

The complaint

Mr and Mrs B complain that Bank of Scotland plc, trading as Halifax, declined multiple requests for a new interest rate product on their mortgage, leaving them struggling to make payments on its standard variable rate.

What happened

Mr and Mrs B have a mortgage with Halifax, on part interest-only part capital and interest repayment terms, originally taken out in 2006 over a term of 22 years. Their mortgage was initially on a fixed interest rate of 4.99% until 2008. When that interest rate product ended, Mr and Mrs B took out a further fixed interest rate product of 5.99% until 2011, and then reverted to Halifax's standard variable rate (SVR).

Mrs B recalls she contacted Halifax in 2011, when their fixed rate expired, to ask for a new interest rate. Mrs B says Halifax told her that, as she had recently been made redundant, she wouldn't meet its affordability requirements for a new interest rate product.

Unfortunately, Mr and Mrs B experienced financial difficulties from 2012. Halifax agreed a three-month payment holiday and then agreed reduced payment arrangements with them. Mr and Mrs B started managing to make their full monthly repayment from around mid-2013.

Mrs B remembers asking for a new interest rate product several times during this period. Halifax says that Mr and Mrs B wouldn't have been eligible for an interest rate product at that time, due to the mortgage arrears.

In March 2015, the remaining arrears were capitalised to the mortgage account. In 2016, Mrs B asked about an interest rate product, and says her request was declined. Halifax has no record of why an interest rate product wasn't put in place.

In August 2019, Mrs B successfully arranged a new five-year interest rate product at 2.05%, which went into place in October 2019.

Mrs B complained about Halifax refusing her previous requests for an interest rate from 2011 onwards. She also complained about the time it took for Halifax to apply the interest rate product in 2019.

In response, Halifax said it thought the complaint about the request in 2011 had been brought outside the time limits set by the regulator. It said that it had limited records from 2013, but it thought any requests made by Mr and Mrs B for an interest rate product around that time would have been declined due to the mortgage arrears.

However, Halifax couldn't see any reason why a rate switch hadn't gone ahead in 2016. It therefore offered to re-work Mr and Mrs B's account as if they'd been offered an interest rate product at that time. It also offered to backdate the product Mr and Mrs B had arranged most recently to September 2019.

Mr and Mrs B weren't happy with Halifax's response and referred the complaint to the Financial Ombudsman.

Our Investigators looked into the complaint. They concluded that the request for an interest rate product Mrs B recalled making in 2011 wasn't something we could consider as the complaint about that had been made too late. Mr and Mrs B accepted that.

The Investigators also thought that Halifax's offer was a fair way to put things right. Mr and Mrs B disagreed, so the complaint came to me to decide. I issued a provisional decision.

My provisional decision

I proposed to uphold this complaint. I said:

Firstly, I agree with our Investigators that a complaint about any requests for an interest rate product Mrs B made in 2011 has been brought outside the time limits set by the regulator, and aren't something the Financial Ombudsman can consider. Mr and Mrs B accepted our Investigators' view about that, and the Investigators also noted that – at the relevant time in 2011 – Halifax's SVR was lower than the fixed rates it was offering and therefore cheaper for Mr and Mrs B.

Mrs B recalls asking again for an interest rate product in 2013. Halifax has no record of any requests made by Mr and Mrs B for an interest rate product around that time, but says it thinks they would have been ineligible for a lower interest rate product in any event as the mortgage was in arrears.

It's reasonable, in principle, for lenders to only offer interest rate products to customers who meet certain criteria. And it's not uncommon for lenders to require that a mortgage account be up-to-date before it will offer an interest rate product. I've seen Halifax's lending criteria, and they include this requirement.

I think it would have been fair for Halifax to decline any requests Mr and Mrs B made for an interest rate product in 2013. I can understand Mr and Mrs B's point that their monthly payments would have been lower, and therefore easier to manage, had the mortgage been on a lower interest rate rather than Halifax's SVR. However, I think it's reasonable that Halifax would want to be satisfied that the mortgage would be sustainable moving forwards before agreeing to offer a new interest rate product, and to do that it would need to see a history of Mr and Mrs B consistently managing their monthly payments.

This is an important consideration because, while a fixed interest rate would usually result in lower monthly payments, it would also come with an early repayment charge if the mortgage needs to be brought to an end early – such as in circumstances where the mortgage is no longer affordable and the lender repossesses the property. So a fixed interest rate which a borrower can't maintain can end up costing more in the end.

In 2013, Mr and Mrs B had struggled to manage their monthly payments for some time, and I understand they had only recently started their own business. Halifax agreed a payment holiday with them for a few months, and it wasn't until mid-2013 that they started managing to make their full monthly mortgage payments. Against this background, I don't think I can fairly conclude that Halifax should have agreed a new interest rate product in 2013; it wasn't clear whether Mr and Mrs B would have been able to maintain the resulting mortgage payments.

As things turned out, Mr and Mrs B managed to make their monthly payments plus a small contribution towards the arrears until March 2015, when Halifax agreed to capitalise the

remaining arrears. I think that was a reasonable step for Halifax to take, as Mr and Mrs B had shown by that point that the monthly payment was sustainable for them.

Our Investigators considered whether Halifax should have offered an interest rate product at the same time it capitalised the arrears. They thought that, as they couldn't see from Halifax's contact notes that there had been any discussions with Mr and Mrs B about a new interest rate, or any requests made by Mr and Mrs B for a new interest rate product, they couldn't fairly say Halifax should have offered one.

I've thought very carefully about whether Halifax should have offered Mr and Mrs B an interest rate product alongside capitalising their arrears. Although Halifax's notes don't show a record of any discussions about an interest rate product between Mr and Mrs B and Halifax around that time, they are only a summary of its conversations with them. It's clear from other notes – in the years both before and after 2015 – that Mr and Mrs B had asked for a new interest rate product several times, and asked again in March 2016, almost exactly a year after the arrears were capitalised.

I also note that Halifax's own notes from its investigation of this complaint in 2019 say: *"although we are unable to evidence the customers version of events, there is a high possibility following the arrears being consolidated that the customer would have wanted to make the CMP [contractual monthly payment] more affordable and therefore would have wanted a lower rate. [...] she could have been advised that she could still continue with PT [product transfer] rate change"*.

So, Mr and Mrs B had a history of asking for a new interest rate, they were turned down for one for no obvious reason in 2016, they could have had one in 2015, Halifax itself has noted that they are very likely to have wanted one in 2015, and Halifax's 2015 notes focus on the decision to capitalise the arrears at that time. Against this background and on balance, I think it's most likely that Mr and Mrs B did ask about a fixed rate during their discussions with Halifax in March 2015.

As I've explained above, I think it was reasonable that Halifax declined any requests for a new rate which Mr and Mrs B made while they were struggling to make their monthly payments, as it couldn't be confident the mortgage would be sustainable. But, by the time it agreed to capitalise the arrears in March 2015, it had seen that Mr and Mrs B had managed to make their monthly payments for over a year.

In all the circumstances, I think Halifax should also have offered Mr and Mrs B an interest rate product when it capitalised the arrears. Mr and Mrs B had shown, by that point, that the mortgage was sustainable, the mortgage was brought up to date by capitalising the arrears, and I think it more likely than not that there was a discussion about a fixed rate at that time.

Accordingly, I don't think Halifax's offer to re-work the account from 2016 does enough to put things right, and I propose to uphold this complaint as set out below.

Putting things right

I think Halifax should re-work Mr and Mrs B's mortgage as if the lowest available fee-free five-year fixed rate it had available in March 2015 had been applied to the account.

It should re-calculate Mr and Mrs B's mortgage as if that rate had been applied at that time, up until Mr and Mrs B arranged the fixed interest rate product in 2019. It should not apply an early repayment charge.

I think this is the fairest way to put things right as it was around four-and-a-half years between the capitalisation of the arrears and when Mr and Mrs B arranged an interest rate product in 2019 – so a five-year fixed rate taken in 2015 would have run for almost the full five years.

This will mean that Mr and Mrs B have made overpayments to the mortgage since 2015. In response to this provisional decision, Halifax should make two calculations to show:

- The current balance on Mr and Mrs B's mortgage if the overpayments had been applied to reduce the balance of the interest-only portion; and
- The extra amounts Mr and Mrs B have paid not treated as overpayments but instead refunded to them. For this calculation Halifax should also say how much the refund would amount to, adding simple annual interest of 8% to each monthly overpayment running from the date of the overpayment to the date of its calculation.

Once we have received those figures, we will share them with Mr and Mrs B. They will then have the choice of either using the overpayments to reduce their mortgage balance, or having them refunded.

Mr and Mrs B's mortgage has been on a higher interest rate than it should have been for several years, meaning their monthly payments were higher than they should have been. I intend to require Halifax to pay Mr and Mrs B £300 by way of apology for the distress and inconvenience this caused them.

Responses to my provisional decision

Mr and Mrs B and Halifax both accepted my provisional decision.

Halifax said the earliest a new fixed interest rate could have been applied from, once the arrears had been capitalised in March 2015, was 1 April 2015. It had no five-year fixed rates available in 2015, and the lowest fee-free product Mr and Mrs B could have had was a four-year rate of 2.14% which was launched in 2015.

Halifax produced some calculations based on that product running until 30 September 2019, followed by the 2.05% product which it had already applied from 1 October 2019 onwards.

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.

Both parties have accepted my provisional directions about how this complaint should fairly be resolved, so I see no reason to come to a different conclusion.

The only remaining matter to be decided is for Mr and Mrs B – they will need to decide whether they would prefer a refund of their overpayments or to leave those overpayments on the mortgage.

Our Investigator will send on the information Halifax has provided about this to Mr and Mrs B so they can choose which settlement to accept.

My final decision

My final decision is that I uphold this complaint and Bank of Scotland plc, trading as Halifax, should:

- re-work Mr and Mrs B's mortgage as if an interest rate of 2.14% had been applied from 1 April 2015 to the date the current 2.05% fixed rate began in 2019. It should not apply an early repayment charge;
- provide our Investigator with any remaining outstanding calculations to show:
 - 1) the current balance on Mr and Mrs B's mortgage if the overpayments they have made since 2015 had been applied to reduce the balance of the interest-only portion, and
 - 2) the extra amounts Mr and Mrs B have paid not treated as overpayments but instead refunded to them. For this calculation Halifax should also say how much the refund would amount to, adding simple annual interest of 8% to each monthly overpayment running from the date of the overpayment to the date of its calculation;
- either re-work Mr and Mrs B's mortgage balance on the basis of the calculation at 1) above, or pay the refund and interest at 2) above, in line with Mr and Mrs B's instructions; and
- pay Mr and Mrs B £300 compensation.

If Halifax considers that it's required by HM Revenue & Customs to deduct income tax from the interest at 2) above, if Mr and Mrs B select that option, it should tell Mr and Mrs B how much it has taken off. It should also give Mr and Mrs B a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B and Mr B to accept or reject my decision before 10 June 2022.

Janet Millington
Ombudsman