

The complaint

Mr D and Ms T complain that Bank of Scotland plc trading as Halifax hasn't treated them fairly when they experienced financial difficulty with their mortgage.

What happened

Mr D and Ms T have a mortgage with Halifax.

Unfortunately, due to a serious car accident, Mr D had to give up work. They then relied on Ms S's income from her self-employment. From around March 2019, the mortgage began to fall into arrears. They had a fixed rate of 2.24%, which expired in May 2019. Since then they have been on the standard variable rate (SVR). This meant their monthly payments increased from around £2,000 to just under £2,500.

Mr D and Ms S asked Halifax for a new interest rate to reduce their payments. They said the higher payments on the SVR weren't affordable. During 2019, Mr D and Ms S made some payments to their mortgage, missed others and overpaid in some months, though overall their arrears increased.

Mr D and Ms S say they asked Halifax to help them in various ways. They asked for a new fixed rate to lower their payments. They asked for a payment holiday or to switch the mortgage over to interest only. But they say it wouldn't consider anything until the arrears were paid off.

Mr D and Ms S complained that Halifax wasn't helping them, wasn't looking at their individual circumstances or doing anything to assist them. They said it was now looking at legal action to repossess their property. This was incredibly stressful for them and their children.

Halifax didn't think it had acted unfairly. It said Mr D and Ms S weren't eligible for a new interest rate while they were in arrears. Once they had cleared the arrears, it could discuss a new rate with them.

Ms S explained that her self-employment income was variable. But Mr D received a small insurance settlement following his accident. And he became able to work again, though at a lower salary than before and with part of his income commission based.

Halifax agreed a payment arrangement with Mr D and Ms S of £3,000 per month. But Ms S said it would take almost two years to clear the arrears at that rate – and it wasn't fair to expect them to pay higher interest all that time.

Our investigator didn't think the complaint should be upheld, so Mr D and Ms S asked for it to be considered by an ombudsman.

I issued a provisional decision, in which I said:

I've looked at the history of the account, and I can see that Mr D and Ms S were previously in arrears in 2017 and 2018. Halifax capitalised around £10,000 of arrears

in March 2018.

After that, Mr D and Ms S kept up with the mortgage until March 2019, when they fell back into arrears. They made no payments in March or April, and a partial payment in May.

In May 2019, Ms S spoke to Halifax. At that point, she was expecting a substantial insurance payment, as well as income from her business, shortly, and expected to be able to clear the arrears in the next month or so. Unfortunately this didn't prove possible, and the arrears continued to mount over the next few months. They had reached around £10,000 when this complaint was first made to us.

Over this time, Ms S kept in regular contact with Halifax to explain their situation. Halifax agreed payment arrangements on a month by month basis, but Mr D and Ms S weren't always able to keep to them.

After the complaint came to us, Mr D and Ms S continued to make reduced payments. But then they cleared the arrears in a lump sum in March 2020. Since then they have, by and large, kept up with the mortgage payments. They took a coronavirus payment deferral, and then switched to a lower interest rate in August 2020.

This complaint is therefore about what happened during the period of the arrears. Mr D and Ms S say that Halifax should have offered them a new interest rate, and should have considered other ways in which it could help them.

Halifax said Mr D and Ms S weren't eligible for a new interest rate while they were in arrears. I've thought about whether that was a fair outcome in this case.

During 2019, when their previous rate ended, Mr D and Ms S were experiencing financial difficulty. Mr D couldn't work following the accident. And Ms S, who's self-employed, has variable income. So they weren't able to make regular payments of the full contractual amount.

Mr D and Ms S did, however, act responsibly in their situation – they kept in close touch with Halifax over this time, and they paid what they could when they could.

Nevertheless, it wasn't clear at the time when or how they'd be able to get the mortgage back on track. When, for example, Mr D might be able to return to work – and which work – or whether Ms S would be able to increase and stabilise her income as she was planning to do.

I do understand the argument that, when they were struggling to meet their payments, reversion to the SVR just made that struggle harder and made it even more likely they'd be in arrears. And there's force in that argument, especially where the difference between a new interest rate and the SVR is the difference between the mortgage being affordable and unaffordable.

In this case, though, that wasn't the difference. Mr D and Ms S were in arrears before the old interest rate ended. And I've looked at the transaction history once they reverted to SVR and – while they were paying what they could when they could – a new rate wouldn't have meant they were able to keep up with the payments. A new rate wouldn't have made their mortgage, which was unaffordable at that time, affordable.

And there are downsides to taking a new interest rate – principally an early repayment charge (ERC).

If Mr D and Ms S's financial situation didn't improve and the arrears continued to grow, there might have come a point at which they'd either have to sell the property or face repossession. Either of those would result in an ERC being added to the mortgage balance to be repaid. While, thankfully, that didn't end up happening that couldn't have been known in 2019 when they asked for a new rate.

On balance, therefore, I don't think it was unfair for Halifax to refuse a new interest rate. It wouldn't have made the mortgage affordable, and it risked making Mr D and Ms S's situation worse. But I'm pleased they were able to take a new rate in 2020 once things were back on track.

Mr D and Ms S also complain that Halifax didn't help them in other ways during their financial difficulty – and here I do think Halifax could have done more.

I've looked carefully at everything that happened, and what Halifax has said. It said it never offers a temporary change to interest only as a concession – that's its policy. It wouldn't consider a term extension, because it said Mr D and Ms S weren't speaking to the right team. And it said it wouldn't consider a payment arrangement because its policy is only to offer a payment arrangement where a full monthly payment was made within the last 35 days.

I don't think this resulted in Mr D and Ms S being treated fairly.

The rules of mortgage regulation require lenders to treat borrowers facing financial difficulty fairly, to try and ensure the mortgage can be paid and to ensure repossession is a last resort. The rules say that in doing so a firm must consider whether it is appropriate in the individual circumstances of its customer to do any of the following:

- Extend the mortgage term;
- Change the payment type;
- Defer payment of interest or capital;
- Capitalise arrears; or
- Make use of government forbearance schemes.

There are no government forbearance schemes in England at present. And capitalising arrears isn't appropriate unless the borrowers can afford the higher monthly payments that would result – so this is a measure better suited to help borrowers clear arrears after their finances improve, rather than to help them during financial difficulty.

A term extension might not have been appropriate in this case, since the term already extended close to Mr D and Ms S's retirement age. But a term extension would reduce the monthly payments. But Halifax wouldn't explore this; it told Mr D and Ms S on the phone that they needed to speak to a different team, and in writing that it couldn't be done as they would pay more interest overall. That's true – but is only one factor to weigh in the balance. Halifax didn't carry out that balancing exercise to consider whether it would have been appropriate in Mr D and Ms S's particular circumstances.

Halifax says it doesn't offer temporary interest only concessions as a matter of policy. So it didn't consider it in this case. But the rules require a lender to consider whether

doing so is appropriate in the circumstances of each individual customer – its policy decision to never offer it meant it didn't consider that in this case.

The rules also say that deferring interest or capital – a payment arrangement should also be considered. Mr D and Ms S kept Halifax informed about their situation, and it agreed a series of ad hoc monthly payment arrangements. But it told them it couldn't consider a longer term payment arrangement because its policy meant that it could only do so where the full monthly payment had been made within the last 35 days.

A temporary interest only concession and a payment arrangement amount to much the same thing. In either case, Halifax agrees to collect less than the full monthly payment for a few months to give a customer breathing space, resolve the underlying issues causing the arrears, and get things back on track.

In this case, I think that is something Halifax could and should have considered. It was clearly very stressful for Mr D and Ms S to have to speak to Halifax frequently while also dealing with everything else that was happening. They were trying to get their finances back on track – through Mr D's anticipated insurance payment, as well as plans for Mr D to get back to work and Ms S to expand her business. They were open and honest with Halifax from the start. If Halifax had been willing to explore a temporary payment arrangement – whether of paying only the interest, or of some other sum – I think that would have helped Mr D and Ms S and taken some of the pressure off them.

But Halifax wasn't prepared to consider that – not because it didn't think it was appropriate in their individual circumstances, but because it had made a policy decision to restrict what it offered, and Mr D and Ms S didn't fall within that narrow policy. I don't think they were treated fairly in their individual circumstances as a result.

In the end, Mr D and Ms S were able to get the mortgage back on track. They cleared the arrears and took a new interest rate in late 2020. So there's no need for me to require Halifax to offer them a payment arrangement or other concession now.

But I do think its failure to think more carefully about what was appropriate in their individual circumstances meant that the experience of being in arrears was more difficult and stressful for Mr D and Ms S – at an already difficult time in their lives – than it needed to be. I think it caused unnecessary upset and required much more contact with Halifax than would otherwise have been the case. I think Halifax should pay them £400 as fair compensation for the extra trouble and upset caused.

Both Mr D and Ms S, and Halifax, accepted my provisional 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.

Having done so, and in light of the responses to it, I see no reason to change what I said in my provisional decision. I remain of the view that £400 is fair compensation for Halifax's failure to consider what it could have done to assist Mr D and Ms S in their individual circumstances and the distress that resulted.

My final decision

For the reasons I've given, my final decision is that I uphold this complaint and direct Bank of Scotland plc trading as Halifax to pay Mr D and Ms S £400 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D and Ms S to accept or reject my decision before 20 April 2021.

Simon Pugh
Ombudsman