

The complaint

This complaint's about a mortgage Mrs B holds with Bank of Scotland plc trading as Halifax. There are two broad elements to the complaint – I'll detail them below – which has been brought by Mrs B's representative, Mr P, with her authority.

What happened

The two components to the complaint are, in summary:

- Halifax is pursuing legal action for possession in reliance on arrears that Mrs B says were accrued unfairly and illegally during a two-year period when she was evicted from the property by Halifax; and
- When Mrs B sent Halifax a letter of authority (LOA) appointing her son to represent her in her dealings with Halifax over the mortgage, Halifax mistakenly contacted the joint mortgage holder, Mrs B's former husband.

By way of redress, Mrs B is seeking removal of the arrears, and reimbursement of £3,000 in Council Tax for the period of non-occupation, along with statutory interest. Additionally, Mrs B seeks £10,000 compensation for distress and inconvenience for each part of the complaint, so £20,000 in all.

When the case came to us, our investigator was of the opinion that we could only consider the point about how Halifax had contacted Mrs B's former husband regarding the LOA. She explained that the part about the arrears and legal action was "time-barred" under our rules because Halifax had already addressed it in a final response on an earlier complaint, and Mrs B had waited too long to refer it to us.

The investigator also provided her view on the merits of the LOA element of the complaint. She explained that Mrs B's former husband is still a joint borrower on the mortgage, so Halifax can reasonably contact him about the mortgage generally, but it was wrong to do so regarding Mrs B's LOA. However, she took the view that Halifax had responded appropriately by apologising and paying Mrs B £75 in compensation.

Mr P asked for the case to be reviewed by an ombudsman. By way of a decision dated 29 November 2023, I confirmed that my remit to consider the merits of this complaint was confined to the second bullet point listed above; i.e. that when Mrs B sent Halifax a letter of authority (LOA) appointing her son to represent her in her dealings with Halifax over the mortgage, Halifax mistakenly contacted the joint mortgage holder, Mrs B's former husband.

What I've 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 have to work within the rules of the ombudsman service, and the remit those rules give us.

Under our rules, we can consider a complaint from a consumer. Mrs B is a consumer, so meets the definition of an “eligible complainant” set out in our rules.

Our rules say that a complaint may be brought on behalf of an eligible complainant by a person authorised by the eligible complainant or authorised by law. In this respect, Mr P is bringing the complaint on behalf of Mrs B.

I must explain that, although Mr P represents Mrs B, it is Mrs B who is Halifax’s customer. It’s Mr P’s role is to bring the complaint on her behalf, in the same way that other consumers might instruct a solicitor or accountant to represent them in a complaint.

But this does not entitle Mr P to consider it his complaint or to air his own grievances about Barclays, because he is not its customer. This is Mrs B’s complaint, and Mr P’s role is limited to putting it forward on her behalf.

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. That means I don’t have to address every individual question or issue that’s been raised if I don’t think it affects the outcome.

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

This isn’t a complaint where I have to decide fault; that’s admitted. Rather, it’s one where I need to decide what a fair settlement should be.

Barclays readily accepts it shouldn’t have contacted Mrs B’s former husband about the LOA; it’s apologised for that and paid compensation of £75 for Mrs B’s time, trouble and upset arising from that mistake. On balance, and considering the wider circumstances, I think that’s fair and reasonable.

I can understand Mrs B being upset at her former husband being drawn into events, and it’s important to remember it’s not in dispute that he should not have been contacted specifically about the LOA. But the broader context here is that Mrs B’s former husband is still a joint borrower on the mortgage, with equal rights and responsibilities to those of Mrs B. Whatever agreement was reached between Mrs B and her former husband at the time of their matrimonial separation, that has no bearing on the joint mortgage contract with Halifax.

So, with or without the mistaken contact over the LOA, Mrs B’s former husband was always going to be drawn into the current possession proceedings. And for the reasons sets out in my jurisdiction decision last month, we have no power to consider the complaint about the fairness or otherwise of the current possession proceedings.

The £75 Halifax paid Mrs B is for wrongly contacting her former husband about the LOA, and within that narrow framework, it’s a reasonable settlement. It’s not to compensate her for drawing him more generally into the legal action, as that was always going to happen. That being the case, there are no grounds for me to order Halifax to do anything further by way of redress.

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 B to accept or reject my decision before 2 January 2024.

Jeff Parrington

Ombudsman