

The complaint

Mr and Mrs M complain that Bank of Scotland plc trading as Halifax didn't treat them fairly when they experienced financial difficulty. They say it refused them a lower interest rate, wouldn't allow them to convert their mortgage to interest only, and is now threatening to repossess their property rather than allow them to sell it themselves.

What happened

Mr and Mrs M have a mortgage with Halifax. They have just under ten years left on the term. Their mortgage is on part interest only and part repayment terms – around £195,000 on interest only and around £70,000 on repayment terms as at their 2019 annual statement.

Mr and Mrs M have experienced financial difficulty in recent years. Mr M gave up work for a period to care for his mother. Mrs M's mother has also been unwell, as has Mrs M herself. And Mrs M works in her own business, which was forced to shut during the coronavirus lockdown. As a result of all this, Mr and Mrs M have been in arrears for some years.

Halifax capitalised the arrears in January 2016 when Mr M returned to work after a leave of absence. Mr and Mrs M then kept up with the mortgage for a year.

But in January 2017, Mr M again needed to take time off work because of family illness. Halifax agreed a series of nil payment arrangements – that is, it agreed Mr and Mrs M could make no mortgage payments. But by July 2017 Mr and Mrs M hadn't been able to re-start payments. They asked Halifax for a new interest rate and to switch the mortgage to interest only, but it refused. Halifax agreed some further payment arrangements in 2017, but Mr and Mrs M haven't been able to make any payments since.

By the time they complained to us in 2020, they were over £50,000 in arrears, and apart from one payment in August 2017, have made no payments to their mortgage account since 2016.

Mr and Mrs M complain that Halifax hasn't treated them fairly. In particular, they say it has refused them a lower interest rate and kept them on the standard variable rate (SVR) for several years. With a lower interest rate they might have been able to pay more, and their arrears would be substantially less.

Mr and Mrs M decided in 2019 to sell their property. They said that they didn't need such a large house now their children had left home, and they wanted to move to be closer to their business. And they recognised that selling the property would allow them to move on from the mortgage.

So Mr and Mrs M told Halifax of their intentions. But they didn't immediately put the property on the market. Around this time Mr and Mrs M asked Halifax to move the whole mortgage over to interest only while they sold the property, but Halifax refused.

In October 2019, Halifax gave Mr and Mrs M 90 days to put the property on the market before it would take legal action. Mr and Mrs M say they weren't able to put it on the market

at this time due to family illness. And then around Christmas 2019 there was a water leak at the property which caused some damage. They wanted to get this repaired before selling the property. Mr M told us that their insurance claim had been accepted and they were expecting the work to be done in late 2020.

By March 2020, the property still wasn't on the market. When lockdown started, the property market was suspended. And Mr and Mrs M say Mrs M's health conditions meant she was advised to shield.

In July 2020, as Halifax maintained that once coronavirus restrictions were lifted it intended to take repossession action – unless the property was sold or the arrears brought down before then – Mr and Mrs M complained.

Our investigator didn't recommend upholding the complaint, so Mr and Mrs M asked for an ombudsman to review it.

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.

First of all, I'm sorry to hear of all the difficulties Mr and Mrs M have faced in recent years. I'm sure it's been a worrying time and they have my sympathy for what they've been through.

In deciding this complaint, it's important I look at everything that has happened, to consider whether Halifax has acted fairly in all the circumstances.

Mr and Mrs M have been in financial difficulties for some time, and haven't been able to pay their mortgage at all for almost four years. I recognise that this is rooted in their own ill-health and that of immediate family, but it remains the case that they are now in very significant arrears.

One of the things they've asked Halifax to do to help them is give them a new interest rate. Mr and Mrs M applied for this in 2017 and complained about that at the time. As they didn't bring that complaint to us within six months of Halifax's response, and there are no exceptional circumstances which explain the delay, I can't consider that specific instance – though I can consider others.

Halifax doesn't generally make new interest rates available to customers in arrears. There are several reasons for this. It reserves its preferential rates for customers whose mortgages are performing as expected. Its new interest rates are for set periods and include early repayment charges (ERCs) for that period – meaning that if the rate comes to an end in that time, an ERC would be payable. There's a much higher risk that a customer in arrears will end their mortgage early – either through sale, or repossession – and an ERC would have a bigger impact on that customer than others.

Balanced against that, though, is Halifax's obligations to treat its customers fairly, including those in arrears. In some situations a customer might not be able to afford the higher payments that come with the SVR but could afford the lower payments that come with a fixed rate – in which case the rate might be appropriate forbearance.

In Mr and Mrs M's case, they haven't been able to afford to make any payments at all since 2016. So it's not the case that a new interest rate would make the difference between the mortgage being affordable and not – they still wouldn't have been able to afford them even if

the payments were lower.

And while Mr M's right that if the interest rate was lower, their accumulated arrears would be lower, I think that's an argument made in part with hindsight. Mr and Mrs M have been planning to sell their property since at least 2019. And while they haven't yet done so, a sale during a fixed rate would have resulted in an ERC – potentially outweighing the benefit of reduced arrears.

Mr and Mrs M were eligible for a new interest rate following the capitalisation in 2016, but there's no evidence they asked for one at the time they were still making their payments. And once they stopped, I don't think – for the reasons I've set out above – that it was unfair that Halifax was no longer willing to offer a fixed rate.

Switching the mortgage to interest only is also, in some circumstances, helpful forbearance and is one of the things that Halifax should consider. But I'm not persuaded it would have made much difference in this case. Most of the mortgage was already on interest only, so it wouldn't have made a huge difference to the monthly payments – and, as I've said, this isn't a case where Mr and Mrs M could have afforded lower payments. They haven't been able to make any payments at all, and moving the mortgage to interest only wouldn't have changed that.

In the circumstances, I think selling the property does seem to be the best way forward for Mr and Mrs M. It's unfortunate that, despite telling Halifax they intended to sell since 2019, Mr and Mrs M still haven't done so.

In the time since 2019, the arrears have continued to grow. And while Mr and Mrs M do still have equity in the property, the equity is reducing every month. There's little sign of Mr and Mrs M getting the mortgage back on track without selling. So it wasn't unreasonable for Halifax to want to know what their progress was, and to explain that repossession would need to be considered if the property didn't sell in a reasonable time. I do note, however, that it allowed them six months before the pandemic hit and repossessions were postponed by the regulator.

However, it is now eighteen months since Mr and Mrs M accepted sale of the property was the best way forward. I understand why Mr and Mrs M wanted to fix the water damage before selling. But that should have been done by now. And the pandemic and lockdown has also got in the way – as it has for many people. It's a worrying time for us all, and as Mrs M has to shield it's more worrying for Mr and Mrs M than for most people.

But that doesn't change the fact that the mortgage is still outstanding, no payments have been made for nearly five years, and the equity is being eroded month by month.

The regulator has issued guidance to lenders setting out that no repossessions can be enforced before 1 April 2021.

This gives Mr and Mrs M some breathing space. The housing market is still active in their part of the UK. And it may be possible for the property to be placed on the market even though Mrs M is shielding; they'll need to discuss that with property professionals in their area.

If Mr and Mrs M are able to make progress with a sale, they should keep Halifax informed and provided they do so I would expect it to allow reasonable time for a sale to progress.

Ultimately, however, if the property can't be sold Halifax will consider repossession. In doing so – if this becomes necessary – it will need to note the regulator's guidance on vulnerable

customers.

This is all for the future, and I hope Mr and Mrs M are now able to sell their property, repay the mortgage, and move on with their lives. And while I sympathise with their position, and I remind Halifax of its ongoing obligations to treat them fairly, I don't think it has been unfair during the period covered by this complaint.

My final decision

For the reasons I've given, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M and Mr M to accept or reject my decision before 8 March 2021.

Simon Pugh
Ombudsman