

The complaint

Mr and Mrs C complain about the interest rate charged to their mortgage with Bank of Scotland plc trading as Halifax. They say the terms of their mortgage say that Halifax's standard variable rate (SVR) should be no more than 2% above the Bank of England base rate – but in fact they've been charged much more than that. They want a refund of the interest they believe they've been overcharged over the years.

What happened

Mr and Mrs C took out an interest only mortgage with Halifax in 2006. They borrowed £250,000 over a term of 14 years.

For the first two years, Mr and Mrs C were on a fixed rate of 4.45%. In 2009, their mortgage reverted to Halifax's SVR, and they have been on the SVR ever since.

Their mortgage offer says, among other things:

We have set a limit on the Halifax Standard Variable Rate so that it will not be more than 2% above Bank of England base rate. We can change the 2% limit but, before we do, we will give 30 days notice to customers who pay interest at Halifax Standard Variable Rate, a discounted rate or an added rate and are subject to an early repayment charge. Those customers will then have three months to repay their mortgage if they want to, without having to pay the early repayment charge. This does not apply to customers who pay interest at a fixed, capped, special or tracker rate.

Mr and Mrs C say that Halifax has never given them notice that it has changed the cap, and therefore it should only have charged them 2% or less above base rate throughout their mortgage – whereas in fact it has charged them more than that. The SVR has been more than 2% above base rate throughout the time they've been subject to it. They therefore say they've been overcharged since 2009.

Halifax says that the terms and conditions of the mortgage allowed it to increase the cap. It increased the cap to 3% in 2008 – on those mortgages subject to the cap (which, it says, does not include Mr and Mrs C's mortgage).

It says that in any case Mr and Mrs C's mortgage was never subject to the cap. It says the cap only applied where a customer's mortgage was wholly or partly on SVR (or linked to SVR) and they were also subject to an early repayment charge (ERC). This might apply in various scenarios – for example when the mortgage was on a discount rate linked to SVR, or when part of the mortgage was on SVR and part on a preferential rate.

This was never Mr and Mrs C's situation – while they were subject to an ERC, the whole of their mortgage was on a fixed rate with no link to the SVR, and then when they were on SVR they were not subject to an ERC – and so the cap never applied to them.

In other words, Halifax says it was never under an obligation to charge them no more than 2% (or as the case may be 3%) above base rate. And so it has not treated them unfairly or overcharged them interest.

However, there were wider concerns about Halifax mortgages which included this wording. And so in 2011, Halifax agreed a scheme with the then regulator, the Financial Services Authority (FSA).

The effect of the scheme was that the wording of the mortgages like this could be confusing – in particular, that it could lead customers to be confused about whether the cap applied to them or not. That included customers in Mr and Mrs C's situation – who were on SVR but not subject to an ERC. Those customers were not covered by the cap, but the inclusion of the wording I've quoted above (or similar) in their mortgage offers could have led them to believe they were. And other customers who were subject to the cap could have been confused about when the cap would stop applying to them.

The FSA therefore required Halifax to write to affected customers explaining the position clearly. And certain customers – including Mr and Mrs C – would be entitled to a refund of any interest charged above the 2% cap between 1 January 2009 and the implementation of the scheme in 2011.

This was because customers like Mr and Mrs C might have been confused about whether the cap applied, or expected that it would apply when it didn't. But because Halifax didn't think the cap applied to them, it had never charged them in line with the cap, and hadn't written to them when it changed the cap. Customers in this situation were to be given a refund of interest as if the cap had applied to them at 2% until 2011 - so the compensation for being led to believe that the cap might apply when in fact it didn't was to re-work the mortgage as if the cap had applied, and also to explain that in reality the cap had never applied and from now on the SVR would not be linked to or capped at an amount over base rate.

The interest refund was to be used to reduce the mortgage balance unless the customer asked for it to be paid in a different way.

The redress was set at 2% above the cap even though Halifax had varied the cap to 3% - because Halifax didn't think the cap applied to them, it had never told them the cap had increased to 3%.

Halifax wrote to Mr and Mrs C, as it was required to by the terms of the scheme, and paid just over £5,000 to their mortgage to reduce their balance. This represented the difference between the interest they had actually paid between 2009 and 2011, and the amount they would have paid had their interest rate been capped at 2% over base rate. Halifax also told them that their mortgage was not subject to the cap and the SVR they would pay from 2011 onwards was not linked to base rate (and would be higher than if the cap had applied).

Mr and Mrs C replied and asked for the money to be paid direct to them instead, so Halifax took it back off their mortgage balance and sent them a cheque in September 2011.

In the years after 2011, Mr and Mrs C's mortgage remained on the SVR and there was little or no contact between them and Halifax apart from things like annual statements and other letters Halifax was required to send from time to time.

In March 2020, Mr and Mrs C reached the end of their interest only term. This led them to look closely at their mortgage – including checking the terms of their mortgage offer. They say that at this point they realised that the SVR Halifax was charging them was more than

2% above Bank of England base rate – and they said that their mortgage offer said that wouldn't be the case.

There followed extensive correspondence. Halifax said Mr and Mrs C's complaint about the interest rate was out of time because the events of 2008 – 2011 were more than six years ago, and Mr and Mrs C would have known about them at the time. It said it had paid them a "goodwill gesture" in 2011 and wouldn't re-open that matter. But it offered them £200 compensation for delays in dealing with their complaint.

Mr and Mrs C weren't happy with that and brought their complaint to us, where it was looked at by one of our investigators.

He said that he couldn't consider anything about the interest rate, because that part of the complaint was out of time. He said Halifax should increase its offer of compensation for the handling of their complaint from £200 to £300. Halifax accepted that, but Mr and Mrs C didn't.

My provisional decision

I took a different view of things to the investigator – I thought that we could consider at least part of Mr and Mrs C's complaint.

I set out the applicable rules, which are that a complaint must be made within six years of the date of the event complained of, or – if this gives more time – within three years of when the complainant knew, or ought reasonably to have known, of cause for complaint.

My conclusions on our jurisdiction were that:

- Mr and Mrs C's complaint is not about the redress they were paid in 2011, and it's not about whether or not Halifax ought to have varied their SVR at that time (which, in fact, it didn't);
- Their complaint is
 - their mortgage offer says that while they are on the SVR, the SVR will always be capped at 2% over base rate;
 - In fact, this has not happened;
 - As a result, throughout the time they've been on the SVR, they've been overcharged interest;
- In other words, the complaint is that each month Halifax charged them interest, it did not do so in line with what the offer actually said about how the interest rate would be set – and therefore overcharged interest each time;
- That means that in this complaint we are looking at the decision Halifax made each month to charge the interest rate it did – and whether it did so fairly, lawfully, and in line with what the mortgage documents said;
- We can therefore, as a minimum, consider the fairness of interest charged in the six years before Mr and Mrs C complained – that is, since March 2014;
- However, we can't go back further than that under the three year part of the rule, because:
 - I was satisfied that Mr and Mrs C were told in 2011 that Halifax did not think their mortgage was subject to the cap, and that they would not be charged interest in line with the cap from then on;
 - Mr and Mrs C received annual statements and other letters setting out their interest rate and the amount they were charged in the years from 2011 – again telling them that they were not in fact being charged interest in line with the cap;

- Therefore, this was enough to tell them that they were not being charged interest in line with what they thought their mortgage offer said – and was enough to reasonably make them aware they had cause for complaint;
- As there were no exceptional circumstances, I would only be considering the fairness of interest charged from March 2014 onwards.

In respect of the merits of that part of the complaint, my conclusions were:

- I took into account the redress scheme that was agreed between the regulator and Halifax in 2011;
- I noted that, in certain circumstances, that scheme was binding on the Financial Ombudsman Service;
- But in any event, whether or not it's binding on me in this case, it's a relevant matter for me to take into account;
- While what happened prior to and in 2011 is out of time and I cannot consider a complaint about it, it is relevant context for deciding whether Mr and Mrs C were charged interest fairly from March 2014 onwards;
- Halifax wrote to Mr and Mrs C in 2011 explaining that their mortgage had never been subject to the cap and would not be subject to it going forwards;
- Mr and Mrs C's mortgage was not in fact subject to the cap on the SVR – notwithstanding the wording included in their mortgage offer – because of further wording in the mortgage terms and conditions. This had been explained to them in 2011, and in the period I could consider (from 2014 onwards) it was not unfair that the interest rate they were charged was not subject to the cap;
- In any case, Mr and Mrs C had not been tied in or subject to an early repayment charge (ERC) since 2009, so if they were unhappy with their interest rate at any time there was nothing to stop them taking out a new fixed rate, either with Halifax or with another lender. But there was no evidence they'd ever tried to do that;
- While Halifax could have handled their complaint better in 2020, a large part of Mr and Mrs C's frustration stemmed from disagreement with the outcome. I was satisfied that the offer of £300 compensation was fair in all the circumstances.

The responses to my provisional decision

Mr and Mrs C acknowledged my provisional decision but made no further substantive arguments.

Halifax said it didn't agree that any of this complaint was in jurisdiction, since – it said – the event Mr and Mrs C were complaining about was the point at which their SVR went more than 2% above base rate, which is more than six years ago. It didn't agree that this was a complaint about the ongoing fairness of the interest they were charged each month. It also said that while it agreed with the outcome I had reached on the merits of the complaint, it considered that the Financial Ombudsman Service was bound by the terms of the scheme agreed with the regulator in 2011.

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.

I've considered what I said in my provisional decision again, but I haven't changed my mind. I'm satisfied that this complaint falls within my jurisdiction, since I'm satisfied that Mr and Mrs C's complaint is that Halifax has overcharged them interest each month because it has charged more than – they believe – their mortgage offer said it would. While we cannot

consider the fairness of those charges more than six years before the complaint was made, the charges within the last six years are in time. I'm satisfied this is consistent with the approach taken in the other cases Halifax has referred to.

Under the terms of the scheme agreed with the regulator in 2011, the scheme is binding on the Financial Ombudsman Service – but only if certain conditions are met. However, I don't need to make a formal finding as to whether I consider I am bound by the scheme or not in this case, since in any event I'm not reaching a different outcome to what the scheme said.

For the reasons I gave in my provisional decision, summarised above, I'm satisfied that it was explained to Mr and Mrs C in 2011 that – notwithstanding the wording in their mortgage offer – the 2% cap never applied to their mortgage. They were paid redress at that time for any confusion the offer may have created. And it follows that the interest charged from March 2014 onwards was not unfair even though it was more than 2% above base rate.

Putting things right

I'm satisfied that Halifax's offer of £300 compensation for delays and frustration in responding to Mr and Mrs C's complaint is fair, and I don't require it to take any further action.

My final decision

For the reasons I've given, my final decision is that I direct Bank of Scotland plc trading as Halifax to pay Mr and Mrs C £300 compensation.

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

Simon Pugh
Ombudsman