction and Halifax didn't get the opportunity to speak to him to see what other arrangements could be made.

Mr P was able to make his CMP each month and did so after the issue with his direct debit. And he had done so prior to that before the direct debits didn't go through. I am not persuaded that Mr P just didn't pay his mortgage as he wouldn't have contacted Halifax in November 2022 if that was his intention.

Halifax had previously offered to consolidate the arrears which had accrued and had previously set up an arrangement to help Mr P pay off some of the arrears. So I think

that other options would have been available to him had he of been given the chance and the opportunity to discuss them – so I think that Halifax have acted unfairly here by not telling him about the pending eviction notice when Mr P called. I therefore think it was unreasonable for Halifax to proceed to evict Mr P at a time when he was making his full CMP and they didn't tell him about it when he called in November 2022.

I can see that Halifax were considering giving Mr P his property back but they have now said that they are unable to do this because they don't believe that Mr P can afford the TPA. They don't think it's in his best interests as they believe that this situation will occur again, and they are just delaying the inevitable. I don't agree with this.

I have seen Mr P's recent payslips which confirm a reasonable salary which more than covers the CMP and think he would be able to cover some of the arrears. Mr P has also confirmed that he would be in a position to pay the payments that have also been missed – that Halifax didn't collect. I have seen Mr P's bank statement which confirms he would be able to cover these payments. His savings statement from November 2022 shows that he had enough money to cover most of the payments missed and the most current statements I have seen show that Mr P is in a much better place with regards to how much money he has been able to save – than he was before. I see no reason to suggest that Mr P is unable to maintain the TPA required. I therefore think that Halifax should give Mr P his property back and I'll explain below what they need to do to put things right for Mr P.

### **Putting things right**

I am minded to direct Halifax to give Mr P his property back and at their own expense, make good any changes or damage that has occurred to the property. I think it's reasonable that they remove all legal, eviction, and any other fees or charges which have been added to the mortgage in connection with legal action taken in 2022 and 2023, including any interest which has been charged.

Halifax should re-instate the direct debit and allow Mr P to make up the payments that have been missed on the mortgage since February 2023 either as a lump sum or an agreed monthly amount between him and Halifax. Halifax should also discuss a new arrangement with Mr P to collect the historic arrears in a way that is affordable to him. This should also include any missed payments from August, September, October and November 2022. Halifax should give proper consideration to the forbearance they can offer Mr P which may include capitalising the arrears. Mr P will need to ensure that he sticks to any arrangements that Halifax agree with him to ensure that things are moving forwards.

This situation has had a significant impact on Mr P. He has suffered financial loss for a number of reasons. He has had to appoint a representative to act on his behalf at a cost of £3,750.00. Mr P has also had to pay for accommodation due to having to stay in a hotel because of the eviction. These costs at the time that our investigator sent their opinion on the matter were £2,179.11 but these would have increased by now. So, Halifax will need to refund all of these costs until Mr P is able to get back into his property.

Mr P also told us that he had to take taxis to work because of the unsocial hours of his work. This is because his bike was locked in the property, and he had no other form of transport. I don't think I can fairly ask Halifax to pay these costs as Mr P could have contacted Halifax to arrange to collect his bike from the property – but he didn't. I also won't be asking Halifax to refund the field agent cost from September 2022 as Halifax had arranged this prior to Mr P making contact with them and Halifax were after all, trying to find out what was happening.

The biggest impact however is the reputational damage that this has had on Mr P. He was made homeless and found himself living in hotels and staying with friends and family when he could. His neighbours would have been aware of what has happened, and I think that Halifax need to acknowledge what this has meant for Mr P. Our investigator thought that Mr P should be awarded £2,500 for the distress and inconvenience that he has been caused – but I am thinking of awarding more than this. I think that the level of disruption to Mr P's life and the embarrassment that he has been caused needs to be recognised. I am therefore minded to direct Halifax to pay Mr P £3,500 for the trouble and upset he has been caused.

## **Developments**

Halifax responded to the provisional decision and accepted what I had said. There were some additional points they wanted to make for clarification purposes.

They said they would like Mr P to provide them with an up to date and valid contact telephone number and also an address for when he is not residing at the property due to his work – so that they have another way to contact him should they need to.

Halifax also acknowledged that Mr P is away for work regularly and wanted to clarify that the costs in relation to accommodation that I said they should pay for, were only relevant to the costs for accommodation when he was due to be at his property – and not when he was away for work.

Halifax also wanted to point out that the commentary they provided regarding Mr P's ongoing affordability was not intended as a definitive rejection of the relinquishment request. It was just one of the concerns they had as they weren't able to have a conversation with Mr P about it.

Mr P also accepted the provisional decision but had some further questions he also wanted clarification on via his representative. His representative made the following comments:

- "The damage caused in cutting out the front door handle and lock and using a padlock to secure it. It cannot therefore be secured from the inside. The property is a listed building and in a conservation area, the front door cannot merely be 'patched up' and is likely to need replacing".
- "The same sort of damage caused to the garage door".
- "The apparently missing council approved wheelie bin that was at the property".
- "The shrubs and plants that have not been attended to and are subsequently significantly overgrown".
- "Is Halifax responsible for reinstating the utilities, and can Mr P expect to be reimbursed for the standing charges for gas, electricity and water rates and council tax for the period since he was repossessed?"
- "Pest control survey – it's a 300-year-old property left empty for this long so is at high risk of vermin".
- "With any number of people having entered and walked through the property can Mr P expect the property to be deep cleaned?"
- "Any further damage caused with the property having been empty".
- "The increase in homeowner management fees as I haven't been able to dedicate my time to the escalation of the case by Halifax for free".
- "Will Mr P be given the opportunity to inspect the property before he accepts the return of the same".

There were further concerns raised based on the order that the process needs to follow as Mr P asked if Halifax have to reinstate the property to its previous condition and then hand the keys back to him -or is Mr P expected to restore the property himself and submit costs to Halifax for the damage. Mr P also wanted clarification that Halifax will be expected to pay for his accommodation costs if they are to undertake the restoration work of the property.

There has been further information that needed to be clarified before issuing a final decision on this complaint as Mr P via his representative has had some concerns regarding the state of the property.

With regards to the points made by Mr P's representative above, we asked Halifax if they would allow Mr P access to the property to ascertain the damage and state of the property in relation to the concerns that he has – Halifax agreed to this.

Mr P has since been to the property which he said he found "utterly soul destroying" and has provided photographs as evidence of what he has seen and the concerns that he has about his property. Mr P's representative said that although the property sale at auction was put on hold, all Mr P's belongings have been put into bags and unfortunately, Mr P was unprepared for what he saw when he visited the property. Mr P also had concerns that the property has been sat empty for nearly a year so there is damage and rapid dilapidation of the property.

We were provided with the following detailed information regarding the state of the property along with photographs:

#### *Damage to the property*

- "The front door and frame can clearly not be 'patched up'. Mr P's property is a grade 2 listed property in a conservation area and the door will have to be replaced 'like for like' by way of a hardwood front door and made good by a professional and not a handy man. The front door is toughened security glass so the glass would need to be utilised or the replacement door would have to match the specification".
- "The doorbell is a traditional Victorian doorbell and appears to be cut, which will need to be restored".
- "The letterbox, attached to the gate has been screwed shut. Removing the screw will leave a hole in the letterbox cover and will not be acceptable. This has also meant that Mr P has not been receiving his mail – including a new license which he has had to pay out £20 for a replacement".
- "The lock to the front gate has also been drilled and damaged. It was fully functional before so will need to be replaced".
- "The garage door will also need replacement locks and any damage caused from the fitting of the padlock repaired".

#### *Upkeep of the property*

- "The photographs show the property has fallen into rather a poor state of repair in terms of dust and bugs littering every surface, so the property needs to be cleaned. There appears no sign of an infestation beyond that of normal household bugs".
- "The plants and shrubbery in the front garden have grown out of control so you can barely see the property from the street. One of the small trees in the pot appears to be beyond recovery".
- "They note that it was mentioned that services would need to be restored however this will need to include the central heating system. The boiler which is relatively new has been switched off for an extended period of time and they're not sure what implications this carries. The whole system appears to have been drained so this will require refilling and rebalancing".



I asked the investigator to go back to Halifax to let them know what I was minded to direct them to do in my final decision – to ensure that we were all on the same page with regards to what was expected.

#### *Damage to the property*

- “The front door and frame can clearly not be ‘patched up’. Mr P’s property is a grade 2 listed property in a conservation area and the door will have to be replaced ‘like for like’ by way of a hardwood front door and made good by a professional and not a handy man. The front door is toughened security glass so the glass would need to be utilised or the replacement door would have to match the specification”. I agreed with this.
- “The doorbell is a traditional Victorian doorbell and appears to be cut, which will need to be restored”. I agreed with this.
- “The letterbox, attached to the gate has been screwed shut. Removing the screw will leave a hole in the letterbox cover and will not be acceptable. This has also meant that Mr P has not been receiving his mail – including a new license which he has had to pay out £20 for a replacement”. The letterbox will need to be replaced like for like as it doesn’t appear it can be fixed. Halifax should also reimburse Mr P the £20 he has paid for his replacement license if he can provide evidence of this.
- “The lock to the front gate has also been drilled and damaged. It was fully functional before so will need to be replaced”. I agreed with this.
- “The garage door will also need replacement locks and any damage caused from the fitting of the padlock repaired”. I agreed with this.

#### *Upkeep of the property*

- “The photographs show the property has fallen into rather a poor state of repair in terms of dust and bugs littering every surface, so the property needs to be cleaned. There appears no sign of an infestation beyond that of normal household bugs”. This is part of making the property ‘good’ so Halifax should ensure the property is cleaned thoroughly.
- “The plants and shrubbery in the front garden have grown out of control so you can barely see the property from the street. One of the small trees in the pot appears to be beyond recovery”. These should be cut back so they are in reasonable shape, as they were at repossession. Halifax should use the pictures from their repossession pack.
- The representative said that it was mentioned that services would need to be restored however this will need to include the central heating system. “The boiler which is relatively new has been switched off for an extended period of time and not sure what implications this carries. The whole system appears to have been drained so this will require refilling and rebalancing”. I agreed with this. Halifax should arrange for an expert to restore the central heating system so that it is fully functional and safe by winter.
- “Council bin appears to be missing”. It’s less likely this would have gone missing if Mr P was in residence so Halifax will need to arrange for another one to be sent to Mr P’s address – at their own cost if there is one.
- The representative asked about the utilities and if these would be switched back on. Halifax should reinstate any utilities that were turned off or not paid. For example, gas, electric water, council tax etc. But Mr P would have to pay any standing charges and council tax for when he was in residence as it wouldn’t be fair to ask Halifax to cover those.

- The representative suggested that there may be pests so asked about pest control. From what we have been told, there was no sign of infestation, so we won't be asking Halifax to do anything further other than clean the property.
- "Property to be deep cleaned". We would not direct a deep clean however we would expect Halifax to return the property to Mr P made good in the condition it was in at the time of repossession.
- "Any further damage to property". This is covered under making the property good.
- The rep has explained that their fee was fixed up to the point of the investigators outcome and didn't expect Halifax to reject the outcome which has now meant the case is at final decision, so their fees have increased. An invoice has been attached for £1,500 which Halifax should also pay for along with the fees mentioned in the provisional decision already.
- The representative asked about the accommodation costs while Halifax arrange for the property to be put in the state it was in before. Halifax as stated in my provisional decision will need to continue to pay for Mr P's accommodation costs until the work is complete and he is able to get the property handed back. Mr P works away regularly so I would only expect Halifax to pay for accommodation costs where he was due to be at the property and not when he was away for work.

I explained that Halifax should compare the photos that Mr P has provided along with those in their repossession pack to ensure the property is made 'good' including everything mentioned above so that it's in the state it was in before they took it over.

Halifax responded and asked for a bit more in relation to the accommodation costs that Mr P incurred and had a few more questions regarding the replacement license that was sent to Mr P. The representative told us that Mr P's costs are approximately £400 per week which will continue until the property is returned. He also said that Mr P hasn't been working away more recently and has been staying within commutable distance for work in anticipation of being able to return to the property. The representative said that the DVLA informed Mr P that they didn't need to change his address based on the knowledge that he would be returning to the property, and he had no fixed address at the time – which is why the driving license was still sent to Mr P's home address.

Halifax then responded in detail and let us know what they agreed to and what they needed further clarification on within this decision.

They have made the following comments:

- "Compensation of £3,500 for reputational damage – agreed"
- "Remove all litigation costs from the account – those applied since litigation action began late last year are agreed. Litigation costs relating to activity prior to 2022 will remain"
- "Legal fees £3,750 plus 8% - agreed"
- "Further representative fees £1,500 – agreed". Although for accuracy they wanted to highlight that Mr P also escalated the case for final decision
  - "Accommodation costs reimbursement – agreed up to the point of the hand back of the property keys and dependent upon the provision of invoices". Halifax confirmed they had received invoices for the following dates:
  - 10 August to 11 August £45.99
  - 21 August to 22 August £41.99
  - 30 August to 1 September £105.98

- 6 September to 8 September £137.98
- 10 September to 11 September £35.99
- 11 September to 12 September £57.49 – Halifax said there are duplicate dates costing £314 which they were unsure about
- 18 September to 22 September £345.96
- 25 September to 29 September £343
- 2 October to 13 October £289.69
- 9 October to 13 October £296
- Halifax said in the provisional decision there was reference to costs included up to the date of the investigators view of £2,179.11 – they said they agree to these in principle but will need to see the invoices
- Halifax said they would like us to consider if it's reasonable to offset the reimbursement of the accommodation costs to the CMP that Mr P was required to pay on his mortgage for the same period. They said it was confirmed in the provisional decision that having seen Mr P's payslips, he is in a position to afford the payments. So on that basis, they deem it reasonable to deduct the CMP from March 2023 to present from the accommodation costs. They said if this isn't possible, can we confirm that Mr P can make a lump sum payment to cover the missed CMP's since March 2023 to present. Halifax explained that if this wasn't possible, the arrears figure will increase significantly when the property is handed back, and the account will be in a worse position than when the court authorised the eviction. They said the account is on the standard variable rate which has been subject to further increases so a remediation will need to take place to establish what the CMP would have been at each interest rate change.
- They said they agree to cover reasonable costs for the damage to the front door upon the provision of the invoice. They said they reserve the right to cover reasonable costs only and will not be liable for the costs over and above reinstating a like for like door and locks.
- They agree to cover reasonable costs for repair of the doorbell upon provision of an invoice.
- They agreed to cover the cost of a new letterbox cover on a like for like basis upon provision of a sale receipt or invoice. They believe that Mr P should have updated his correspondence address with DVLA, but they agree to cover the cost of the £20 fee which they will pay alongside the compensation payment.
- They agreed to cover reasonable costs of the replacement lock on the front gate upon provision of an invoice.
- They agreed to cover the reasonable cost of the replacement garage lock upon provision of an invoice.
- They agreed to cover reasonable costs for cleaning the property and this will not extend to a deep clean as the requirement appears to be for a surface clean to remove dust/standing debris.
- They agreed to cover the costs of reasonable cutting back of the shrubbery. They attached photos which reflect that the shrubbery was already overgrown when the property came into their possession so the costs should be reflective of this. This will be paid upon receipt of an invoice outlining what works have been carried out. They will also replace the tree once they receive a sales receipt or invoice.
- They said with regards to the central heating system, this should be arranged by Mr

P in line with his own preferences as to who carries this out and when. Halifax said they will cover the reasonable cost of this upon receipt of an invoice.

- They said they will cover the cost of the council tax bin upon confirmation of the cost.
- Halifax said their asset managers confirmed the following regarding the utilities:
  - “The water has been turned off but not drained as access was below the floorboards”
  - “The electricity was turned off and the meter reading at the time showed a deficit of £2.77”
  - “The gas was turned off but due to the age of the meter and deficient screen they were unable to take a reading”
  - “The heating was not drained down due to access issues”
  - “Mr P will need to contact the council upon re-occupation to ensure the right council tax is charged”
  - “The keys to the property are with a local estate agent and when collecting these, Mr P will need to take a form of identification”
  - “Based on the above, the asset managers have confirmed that Mr P can arrange for the utilities to be turned back on with relative ease and reoccupation of the property can be swift”
- Halifax said they will commit to reviewing any further requests for reasonable costs in relation to any further damage to the property on the provision of an invoice

### **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.

There has been a lot of mediating between Mr P, his representative and Halifax since the provisional decision was issued with a view to trying to get to the detail of what needs to be done to Mr P's property before it's handed back to him.

I'm pleased that Halifax have agreed with everything that has been put to them and think that action will need to be started, to ensure the swift return of Mr P's property.

Based on what Halifax have said, Mr P will need to provide invoices for some of the work that is now due on the property as detailed above, because of the damage that has been made to certain items.

I think it's imperative that Mr P gets the keys to the property back as quickly as possible as this has caused him a great deal of upset and inconvenience and it will be better for all involved for this matter to be resolved as quickly and efficiently as is possible.

The starting point here is that Halifax will need to arrange for the property to be cleaned so it is back to the position it was in before they took possession of it. Mr P will not be able to move back in until this is done. I appreciate that it's been very stressful for Mr P to see his belongings in black bags and while it won't be pleasant for him to have to put things back as they were, I think he will have to do this himself once the property has been cleaned in order to avoid any further issues.

Mr P should also – which can be done at the same time – start to arrange for the work that is needed on the property in relation to all of the items listed above that Halifax will need invoices for. For ease, I have listed them below but have not gone into the detail again as this is all contained above:

- Front door

- Doorbell
- Letterbox
- Front gate
- Garage locks
- Shrubby and tree
- Central heating
- Council bin
- Utilities
- Any further damage that needs to be rectified

Once he has obtained the necessary invoices and sales receipts that Halifax have asked for above, Mr P will need to send these to them so that they can reimburse him the reasonable costs in relation to all the work that has been detailed above.

Halifax should arrange for all refunds detailed above including the compensation amount, to be paid to Mr P.

Mr P should provide Halifax with an updated contact telephone number and alternative address for when he is due to be away for work so that they have a way to contact him in the future should they need to. This will prevent any further issues in the future.

With regards to the considerations that Halifax asked me to make concerning the reimbursement of the accommodation costs, I have thought about this very carefully and I do think that the suggestion by Halifax is reasonable so that Mr P's mortgage account isn't in a worse position than it should be. I also reached out to Mr P's representative to let him know my thoughts around this.

Mr P's representative has confirmed that Mr P agrees to offset the refund of the accommodation against the mortgage payments that were due since March 2023. But he said that Mr P doesn't agree to clear the payments that accrued during the period that the direct debit was cancelled between August and October and that he would like those payments added to the mortgage.

I think that offsetting the accommodation costs from March 2023 until Mr P is handed back the property is the right thing to do. I would note here that, it appears that the payment from February 2023 may not have been made as this was the month that Mr P was evicted – so Halifax should check this. If this payment hasn't been made, it's reasonable to offset the accommodation costs from February 2023 instead of March 2023.

The payments from August, September, October and November 2022 will still need to be paid so even though Mr P would like these added to the mortgage, I did say in my provisional decision that Halifax should agree an affordable way for Mr P to repay these missed payments, along with any historic arrears that are still outstanding on the mortgage – this still needs to happen. So I see no reason to depart from what I said previously. Halifax should give proper consideration to any forbearance they can offer Mr P which may include capitalising the arrears. Whilst capitalisation is an option, it's not for me to say if it's the right option so as I said, Halifax will need to give proper considerations to what they can offer Mr P and they should discuss these options with him.

Mr P's representative has given us an explanation for the duplicate payments which have been requested for the accommodation costs for Mr P. Mr P currently works a shift pattern, and it's been explained that on occasion, the hospital that he works at change his shifts and tell him they don't require him to work on that particular shift. So on these days, Mr P would have already checked out of his accommodation only to have to go back again as he had no-where else to stay. This explanation is reasonable so Halifax should be able to go ahead

and refund the accommodation costs as agreed. Mr P will need to provide invoices since his eviction for the time that he has been renting out accommodation until the time that he is handed back his property so that Halifax are able to carry out the necessary adjustments to his mortgage account.

Mr P would have only required accommodation when he wasn't away at work or staying with friends/family, so these are the costs that need to be taken into account. The representative has said that since Mr P's eviction, he has tried to stay more local to his home address and has not been working away as much as he was trying to get this matter sorted out and hoping he would be able to get his property back. I would not expect Halifax to pay for accommodation costs while Mr P was away for work so invoices will need to be supplied since eviction so that Halifax can make the necessary adjustments to Mr P's mortgage (for offsetting those payments).

As Halifax have said, they will need to recalculate what Mr P's CMP would have been with the recent interest rate changes so it's not clear how much the CMP has been during the period from March 2023 so if there are any funds available after the offset of these costs to the mortgage account, Halifax should let Mr P know so he can decide whether to offset these against last year's payments or the arrears, or whether Mr P wants any surplus refunded back to him.

As I've already mentioned, this has been a very stressful time for Mr P and Halifax will need to carry out the actions on their end to enable Mr P to start contacting the relevant people that he needs to get the work carried out on the damaged items, including arranging for utilities to be turned back on.

I hope this clarifies to the representative and to Mr P in how things need to get rectified. I think it's easier all round for Mr P to arrange the work that he needs carried out and then supply Halifax with the invoices needed.

The key thing here is to get Mr P back into his property as quickly as possible and it would be reasonable for both parties to continue to work together to ensure that this matter is brought to a satisfactory ending without any further delays.

I think it's also important to note here that Mr P should ensure that he sticks to any payment arrangements (or any form of forbearance) offered by Halifax to ensure that there are no further issues in the future.

### **My final decision**

For the reasons given above, and in my provisional decision, I uphold this complaint and direct Bank of Scotland (trading as Halifax) to:

- At their own expense, Halifax will need to reimburse Mr P for the changes he needs to make in order to make good any damage or changes made to the property as a result of the eviction – such as repairing or changing locks, removing boards, helping Mr P reinstate services if he needs it – and return the property to Mr P. This means they should pay for the reasonable costs as agreed for the following:
  - Front door will need to be replaced 'like for like' and made good by a professional. Front door is toughened glass so the glass would need to be utilised or replacement door would need to match the specification – Mr P to arrange this.
  - Doorbell will need to be restored – Mr P to arrange this.
  - The letterbox will need to be replaced like for like as it doesn't appear it can be fixed, and Mr P will need to arrange this. Halifax should also reimburse Mr P the £20 he has paid for his replacement license if he can provide evidence of this.
  - Front gate lock will need to be replaced so that it's fully functional – Mr P to arrange this.

- Garage door will need replacement locks and any damage caused from fitting of the padlock will need to be repaired – Mr P to arrange this.
- Cleaning – Halifax should arrange for Mr P's property to be sufficiently cleaned so that it's in the condition it was prior to possession – this should be done immediately so that Mr P can get back into the property
- Shrubs should be cut back to how they were at possession of property and Halifax should reimburse the cost of the tree – Mr P to arrange this.
- Central heating – Mr P should arrange for someone to look at the heating and Halifax should cover reasonable costs in relation to this in order to get it up and running
- Council bin – Mr P to let Halifax know how much a replacement bin is so that they can cover the cost of this. Mr P will need to arrange the replacement
- Utilities – Mr P to contact his utility providers to get them all reinstated. He will also need to contact his local council to let them know he is back in the property so they can arrange to work out the correct bill for him. Mr P will need to pay for any outstanding charges for the time prior to possession of the property
- Any further damage – Mr P to provide Halifax with any other invoices for them to consider the payment towards any other damage that he finds at the property
- Remove all legal, eviction and any other costs or fees from the mortgage balance which were charged in connection with the legal action taken in 2022 and 2023, including any interest charged on them.
- Re-instate the mortgage direct debit and allow Mr P to pay the amounts which were missed in August, September, October and November 2022, by setting up a new payment arrangement, in a way that is affordable for him. Halifax should give proper consideration to forbearance they can offer Mr P for the outstanding arrears balance which may include capitalising the arrears.
- Refund the fees that Mr P has had to pay for the representative who has been acting on his behalf which has costs of £3,750 and £1,500. Halifax will need to add 8%\*simple annual interest to both payments.
- Halifax should reimburse Mr P's accommodation costs for the periods he wasn't working away from home from the time that he has been evicted to the time that he is handed back the keys to the property. This refund should offset the CMP that was required on the mortgage from March 2023 (or February 2023 if this payment has been missed) until Mr P is handed back the property. These costs should include 8%\* simple annual interest. If there is any surplus, Halifax should let Mr P know and he can decide whether to offset these against the missed payments from 2022 or the historic arrears or get the money back as a refund.
- Pay Mr P £3,500 for the distress and inconvenience he has been caused and for the impact this has had on him.

Mr P will need to provide Halifax evidence of the costs that we are asking for them to reimburse. Halifax will cover the reasonable costs for the above for the items being on a like for like basis. I would not expect Halifax to pay for anything over and above this.

\*Halifax may deduct income tax from the 8% interest elements of my award, as required by HMRC. But they should tell Mr P what they have deducted so that he can reclaim the tax from HMRC if he is entitled to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or

reject my decision before 22 November 2023.

Maria Drury  
**Ombudsman**