

The complaint

Miss B complains that she got a mortgage offer from Bank of Scotland plc trading as Halifax, but then it changed its mind shortly before exchange and completion of contracts, and said it wouldn't lend on the property. Miss B thinks this decision was unreasonable and unfair.

What happened

Miss B set out for our service a timeline of events, covering her dealings with Halifax when she attempted to purchase her flat.

24 May 2022 - mortgage offer issued by Halifax, to expire on 30 September 2022.

22 September 2022 - conveyancer communicated updated ground rent details to Halifax. Miss B said this information had been delayed, due to a page missing on the lease held with the Land Registry, that set out the ground rent. Miss B said her conveyancer told her that he had no concerns with the purchase, because the lease said the ground rent was capped.

23 September 2022 - the broker amended the mortgage application to include the most recent amount of ground rent. Halifax issued a revised mortgage offer expiring on 31 October.

27 September 2022 - Halifax wrote to say the revised ground rent information was unacceptable, and it would not lend on the flat. Miss B said the same flat was currently mortgaged with the Halifax (remortgaging most recently in 2021). Miss B said she only found out about this on 29 September 2022, the day of exchange of contracts, with completion due on 30 September 2022.

29 September 2022 – Halifax sent the mortgage funds to Miss B's conveyancer, by mistake.

30 September 2022 – Halifax texted Miss B to say when her first mortgage payment was due.

2 October 2022 - First complaint raised with Halifax regarding the chain of events above.

Miss B said that on 17 October 2022 she also found out that Halifax had changed her address. It had done this not just for Halifax, but for other financial products she held within the same group. And she said it did so without telling her or getting her permission. Miss B told us she then complained about this too.

Miss B wanted our service to be aware that Halifax had approved another mortgage on a flat in the same block, as recently as June 2022. She said Halifax asked its survey firm to reconsider its decision on her flat, but it would not.

Miss B said that in January 2023, Halifax ran a hard search on her credit file, without her permission. In March, Halifax had confirmed to the credit reference agency that this search wasn't a mistake and wouldn't be changed. But later in March, after a very lengthy phone call with Halifax, it accepted that this was run automatically because of Miss B's previous

application, and shouldn't have been done. Halifax then got this search removed.

Miss B said she had a number of unanswered questions about her declined application. She wanted to know why Halifax had previously been happy to lend on flats in this block, and now wouldn't. Had other conveyancers not reported the same issue that hers had alerted Halifax to? She wanted to know why Halifax had written to her conveyancer with problems about the mortgage, but not also her broker.

Miss B said information Halifax had pointed to as being available in a handbook for brokers, wasn't there. She said she'd never seen Halifax's criteria for assessing ground rent. She wanted to know why Halifax thought the mechanism for reviewing the ground rent wasn't sufficiently clear – she herself thought it was limited to under £1,000 – and she wanted to know how this affected Halifax's lending to other properties with inflation linked increases as part of the future ground rent calculation.

Finally, Miss B wanted to know why Halifax had changed her address across the whole group, and why it didn't have to tell her about that.

Miss B said she had since managed to purchase the flat, but with a different lender and a higher rate of interest, as well as a higher deposit. Miss B said she'd not just been financially affected, but also very stressed and upset by what happened. She thought the reason the mortgage offer was withdrawn at the very last moment was so Halifax did not have to honour the low five-year fixed interest rate it had offered, given the market turmoil at the time.

Miss B wanted Halifax to pay financial compensation for all that had gone wrong.

Halifax said it was sorry that things hadn't gone smoothly with Miss B's mortgage application. It accepted that Miss B and her representatives had faced long wait times to speak to it, and that it had failed to put her mortgage application on hold, which meant that funds were released, her address was updated, and a later credit search was carried out.

But Halifax didn't think it had made a mistake about its core decision not to lend to Miss B on this property. It did think the clause Miss B's conveyancer had alerted it to, could impact future saleability. Halifax said it had paid Miss B £75 to apologise for not putting her mortgage on hold, and it wouldn't look to offer any more than this.

Our investigator didn't think this complaint should be upheld. She said the offer Miss B received did include a condition about the amount of ground rent. And Halifax was then contacted by Miss B's conveyancer to provide new information on the ground rent. Halifax then told Miss B's conveyancers it wouldn't lend on the property, because of the ground rent review mechanism. Our investigator said Halifax responded reasonably promptly to this new information, and she didn't think it was unfair for Halifax to withdraw its offer at this point.

Our investigator said it was poor service for Halifax to release funds, and to update Miss B's address, after this. But she said the money was returned with no cost to Miss B, and her address was changed back. Halifax also then removed an additional hard credit search it did by mistake. So overall, our investigator thought that Halifax's payment of £75 in this case was fair.

Miss B disagreed. She didn't think there was a special condition about ground rent in her offer. And she said if Halifax was only following its own lending criteria here, then why had it lent on flats in this block previously? She thought Halifax had based its decision on the advice of one individual surveyor who just didn't understand the ground rent escalation clause in the lease. Miss B thought the lease did have a safeguard on ground rent, so it would not inhibit a future sale.

Miss B thought Halifax ought to have challenged the wrong advice it received. Miss B also noted that Halifax hadn't proposed any solution to this problem, which she thought it should have done. She still thought Halifax had just been grasping at straws, because it wanted to rescind a very competitive mortgage offer.

Our investigator pointed Miss B to the special condition, which set out the annual charge for ground rent. And she said Halifax was entitled to rely on the information it had received from a surveyor. She noted that Miss B's conveyancer had expressed concerns to Halifax too. Our investigator also said we couldn't look at other lending by Halifax, that wasn't part of our role, we could only look into Miss B's complaint. And she hadn't changed her mind on that.

Miss B wanted an ombudsman to consider her complaint, so it was passed to me for a final decision. I then reached my provisional decision on this case.

My provisional decision

I issued a provisional decision on this complaint and explained why I only proposed to uphold it in part. This is what I said then:

I should like to say from the outset that I don't think Halifax made a mistake in its decision not to lend to Miss B. However, I don't think the payment that Halifax has made to date appropriately recognises the full impact of the mistakes it did make, on Miss B, so I'm suggesting it pays a little more.

Because of that, this decision will be provisional, and I'll give both sides a chance to comment before I make a final decision. I'll now explain how I reached this view.

Miss B told us that her conveyancer had told her the ground rent on her property was capped, and wasn't a cause for concern. But Halifax has shared with us an email that Miss B apparently received from a conveyancer. That includes, after a short explanation of the ground rent increase mechanism, the following warning –

This obviously could lead to quite large increases in the rent as market values do tend to increase quite a lot in 21 years, so you need to be prepared for that and acknowledge that future buyers may not accept that or be able to afford those increases.

I think that is a warning to Miss B about the future marketability of her property.

This letter then continues with this warning about the effectiveness of any cap –

...so effectively, I would surmise that the Landlord cannot bring the rent above £1,000, however there is no guarantee of this and therefore you need to be aware of this in the future...

I think that does fall short of the sort of reassurance that Miss B later said this lease document would offer about future ground rent increases.

It appears that this email was sent to Miss B on 23 August, so I'm not clear on why Halifax wasn't made aware of this provision for increasing ground rent until late September 2022. When Halifax issued its mortgage offer to Miss B, it did so on the basis that ground rent for the property was £300. I haven't been able to see that Halifax was told either about the current annual ground rent (which was a little higher than this) or about the provisions for increasing the ground rent, until 22 September.

Miss B said Halifax was applying provisions from a handbook which it had refused to share with her. It said her broker could access this, but she told us he couldn't. I think the handbook that Halifax refers to is intended for use by conveyancers, and it would appear that Miss B's conveyancers did have access to it, because they referred to it when they contacted Halifax about the lease.

Again, although Miss B refers to her conveyancer as unconcerned about the lease terms, that doesn't seem to me to be borne out by the email Halifax received from them on 22 September. That included the following –

Please confirm whether you find the current ground rent amount and the mechanism for reviewing/increasing ground rent to be satisfactory and that you are happy to proceed. We cannot comment on whether the value is impacted and in line with your CML instructions we are reporting to you as we believe the ground rent provisions may not be satisfactory or may materially affect the value of the property.

So it does appear that the conveyancer working for Miss B had also expressed concerns.

Miss B then complains that she wasn't made aware that Halifax was going to rescind its offer until 29 September. But I can see that on 24 September, Halifax wrote back to Miss B's conveyancers to say that, in the light of this new information, it couldn't confirm it was still going to go ahead with the lending –

The details regarding the ground rent is currently being reviewed further and we will respond to you as soon as possible. Please note this matter should remain on hold until you have had confirmation that the application can proceed.

Halifax consulted its valuer, and they said the property wasn't suitable security for a mortgage. I know Miss B thinks that advice was wrong, but Halifax is entitled to rely on the professional advice it commissions. Miss B said Halifax ought to have questioned this, but as this advice does seem to me to be consistent with what Miss B's conveyancer had said to Halifax, I don't think it had any reason to do so.

Halifax then said it wouldn't lend on Miss B's property, and it was withdrawing its offer. I think Halifax had included, as a condition of Miss B's offer, an amount for ground rent. And it was then told this wasn't a flat rate at all, but subject to future increases. I think Halifax was entitled to withdraw its offer in these circumstances.

Miss B says Halifax hadn't reached the same conclusion on other properties in the same block. I don't think it's appropriate for me to speculate here on how that happened, or why. My role is to look at the decision Halifax made on Miss B's lending. And I don't think that decision was unreasonable or unfair.

Although I think Halifax did respond promptly to Miss B's conveyancer's request, we know this all happened very close to Miss B's intended exchange and completion dates. I can well understand that this greatly increased Miss B's distress. But I don't think that's Halifax's fault.

We also know Halifax then failed to put a hold on Miss B's application. So it not only released funds, but also changed her address across the financial services group of which it is part.

Halifax has said its customers usually appreciate not having to notify all the members of its group about an address change, but obviously that wasn't helpful in this case. On 15 November, it wrote to Miss B to say it was sorry about that, and it was paying her £75 to apologise. I think that does provide a fair and reasonable response to Miss B's complaint, up to that point.

Then, in a further consequence of Halifax's failure to put this application on hold, it ran a hard credit search which was recorded on Miss B's credit file. Halifax also appears at least initially to have refused to remove that.

Halifax now accepts that was wrong too. I don't think that when Halifax paid Miss B compensation of £75, in late 2022, it anticipated she would still be dealing with the fallout of its unfortunate administrative error in early 2023. And I do think Halifax should pay a little more compensation for that. So I will ask Halifax to pay Miss B £100 now, in addition to the payment of £75 it has already made.

I invited the parties to make any final points, if they wanted, before issuing my final decision. Only Halifax replied.

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.

Halifax said that, on review, it agreed that it should have removed the additional search from January 2023, when the issue was raised. So it said that in the light of this oversight, it would agree to pay the additional £100 I'd suggested.

Neither side has offered any further evidence or argument, and I haven't changed my mind. I'll now make the decision I originally proposed.

My final decision

My final decision is that Bank of Scotland plc trading as Halifax must pay Miss B £100, in addition to the payment of £75 it has already made for this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 5 February 2024.

Esther Absalom-Gough
Ombudsman