

The complaint

Mr S complains that Bank of Scotland plc trading as Halifax made a mistake about how much more he'd need to borrow to buy his new home. This mistake was only discovered after Mr S was committed to the purchase, with difficult consequences for Mr S.

What happened

Mr S had an existing mortgage with Halifax. In 2022, he decided to move, buying a new property from a developer who would purchase his old home in part exchange. Mr S asked Halifax for a new mortgage for his new purchase, and lending was agreed.

Mr S now knows that when Halifax worked out how much he would need to borrow, in order to buy his new home, it treated all of the payment he was getting for his old home as a deposit on the new property. But Mr S still had a mortgage with Halifax for his old home, and that would need to be repaid out of the sale proceeds, before any remainder could be used towards the purchase of his new home.

Mr S said his solicitor told him a few days before his sale and purchase were due to go through, that he was short around £130,000. Mr S said at this point, he was committed to the transaction, and legally obliged to go through with it. He contacted Halifax's mortgage advisor, who initially denied there was a mistake, but then accepted this, right before the purchase.

Mr S said he had to borrow from family and his partner to complete the purchase. He paid off the finance agreement on his car, at considerable cost, with money borrowed from family. That allowed Halifax to increase its lending to him. And Mr S then bought the property, as intended and previously agreed. But he says he now has no savings, a much higher debt, and a very significantly longer term on his mortgage. He also faced having to sell his car, to pay back the loan his family had provided to him.

Mr S said if he'd realised how much this property would actually cost him, he'd have looked for a different place to purchase.

Halifax has shown us that it initially made an offer to Mr S on 14 October 2022 to borrow at total of £206,995, on a 13 year loan with a monthly payment of £1,580.66. Then, not long before he purchased his property, it issued a revised offer. That offer of 15 December 2022 was to borrow a total of £292,165 on a 21 year loan, with a monthly payment of £1,581.06. Halifax says it does think this revised lending is affordable for Mr S.

Halifax has accepted that it was responsible for the original error here, because when its mortgage advisor told Mr S how much he'd need to borrow to buy his new home, he omitted to allow for the old mortgage to be paid off. But Halifax said the shortfall would be around £109,000 which was needed to pay off the old mortgage, not £130,000.

Halifax said it was sorry. It understood Mr S had to borrow from family in order to repay his car finance, which allowed Halifax to increase the lending it could make to him. And he's also had to take a large cash gift from his partner, to go ahead with the purchase.

Halifax said it would pay Mr S £1,000 in compensation, and it would reimburse him the amount of £23,570 which he'd borrowed from family to pay off his car finance, and needed to repay them urgently. Halifax also said that if Mr S didn't want to keep this expensive property, then Halifax would waive the Early Repayment Charge ("ERC") on his mortgage if he sold the property to downsize, although Mr S has said he doesn't plan on moving.

Halifax has shown us it has made these payments. It thought this provided a fair outcome to this complaint. It said it wouldn't simply pay Mr S the £109,000 shortfall, to reduce his borrowing to the amount he'd originally planned to take.

Our investigator didn't think this complaint should be upheld. He said he could understand why what happened would have been a shock to Mr S, and it was clear that Halifax had made a mistake. But our investigator said he wasn't clear why this mistake wasn't picked up until so close to the time of purchase, because the offer Halifax sent to Mr S's solicitors explained that Mr S's previous mortgage did need to be repaid. Our investigator said he didn't think Halifax was solely to blame here.

Our investigator said he'd looked at the impact of this mistake, and what Halifax had done to try to put things right. He said Halifax had paid £1,000 in compensation, and also made a very significant payment of £23,570 so Mr S could keep his car. That would mean he could repay the loan from his family which had cleared the car finance, without having to sell the vehicle. Instead, he'd own it outright.

Our investigator said Mr S wanted Halifax to pay the whole of the shortfall, but our service doesn't aim to punish or fine businesses. We try to return customers to the position they'd have been in if the mistake didn't happen. But he said that wasn't possible here, because Mr S had sold his old property and bought the new one. Our investigator didn't think Halifax had to cover the whole of the shortfall for Mr S. He noted that Halifax had agreed to waive the ERC if Mr S wanted to move in future. So Mr S could, if he wanted to, sell this property, get his savings back, and then buy somewhere cheaper, although our investigator accepted Mr S might not want to do that, and there would be other costs if he did.

Mr S didn't agree. He said he had expressed doubt about the figures, but was told by the mortgage advisor that they were right. And he said he'd complained to his solicitors, who were currently investigating.

Mr S said he'd have preferred not to get a single penny from Halifax, as the right thing to do would have been to let him go. Mr S said that he could provide further evidence of this mistake. Because no agreement was reached, this case was then passed to me for a final decision.

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've reached the same overall conclusion on this complaint as our investigator.

Mr S has offered our service further evidence of Halifax's mistake. I've not asked to see that, because Halifax has accepted that what went wrong here was something it caused. So what

I think I need to look at here, isn't whether Halifax caused this problem. It is, as our investigator said, partly to do with whether someone else involved in this purchase, such as Mr S's solicitors, should have alerted him to this error earlier. And it's mainly about whether what Halifax has done provides a fair and reasonable outcome to Mr S's complaint against Halifax.

Like our investigator, I do think it's unfortunate that this mistake wasn't spotted at all until so close to the date of completion, and after Mr S was committed to the sale. Our service doesn't look at complaints against solicitors, so I don't think it would be appropriate for me to comment on whether this error should have been discovered before Mr S was committed to the sale and purchase. But I do agree with our investigator's core point here, which is that whilst Halifax is responsible for the original error, it's not solely responsible for this not being discovered before Mr S was committed to this purchase.

As our investigator said, when a mistake like this has been made, our service would think about whether we ought to put Mr S back in the position he would have been in, if the mistake hadn't been made. But here, whilst I think the original error was Halifax's, I haven't been able to see that it's entirely Halifax's fault that this wasn't discovered earlier, while Mr S could still safely and easily back out of this transaction.

And I also have to bear in mind that putting Mr S back in the position he would have been in if no mistake had been made here, would be a very difficult thing to do. Mr S has bought a property which he says, if this mistake hadn't been made, he wouldn't have purchased. He now owes more on that property, and he's told us his partner's savings have been used up in the purchase. Whilst he's paying the same amount each month for his mortgage payment, he will now need to make those payments for considerably longer than initially planned.

Mr S has told us that if this mistake wasn't made, and he'd known from the start how much he would really need to borrow, he wouldn't have bought this property. He wouldn't be living in this property now, he'd have found somewhere else, cheaper.

So the only way to put Mr S back in the position he would have been in, if the mistake hadn't been made, is for this property to be sold and Mr S then to buy somewhere cheaper, which would mean his mortgage could be brought back closer to the term originally envisaged.

Mr S has been clear with Halifax and our service that he doesn't want to sell the property, and I can understand that. But I don't think that means it's fair and reasonable to ask Halifax to pay all of the shortfall of around £109,000 which it only identified late in the day. I think that, both because it isn't solely Halifax's fault that this mistake wasn't discovered earlier, but also because that wouldn't put Mr S back in the position he would have been in if the mistake hadn't been made. It would put him in the much better position, of owning a sizeable chunk of the equity in a property that he tells us, without Halifax's mistake, he simply wouldn't have bought.

I've considered what Halifax has offered here. It's paid Mr S £1,000 in compensation, and has also paid a further £23,570 so Mr S can pay back the family loan he took to clear his car finance. That payment is a little less than a quarter of the additional mortgage borrowing Mr S has entered into, but the payment does mean Mr S now owns his car outright, so no longer has those monthly payments to meet. I hope that will assist Mr S in rebuilding his savings, or perhaps allow him to overpay on this mortgage so the term can be reduced.

Having considered all of the above issues, I do think the payment Halifax has already made in this case, does represent a fair and reasonable outcome to this complaint. So I won't ask

Halifax to do more than it has done already. And, although I understand that Mr S will be disappointed, that means his complaint won't be upheld.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 1 January 2024.

Esther Absalom-Gough
Ombudsman