

The complaint

This complaint's about a mortgage Mrs H holds, jointly with three other borrowers, with Bank of Scotland plc trading as Halifax. There are several elements to Mrs H's complaint – I'll detail them below – which relate primarily to how Halifax has treated her since she left the property in 2009.

What happened

By way of a provisional decision dated 5 September 2023, I set out my provisional conclusions on this complaint. The following is an extract from the provisional decision.

"The broad circumstances of the dispute are known to Mrs H and Halifax. I'm also aware that the investigator issued a comprehensive response to the complaint, which has been shared with both parties to the dispute, and so I don't need to repeat the details here.

Our decisions are published, and it's important that I don't include any information that might result in Mrs H being identified. Instead I'll focus on giving the reasons for my decision. If I don't mention something, it won't be because I've ignored it. It'll be because I didn't think it was material to the outcome of the complaint.

The background to the complaint is that Mrs H entered into the mortgage as one of four joint borrowers; the other three are her husband, her sister and her brother-in-law. Mrs H has told us that she's not lived in the mortgaged property since 2009, and has been the victim of abuse from the other borrowers in the intervening years. Mrs S has also told us that her husband is responsible for making the mortgage payments, and when he fails to do so on time, Halifax reports this on her credit file, which she thinks is unfair. Mrs H wants Halifax to remove her from the mortgage.

That's the historical context to the complaint; more specifically, our investigator identified twelve elements to the complaint, covered by various final responses that Halifax has issued from time to time. Summarised in my own words, these are:

1. Mrs H has issues with the circumstances in which the mortgage was taken out by her and the three other borrowers.
2. Despite her separation from her husband in 2009, Halifax won't remove her from the mortgage without the consent of the three other borrowers.
3. Mrs H is concerned at how her husband is running the mortgage; she thinks he's in breach of the mortgage contract and that this will impact on her.
4. The three other borrowers have been hostile and subjected her to abuse, but Halifax hasn't addressed this.
5. Mrs H is unhappy that Halifax allows her husband to make changes to the mortgage without consulting her; she says he should ask her permission for changes so that she can negotiate her removal from the mortgage.
6. Mrs H is unhappy about the information Halifax reports on her credit file.
7. Halifax reported incorrect information on her credit file, corrected it, but didn't tell her about the error.

8. Halifax gave out Mrs H's personal data to a third party in 2009.
9. Halifax has shared Mrs H's personal information internally without her consent.
10. In material she received in response to a data subject access request (DSAR)
Mrs H noted that one of the three other borrowers had received a refund as a result of a payment mix-up. She wants more information about this.
11. Mrs H believes two mortgages have been mixed up and wants clarification.
12. Halifax has told Mrs H some of her complaint issues are "out of time".

Other than some service failings, for which she considered it had offered reasonable compensation, our investigator wasn't persuaded Halifax had treated Mrs H unfairly overall. She's asked for the complaint to be reviewed by an ombudsman.

What I've provisionally decided - and why

I'll start with some general observations. We're not the regulator of financial businesses, and we don't "police" their internal processes or how they operate generally. That's the job of the Financial Conduct Authority (FCA). We deal with individual disputes between businesses and their customers. In doing that, we don't replicate the work of the courts.

We're impartial, and we don't take either side's instructions on how we investigate a complaint. We conduct our investigations and reach our conclusions without interference from anyone else. But in doing so, we have to work within the rules of the ombudsman service, and the remit those rules give us.

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've set out my conclusions and the reasons for them below, using the numbered headings I used in the above summary. The investigator grouped some of the individual points together, where they related to a common theme. That was a reasonable approach, and I have done something broadly similar, albeit with slightly different groupings, for reasons that will become apparent.

Points 2 to 5

The investigator included point 1 in this group; I haven't done so, and will explain why later in this decision.

At the heart of elements 2 to 5 of the complaint is the breakdown in the relationships between Mrs H and her three co-borrowers, after the mortgage was taken out. I can tell from considering everything she has said and provided, that this is a deeply sensitive and complex situation, and that Mrs H feels extremely vulnerable as a result. The difficulty for Halifax is that where personal relationships within a mortgage break down, a lender can't simply remove one borrower because they want to be removed.

First of all, it's a situation for the borrowers to resolve between them, and that might require the involvement of intermediaries – for example, solicitors - if direct communication is difficult or uncomfortable. Essentially, however, the parties need to agree collectively on who should remain on the mortgage and who should be released from it. At the same time, it would be normal practice for a similar agreement to be reached on who should stay on, or be released from, the title to the mortgaged property.

If all the parties to the mortgage are able to do that, those proposing to stay on the mortgage then need to apply formally to take over the mortgage (and the property title) and the lender – so Halifax in this case – will then assess the application by reference to its lending criteria and its regulatory obligations. So even if Mrs H gets to the stage where she and the three other borrowers can agree on an exit strategy for her, and a formal application is submitted to Halifax by the three other borrowers, it won't be a foregone conclusion that Halifax must agree.

But unless and until that happens, Halifax is reasonably entitled to continue treating Mrs H as a joint borrower alongside the three other borrowers. That means she has the same joint and several liability for the mortgage payments, with all the implications that go with that (including credit file reporting, which I'll get to shortly). It also means Mrs H is entitled to the same degree of fair treatment as the three other borrowers, which I'll also get to in due course.

Points 6 and 7

The starting point here is, as I've already explained above, Mrs H is jointly and severally liable, alongside the three other borrowers, for the mortgage payments, and Halifax has both the right and the obligation, to report accurate information about the payment record on all four borrowers' individual credit files. That's the case even if in practical terms the payments are made by only one of the three other borrowers. Clearly, that creates a potential difficulty for Mrs H because it places her in a situation where something outside her control - i.e. her husband's actions in making the payment - can result in adverse information being recorded on her credit file.

But that doesn't mean Halifax's reporting on Mrs H's credit file is *inherently* unfair. It's something that Halifax must do all the time Mrs H remains a joint borrower. I'm not in a position to say if Halifax has reported anything factually inaccurate on Mrs H's credit file, because I haven't seen a copy of it. But in terms of the complaint about credit file reporting as it has been articulated to date, there aren't any grounds for me to find that Halifax has treated Mrs H unfairly.

Point 8 to 11

The investigator included point 12 in this group; I haven't done so, and will explain why later in this decision.

At the heart of points 8 to 11 of the complaint is how Halifax has managed Mrs H's personal data. Generally speaking, we take the view that this is something that's better dealt with by the Information Commissioner's Office (ICO) and I can see that she has engaged with the ICO on some of her data concerns. I don't think it would be right for me to second guess or otherwise interfere with any investigations being carried out by the ICO into some or all of Mrs H's data management concerns.

Other matters

I'll cover points 1 and 12 of the complaint in this section.

We aren't free to deal with every complaint we receive. We're bound by our rules – which in turn flow from legislation – that set out the types of complaints we can look at. Those rules are maintained by the Financial Conduct Authority (FCA) and are published in the FCA's Handbook, under the heading "DISP".

Section 2 of DISP sets out the jurisdiction of the Financial Ombudsman Service. It covers such things as who is bringing the complaint, what it's about, which business it's about and, crucially, time limits on how long after a person becomes aware of a problem they can wait before complaining about it.

There's no issue on the first three aspects of our jurisdiction I referenced in the preceding paragraph. Mrs H is a consumer and therefore eligible to complain to us. The subject matter of this complaint – the operation of a loan secured by a mortgage on land – is an activity we can look into, and Halifax is covered by our scheme. The issue I need to address here is with the time limits in our rules.

Our rules say that, unless the business consents, or there are exceptional circumstances, I can't consider a complaint that is referred to our service:

- a) more than six months after the final response letter or summary resolution communication; or
- b) more than six years after the events complained of; or
- c) more than three years after the consumer knew, or ought reasonably to have known, there was cause to complain

unless, in the case of b) and c) above, there is a written acknowledgement of a complaint having been made within the time limits.

As stated above, our rules only allow us to look into events that happened in the six years immediately preceding the start date of the complaint. There's a provision in our rules for two exceptions to that, and I'll cover those in due course. But in the first instance, the various elements of this complaint started in 2020, which means we can only look into events that happened since 2014.

In point 1 of the complaint, Mrs H has referenced events going back as far as 2003 when the mortgage was taken out. It is for this reason that I considered it necessary to clarify the limits on my remit to determine the merits of the complaint.

I mentioned a moment ago that our rules include a provision for two exceptions, and I'll cover those now.

The first exception is what is known as the three-year rule. The second exception is where there is a written record or some other acknowledgement of a complaint having been made within the time limits in our rules.

We can look into events that happened more than six years before a complaint started, if we are satisfied that the consumer only knew (or could reasonably have known) that they had grounds for complaint less than three years before they first raised the complaint. So that means I have to think about when Mrs H could – or should – have raised the complaint about the origination of the mortgage in 2003.

It's not always easy to assess when a consumer might reasonably have known for the first time about the issue(s) or event(s) that they're complaining about, thus starting the three-year "clock" running. The rules we follow don't just require me to consider what a consumer did know; I have to take account of what they ought reasonably to have known, and when they should have known it. Also, Mrs H didn't need to know of all of her complaint points, just that something might have gone wrong and that Halifax might be to blame.

I've seen extracts from Halifax's archived notes that Mrs H contacted it in August 2009 to allege that the mortgage might have taken out fraudulently and that she intended going to the police. The notes from the time indicate that Halifax didn't treat this as a complaint as such, but that a message would be left for the Retail Fraud team to look into as a possible case of identity theft.

Whether or not Halifax recorded this contact as a complaint, I think it's fair to say that it was an expression of dissatisfaction on Mrs H's part, which means that it would meet the definition of a complaint as set out in DISP. That means that in August 2009, Mrs H effectively complained about the circumstances in which the mortgage had been taken out. What I then have to decide is whether that was less or more than six years after the mortgage started.

The available evidence suggest it was more. I say that because Halifax has provided an extract from what is either the application form or offer for the mortgage, bearing Mrs H's signature, and it is dated 31 January 2003. Added to that, the mortgage statement issued in May 2019 referred to a remaining term of nine years; i.e. ending in May 2028. That would correspond with a 25-year mortgage starting in May 2003. Working on the premise that the mortgage started in May 2003, Mrs H's expression of dissatisfaction in August 2009 about the possibility of the mortgage having been taken out fraudulently is a complaint, and Halifax's note is a written record of it having been made. It looks to have been made outside the six-year time limit, so I need to consider if it was made within the three-year time limit.

To assess that, I've gone to Mrs H's comments to our investigator in her email of 3 February 2023. The essence of this email is that Mrs H describes how she believed she was being added to the title of the property in 2003 without realising she was, effectively being hoodwinked into joining the mortgage as well. Taking into account the wider domestic environment Mrs H has described herself as being in, I'm inclined to give Mrs H the benefit of the doubt here and say that I'm not sure I can safely conclude that she was, or could reasonably have been, aware that she was a full party to the mortgage (as well as the property) three years before she contacted Halifax in August 2009.

That being the case, point 1 of this complaint is not time-barred. The investigator was right to address it on its merits, and I can also see why she grouped it alongside points 2 to 5, insofar as it goes more to the relationship and interaction between the four parties to the mortgage than it does to the actions of Halifax as lender.

I separated it out in order to clarify the jurisdiction aspect first, and whilst my conclusion is that point 1 of the complaint is not time-barred under our rules, it remains the case that it is about events that happened twenty years ago. It's also, as I've said, less about what Halifax did – or didn't do - when providing the mortgage and more about what the four borrowers did – or didn't do - when applying for it.

It's unlikely that the Financial Ombudsman Service could get to the bottom of how Mrs H came to be a party to the mortgage in 2003 without hearing testimony from the three other borrowers. We have no power to compel evidence from them, and even if they were willing to provide testimony, it's not clear to me that anything they might say would allow me to reach a reliable conclusion on whether it was reasonable or otherwise of Halifax to provide the mortgage to all four parties. Overall, I think point 1 of Mrs H's complaint, like points 2-5, is something for Mrs H to resolve with the three other borrowers.

Point 12 is, in itself, about Halifax saying Mrs H has brought parts of her complaint out of time. I'm talking here not about the six-year/three-year time limit, but the six-month time limit after a business has dealt with a complaint.

As I mentioned earlier, Mrs H began complaining in 2020, and Halifax has issued a series of final responses between 2020 and 2022. Mrs H's first contact with us was on 11 April 2022, which means that under the six-month provision in our rules, we can only consider elements of her complaint that were covered in final responses issued after 11 October 2021.

The issue of Mrs H wanting to be removed from the mortgage was addressed in a final response dated 4 December 2020. In the normal course of events, that would mean it was time-barred, but Halifax has consented to us looking at it, which is why the investigator, and then I, have been able to make a finding on that issue.

The issue of credit file reporting was dealt with in a final response dated 22 March 2021; that's also more than six months before Mrs H contacted us. However, it was covered again in a final response Halifax issued on 30 March 2022, in terms that I am satisfied renewed referral rights to this service. That's why the investigator, and then I, have been able to make a finding on this issue.

I said at the outset that I wouldn't be commenting on every single point, and I haven't. I have, as I said I would, confined myself to those matters that I consider have a material effect on the outcome. I've also had to limit my findings to those matters which fall within the jurisdiction of the Financial Ombudsman Service. I can see from her submissions how important this is to Mrs H. That's a natural reaction, and entirely understandable when you're as close to a situation as she is here.

But I have a different remit. I have to be objective, and impartial, and sometimes that means stepping back from the fine detail, taking an overview and deciding what is fair, reasonable and pragmatic in all the overall circumstances of the case. It also means that I'm not required to provide answers to every specific question that comes up if I don't consider doing so will affect the overall outcome."

Both parties were given a two-week time frame in which to make their further comments. That time has now passed; Halifax hasn't provided any further comment in response to the provisional decision. Mrs H has left a telephone message to say she is unwell and needs more time to provide further information.

I addressed the issue of additional time in my provisional decision. Mrs H first told us she intended submitting more information for the reviewing ombudsman to consider after the investigator gave her informal view of the complaint. That was in May of this year; we kept progress on the case in abeyance for Mrs H to do that, but despite numerous reminders, Mrs H kept declining to provide the information.

Overall fairness means we cannot leave cases open indefinitely; aside from the impact it has on this service's finite resources, there is another party to the complaint, and we have to treat both with equal fairness. I can't conclude that we haven't given Mrs H ample opportunity to argue her case. She has been already had four months in which to provide her final submission before the case is determined.

Furthermore, our enabling legislation, the Financial Services and Markets Act 2000, provides at section 225 that we are required to resolve complaints "*quickly and with minimum formality*".

That's why, when the case came to me for review, I made it very clear in my provisional decision – which, to be clear, didn't depart from the investigator's recommended outcome in any way but merely explained it with more precision – that that no further extensions of time would be granted to either side. I've no reason to depart from that position.

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 won't be changing my decision, for the same reasons as given in my provisional decision, which are repeated above.

My final decision

My final decision is that I don't uphold this complaint.

My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further consideration or discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 17 October 2023.

Jeff Parrington
Ombudsman