DRN-3267721

The complaint

Mr and Mrs C are unhappy with how long Bank of Scotland plc, trading as Halifax, took to consider and agree their request to extend their mortgage term and take a new fixed interest rate.

What happened

Mr and Mrs C have an interest only mortgage with Halifax that was originally taken in 2012. The fixed interest rate on their mortgage was expiring in July 2019 – with the mortgage term due to expire in July 2020.

Mr and Mrs C contacted Halifax in July 2019. They said they were interested in extending the term of their mortgage and taking a new fixed interest rate. The mortgage balance was approximately £151,000.

Halifax says it explained what information it would need to see to consider the application. And it was waiting for Mr and Mrs C, or their independent financial adviser, to get in touch to provide this. Mr and Mrs C have said that Halifax told them it couldn't consider a term extension until there was less than six months remaining on the mortgage term, so they didn't proceed at that stage.

In February 2020, Mr and Mrs C contacted Halifax to again discuss extending their mortgage term and taking a new fixed interest rate. By this time their existing fixed interest rate deal had expired, and they were paying a variable interest rate of 4.24%.

Mr and Mrs C were looking to extend the mortgage term by five years. And I've seen a mortgage illustration indicating they were looking at taking a three-year fixed interest rate of 2.84%.

The application took several months to be assessed. It appears that Halifax needed additional information on several occasions about Mr and Mrs C's income, in order to assess affordability, and their repayment vehicle for paying the capital balance.

After looking at the plan for repaying the capital, Halifax said that it felt this would only cover approximately 80% of what was due. So, in order to agree to the application, it required Mr and Mrs C to reduce the mortgage balance to around £124,800. Mr and Mrs C agreed and have provided evidence to show they withdrew approximately £26,000 from an investment ISA they held to do this.

A term extension and new interest rate were finally agreed in September 2020 on the revised mortgage balance of roughly £124,800 – with the new rate effective from October 2020. The mortgage term was extended until October 2025. Mr and Mrs C also took a new fixed rate for three years. But while the application had been ongoing, the rates that Halifax was able to provide had changed, so their new rate was 1.49% - an improvement on what they had initially asked for.

Mr and Mrs C were unhappy with the service provided by Halifax during the application.

They said they'd had to spend a significant amount of time chasing Halifax which they felt they should be compensated for. And they were also unhappy they'd continued to pay interest at a higher rate, while the application was ongoing.

Halifax didn't think it had done anything wrong. So, Mr and Mrs C asked our service to consider their complaint.

One of our Investigators looked into the complaint. He noted that while the application had taken a number of months, Mr and Mrs C had benefitted from the interest rate available to them improving. He did though think some of the delay, approximately one month, was due to Halifax's handling of the matter. He felt this had caused unnecessary distress and Mr and Mrs C to have to pay interest at a higher rate for one month longer than they should've. So, he recommended Halifax refund them the difference in interest they'd paid for one month and pay them £100 for the trouble and upset caused.

Halifax agreed with our Investigators opinion. But Mr and Mrs C did not. They felt the suggested payment for trouble and upset did not fairly reflect the amount of time they'd spent chasing the matter. They also said the improved interest rate available to them was due to changes in the market not Halifax's actions and didn't think this was relevant to the complaint.

I issued a provisional decision earlier this month explaining that I intended to recommend a slightly different resolution to that of our Investigator. Below are extracts from my provisional findings, explaining why.

The application not progressing in July 2019

As I mentioned, Mr and Mrs C first contacted Halifax to discuss a term extension in July 2019 – when their fixed interest rate was ending. Halifax has provided contact notes showing three calls were made to it by Mr and Mrs C around that time to discuss this. It has also provided call recordings.

I've listened to these recordings. In the first, Mr C explained that he was interested in extending the mortgage term with the mortgage remaining on an interest only basis. The member of staff he spoke to initially said they weren't sure this was something Halifax would offer, as it would normally require the mortgage to move onto a capital and interest repayment basis. But after checking again they confirmed an interest only extension was something that could be discussed. During the call they also suggested that this would normally be considered closer to the end of the existing mortgage term. But they quickly corrected themselves and said there was no reason that the extension couldn't be considered at the time. They then went into what information would be needed and what evidence would have to subsequently be provided. Mr C indicated it would be his financial adviser that dealt with this. Halifax noted though that Mr and Mrs C would need to be present during any call with the adviser, to give authority and so Halifax could read them certain declarations. This call ended on the understanding Mr and Mrs C and their adviser would be back in touch in the near future.

In the second call, Mr C said to Halifax his adviser had tried to process a term extension application but had been told Mr C needed to agree details with Halifax first. Halifax said this wasn't the case and that Mr C could either speak to one of its advisers and apply directly or his adviser could apply on his behalf. This call ended on the understanding Mr and Mrs C's financial adviser would be taking the application forward.

In the last call I've been provided a recording of, it was indicated that Mr and Mrs C would be applying directly, as their adviser was unable to do so. Halifax explained the documentation *that would eventually need to be supplied and gave the details of where this would need to be sent. But it explained Mr and Mrs C should have this to hand when discussing the application with one of its mortgage advisers and only send it to Halifax once this conversation had taken place. This call ended on the understanding that Mr and Mrs C would be getting back in touch with Halifax at the end of July 2019, to have a conversation with one of its mortgage advisers.*

Halifax has no record of Mr and Mrs C having contacted it again until February 2020.

Halifax appears to have been clear in the calls that it could consider an application for a term extension at that time and set out the information that would be needed. There is no indication that it was going to take the next action. And it seems clear from each of the calls that the parties agreed on each occasion that it would be Mr and Mrs C, or their representative, that would be initiating the next contact.

So, based on the information that I've been provided, I don't think Halifax has done anything wrong that explains why the enquiry did not progress between July 2019 and February 2020. And I can't reasonably say it is responsible for that delay.

Was Mr and Mrs C's application considered correctly in 2020

Before agreeing to extend the term and agree a new interest rate deal, Halifax carried out assessments in relation to whether it deemed the mortgage affordable or the repayment vehicle suitable.

There are regulations that have flowed from the Financial Conduct Authority's ("FCA") Mortgage Market Review (MMR). This has led to a series of major changes, effective since 2014, in the way residential mortgages are regulated. MMR regulations have brought about requirements for stricter lending assessments, particularly around affordability and repayment strategies for interest only mortgages, aimed to protect consumers and encourage mortgage lenders to act more responsibly.

The FCA recognised though that this could impact existing borrowers who wanted to make changes to their mortgages. So, it introduced certain rules to address this. These rules are set out in the Mortgage and Home Finance: Conduct of Business Sourcebook ("MCOB"). These rules allow lenders to set aside some of the new tests, particularly around affordability assessments and repayment strategies for interest only mortgages, in certain circumstances if the change being requested to a mortgage was in the customer's best interests.

Importantly though, they don't say that a lender should not carry out the relevant assessments. It can just potentially set these aside, after they have been carried out, if it deems it appropriate to do so. So, I don't think Halifax was wrong to look at the affordability of the agreement or how the mortgage would be repaid at the end of the term. And so, I don't think it was wrong to request relevant information and evidence to allow it to do this – which meant the application would take some time. I'll look later at whether this assessment was done as efficiently as it should've been.

Going back to the rules I've mentioned it's important to note that these rules also don't oblige lenders to make changes to mortgages or agree to lend. They merely say that changes don't have to be refused – if the criteria for setting aside the more stringent tests are met.

Mr and Mrs C's request to extend the term of their mortgage was ultimately agreed. But only after the mortgage balance was reduced – because Halifax felt the repayment vehicle for the mortgage was not sufficient to cover the whole balance. And this led to Mr and Mrs C having to withdraw money from an investment to reduce the balance.

Mr and Mrs C's application would appear to fall into the category where Halifax could opt to set aside the more stringent tests around interest only repayment strategy. That is because the original mortgage was taken out prior to 26 April 2014, there doesn't appear to have been further borrowing since that date and Mr and Mrs C were not looking to take additional borrowing as part of their application. So, if the transaction, the term extension, was in their best interests, I think Halifax could've set aside this assessment. And as it is the assessment of the repayment vehicle that has led to Halifax requiring the reduction in the mortgage balance – if this had been set aside, they might not have been required to make a withdrawal from their investments.

So, I've thought about whether Halifax should've set aside this assessment.

In the calls I've listened to from July 2019, Mr and Mrs C explained that they wanted to extend the term and keep the interest only mortgage because the returns they were receiving on their investments (which were intended to repay the mortgage) exceeded what the mortgage was costing. And so, they wanted to leave those investments in place. And when the application was continued in February 2020, they explained they were also keen to avoid penalties for withdrawing the investments – which they indicated would've been lessened at the end of the extended term. So, there was a potential benefit to the extension for them. But just because this course of action was what they wanted – it doesn't mean it was in their best interests.

Extending the mortgage term would though mean having to pay interest on the entire mortgage balance for a further five years – so brought with it a significant additional cost. There was also the risk that Mr and Mrs C's investments could've decreased in value. So, at the end of the extended term they could've been left in a worse position, and even not have a way to repay the balance.

Given the additional cost and risk involved, I think it was fair of Halifax to conclude that the transaction initially requested might not have been in Mr and Mrs C's "best interests". So, I don't think Halifax has acted incorrectly by continuing to apply its standard assessment criteria to the repayment strategy, rather than setting this aside.

And based on what I've seen I think Halifax has applied its lending criteria, in relation to investments and the potential for their value to change, fairly to the repayment strategy that was explained to it. Which means I don't think Halifax did anything wrong by requiring the mortgage balance to be reduced. And overall, I think the application was considered fairly and correctly.

Did Halifax cause delays after February 2020

As I've noted Mr and Mrs C's application took several months to be considered fully. I've seen evidence that there were several phone calls between Mr and Mrs C and Halifax in February 2020. In those calls, information was provided about income and expenditure, as well as details of Mr and Mrs C's investments being outlined. Following a call on 25 February 2020 I can see that a mortgage illustration was produced setting out the proposed changes to the mortgage that had been talked about.

Halifax's records show it then received a signed application declaration in early March 2020. But no other documents – to evidence the figures that had been discussed over the phone - are recorded as having been received at that point.

The next contact between Mr and Mrs C and Halifax was in early June 2020, when Mr and Mrs C asked how the application was progressing. And it was shortly following this call that further evidence was sent to Halifax.

It isn't entirely clear what happened when the declaration was provided in early March 2020. Mr and Mrs C have indicated that they believe they supplied evidence of income and expenditure at that time as well. But Halifax only has record of receiving a declaration.

I can't see that after receiving the declaration that Halifax chased Mr and Mrs C for the remaining outstanding information. If it hadn't received anything after the conversation on 25 February 2020, then I could understand this – as it would've been reasonable to assume

Mr and Mrs C had decided to make alternative arrangements. But given the application declaration was received, I think this ought to have indicated they were intending to proceed. And I think it'd have been reasonable for Halifax to remind them, certainly within a month of the declaration having been received, that additional evidence was needed. So, I think Halifax could arguably have done more at that stage.

I am conscious though that these events coincided with the onset of the pandemic. So, came at a time when businesses, including Halifax, were adapting to great uncertainty and regularly changing guidance. And I do think this goes some way to explaining why it may not have chased Mr and Mrs C.

I've also taken into account that Mr and Mrs C didn't contact Halifax again until June 2020. And they could arguably have checked in with it sooner, to see if they needed to send any further information – particularly with their existing mortgage term due to expire in July 2020. But they too, like all of us, would've been dealing with the uncertainty the pandemic had brought about. So, I can also understand why they may have not thought to do so sooner.

In summary, I don't think either party is wholly at fault for the application not progressing between the end of February 2020 and the start of June 2020. But I am satisfied that Halifax didn't have the evidence it needed to carry out an assessment of the application during that time.

The required evidence was eventually received in early June 2020. Call notes provided by Halifax indicate documents were available on 9 June 2020. But it doesn't appear that these were reviewed until July 2020, or that Mr and Mrs C were updated until 8 July 2020 – when more information was requested.

I can see Mr and Mrs C made several phone calls to Halifax in the interim asking for an update. While I appreciate that Halifax was still dealing with the changing circumstances around the pandemic, I think this delay of approximately one month was unreasonable and avoidable. Particularly bearing in mind by that time Halifax was aware that the application had been ongoing since February 2020, the initial mortgage term was due to expire in July 2020 and that Mr and Mrs C were anxious for this to be resolved.

Once this information was assessed in July 2020, more evidence was required – which I don't think is unreasonable. This seems to have been provided promptly around 13 July 2020, based on when Halifax's notes indicate it was received. But there appear to have been further delays in this being reviewed by Halifax, with this not happening until early August 2020, and an update not having been provided to Mr and Mrs C until 3 August 2020 – a delay of another three weeks. And again, I think this was an unnecessary delay.

Correspondence continued between the parties throughout August 2020, with more evidence exchanged, particularly relating to the repayment vehicle, which led to the mortgage amount, Halifax was willing to agree to extend the term for, reducing. That communication seems to have been dealt with more effectively though and I don't think Halifax caused further delays before the mortgage was agreed.

In summary then, while I think it was reasonable for Halifax to require evidence to be provided for it to consider the application, I don't think this evidence was always dealt with or reviewed promptly. And I think this has caused delays to the application – totalling approximately seven weeks.

With that in mind, I've thought about what a fair way to put this right would be.

The application not concluding until September 2020 did benefit Mr and Mrs C in a way. The interest rate they obtained on their mortgage – a fixed rate of 1.49% for three years – was less than what they originally applied for – a three-year fixed rate of 2.84%. And so, over the period of the fixed interest rate, they will pay significantly less in interest – several thousand pounds in fact.

Mr and Mrs C have said that this was not due to Halifax doing anything to help them but because of market conditions. And I agree the change was because of changes to market conditions. But as they have benefitted from this, quite significantly, I do think it is correct to take this into account when considering what is fair.

Had those delays not happened, the changes to Mr and Mrs C's mortgage would've happened sooner than they did. So, the new interest rate deal would've been in place sooner and they'd have paid less interest. Our investigator recommended that Halifax refund the difference in interest Mr and Mrs C paid for one month. But as I think the delays caused by Halifax were actually longer than this – approximately seven weeks – I think it'd be appropriate for it to refund the difference in interest between the standard variable rate and the new fixed rate on the mortgage for the full duration of the delay it caused (seven weeks).

Mr and Mrs C have said that the way the application was handled was upsetting and resulted in them having to make a large number of phone calls to chase things with Halifax, which was very inconvenient for them. Having reviewed the contact notes I can see that Mr and Mrs C made did make regular calls to Halifax looking for an update. A lot of which, I think, would've been avoided if the delays had not happened.

Mortgage applications will often require a fair amount of administration on the part of the applicants. And they can take a significant amount of time and, even at the best of times, be stressful. But I do think Halifax has caused Mr and Mrs C to expend more time than necessary on this application.

Mr C has mentioned the number of hours he spent on the phone to Halifax and the hourly rate he charges. But I don't think it'd be reasonable to award redress based on his professional rate – not least as this was a personal matter. But I do accept that having to make this number of calls would've been inconvenient.

Taking everything into account, I'm minded to say that Halifax should pay Mr and Mrs C £300 for the distress and inconvenience it caused here.

Mr and Mrs C have also said that, only finding out they needed to reduce the mortgage balance at quite a late stage, limited where they were able to release funds from. And that caused them to incur costs. But I don't think Halifax did anything wrong by requiring the mortgage balance to be reduced – as it seems to have acted in line with its lending criteria. And I also don't think it has delayed discussing this issue with Mr and Mrs C – as all of the information it based this decision on seems to have only been received in full, shortly before this was explained to them. So, given this, and that the saving on the interest rate Mr and Mrs C have ultimately benefitted from seems to exceed the costs they've incurred, I don't think Halifax needs to do anything further to address this issue.

Responses to my provisional decision

I gave both parties an opportunity to make further comments or send further information before I reached my final decision.

Mr and Mrs C did not provide any further comments for me to consider.

Halifax said it agreed with my provisional findings. But rather than calculate the difference in interest for seven weeks, it would round this amount up to two months.

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 considered everything again, as neither party have provided me with any additional information to take into account, I see no reason to depart from my provisional findings that Halifax did cause some delays to this application and should do something to put that right.

Putting things right

Halifax has said it accepted my provisional findings and in fact proposes to do more than I suggested, by refunding Mr and Mrs C the difference in interest between what they did pay and what they would have paid on their new fixed rate for a period of two months, rather than seven weeks. Taking everything into account, and as my findings and reasons for them are unchanged from those in my provisional decision, I think this offer is fair.

So, to put things right, Halifax should;

- Pay Mr and Mrs C £300 for the distress and inconvenience caused by how it handled their application.
- Refund Mr and Mrs C the difference in interest between what they did pay on their mortgage and what they would've paid on their new fixed rate, for a period of two months – as it has now agreed to.

My final decision

For the reasons I've explained I uphold Mr and Mrs C's complaint.

To put things right I require Bank of Scotland plc, trading as Halifax, to settle the complaint as directed in the 'Putting things right' section of my decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs C to accept or reject my decision before 21 April 2022.

Ben Stoker
Ombudsman