

The complaint

This complaint's about a mortgage that Mr and Mrs H took out in 2020 with Bank of Scotland plc trading as Halifax. They're unhappy that when they changed property, Halifax wouldn't honour the same rate they'd already been offered.

What happened

By way of a provisional decision dated 5 September 2022, I set out my provisional conclusions on this complaint. The following is an extract from the provisional decision.

"The broad circumstances of this complaint are known to Mr and Mrs H and Halifax, and not in dispute. So I don't need to repeat all of the details here.

Our decisions are published, and it's important that I don't include any information that might result in Mr and Mrs H being identified. Instead I'll give a brief summary of the main points, rounding the figures where appropriate, and then focus on giving the reasons for my decision. If I don't mention something, it won't be because I've ignored it. It'll be because I didn't think it was material to the outcome of the complaint.

Mr and Mrs H applied for the mortgage in February 2020, via a broker; Halifax issued a mortgage offer on 30 March 2020, which was valid until 30 September 2020. The interest rate product attached to the mortgage was a fixed rate of 1.50% running until 31 March 2022.

In August 2020, Mr and Mrs H's vendor withdrew the property from sale and they had to look for a new property to buy. They found one, and on 24 August 2020, their broker spoke to Halifax on the phone. Halifax's caller handler issued an illustration with the same interest rate product that was in the original mortgage offer, and the application was re-keyed with the new property details.

Halifax initially proposed a "desk-top" valuation, but then realised the loan to value ratio (LTV) was slightly higher than before, which meant a physical valuation was required. The earliest date a physical valuation could be carried out was 25 September 2020. Halifax then told the broker that Mr and Mrs H would need to apply for a new rate as the 1.50% product was no longer available. At short notice, and not wanting to risk losing their home for a second time, Mr and Mrs H agreed to a five-year fixed rate of 2.95%. Halifax issued an offer on 6 October 2020, and the purchase completed a month later.

Mr and Mrs H complained, saying that if Halifax had arranged the valuation sooner, they'd have been able to complete before 30 September 2020, the expiry date of the original offer. Halifax offered £150 compensation for the mix up over the valuation but didn't think it was to blame for Mr and Mrs H having to take the higher rate. Mr and Mrs H referred their complaint to us.

Our investigator initially upheld the complaint and recommended Halifax pay the difference between the original rate and the new rate for the duration of the original rate, but otherwise leave the five-year fixed interest rate running until its end date. He also thought compensation should be £300 rather than £250. Mr and Mrs H accepted the recommendation, but Halifax challenged it. The investigator subsequently changed his mind and rejected the complaint altogether. He did so after Halifax explained that the physical valuation was always necessary, due to the LTV increase, and even if the booking had been placed earlier, the valuation would still not have been carried out before 25 September 2020.

Mr and Mrs H asked for the complaint to be reviewed by an ombudsman.

What I've provisionally decided – and why

I'll start with some general observations. We're not the regulator of financial businesses, and we don't "police" their internal processes or how they operate generally. That's the job of the Financial Conduct Authority (FCA). We deal with individual disputes between businesses and their customers. In doing that, we don't replicate the work of the courts.

We're impartial, and we don't take either side's instructions on how we investigate a complaint. We conduct our investigations and reach our conclusions without interference from anyone else. But in doing so, we have to work within the rules of the ombudsman service, and the remit those rules give us.

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I've taken account of what Mr and Mrs H have said about expiry date of their first offer always being 30 September 2020 from the outset, after the investigator mistakenly referred to it as having originally been June 2020 and then extended to 20 September 2020.

Having taken into account everything that both parties have said and provided, I've reached a different conclusion on how this case should fairly be settled. Because of that, I set out my current findings in this provisional decision, in order that both parties have the opportunity to comment before I finalise my decision.

My starting point here is that the mortgage offer for the original property always had an expiry date of 30 September 2020. That being so, if Mr and Mrs H had completed their purchase *of that property* before 30 September 2020, they'd have done so on the 1.50% fixed rate product. Once that property fell through and they were forced to find a new one, the question I have to consider is whether there was ever any prospect of them obtaining a mortgage on the new property with that same interest rate product.

Mr and Mrs H have argued, quite plausibly on first glance, that but for the time taken to carry out the valuation, it's likely they would have been able to complete by 30 September 2020. Their argument isn't without merit, however as the parties making it, it falls to them to show that if their application had proceeded as normal from the outset, then it's **more likely than not** that they'd have completed on or before 30 September 2020.

I've emphasised the phrase "more likely than not" because "just as likely" isn't enough. Based on all that I've seen thus far, I'd struggle to conclude that completion on or before 30 September 2020 was more likely to have happened than not. But in

any event, I'm not persuaded it's the issue on which the outcome of Mr and Mrs H's complaint turns. The position is a little more nuanced than that.

The expiry date of 30 September 2020 applied to the original offer for the original property. The change of property, and the increased LTV, meant a new offer would always be required. Any new offer would supersede the original, would have its own expiry date and, critically, could only be issued with an interest rate product that was available at the time the new offer was issued.

When Mr and Mrs H's broker spoke to Halifax on 24 August 2020, the call handler located the rate product code (ending in 005) from the original mortgage offer and succeeded in raising an illustration for a new mortgage at 1.50%. This clearly gave the impression that the product was still available at that point, and the expectation thus created informed the discussions between Mr and Mrs H and their broker about how to proceed. But I think that expectation was false; I'll explain why.

There's an internal note in Halifax's record of the complaint investigation dated 20 November 2002, which I reproduce below verbatim:

"Use the product code, don't check when it expires (sic). As long as the product is showing. It doesn't say when it will expiry. we would do the MI and not check anything else. Useless (sic) the Broker ask us to"

The inference I've drawn from this is that when Halifax raised the illustration for the new mortgage on 24 August 2020 incorporating product code ending 005, it did so without having checked the product was still available to put into a new offer. It wasn't, and I'm satisfied Mr and Mrs H's broker already knew this, because on 21 August 2020, she said, in an email to them:

*"I can ask Halifax whether they will honour the 1.5% rate and change the property details. They may say no or insist the expiry date remains **or a product currently available.**"*

(My emphasis in bold.)

Putting all of the above together, I've concluded that the product code ending 005 had already been withdrawn before Mr and Mrs H were forced to look for a new property to buy.

The investigator has requested evidence of the withdrawal date from Halifax; I'd ask that it include that information with its response to this provisional decision. In the meantime, this would point to that the answer to the question I posed earlier being that there was never any prospect of them obtaining a mortgage on the new property with product code ending 005, regardless of whether they completed on or before 30 September 2020. Halifax's error was to create a false expectation that they could. So I'm satisfied that this complaint should be upheld; the next question for to decide is how Mr and Mrs H should fairly be compensated for Halifax's error.

When a business gives wrong information, we don't expect it to place the customer in the position they'd be in if that information had been correct. We expect it to put them in the position they would have been in if the incorrect information hadn't been given. What should have happened here is that, instead of being told they'd need to choose a new product in late September 2020, Mr and Mrs H should have been told this on 24 August 2020. So I have to assess what they would have done if the same news had been given to them a month or so earlier than it was.

I've seen the evidence from Mr and Mrs H of their discussions with their broker about the possibility of changing to a different lender that was offering a deal at 2.29%. Although lower than the 2.95% deal Halifax was proposing for the offer on the new property, the thinking was that starting afresh with a new lender at a time when underwriting checks were quite onerous was a riskier option than staying with Halifax.

It seems to me more likely than not that if Halifax hadn't misled them and Mr and Mrs H and their broker had held this discussion a month earlier, they'd have reached the same conclusion. Mr and Mrs H had already lost one property; I don't think they'd have risked losing another by starting the entire mortgage underwriting process again with a new lender.

In that context, my provisional conclusion is that Mr and Mrs H would still have taken the 2.95% five-year fixed rate deal they now have with Halifax. It's also likely the valuation would still have been carried out when it did, given the limitation there appears ultimately to have been on the availability of the surveyor to conduct it.

All things considered, it seems to me that Mr and Mrs H are already in the position they'd have been in if Halifax hadn't messed up on 24 August 2020. But they'd have made their decision sooner, and reached that same position having avoided a great deal of the stress and anxiety that came from having their expectations raised unrealistically and then lowered back to reality.

Mr and Mrs H deserve compensation for being put through all of that unnecessarily. Taking everything into account, I'm presently minded to assess fair compensation at £400. Halifax sent Mr and Mrs H a cheque for £150, but they have told us they never cashed that cheque. I'm inclined to take them at face value on that, but I've no doubt Halifax would be able to show if the cheque had been cashed."

I gave the parties two weeks to reply to the provisional decision; that time has now passed. Mr and Mrs H haven't commented; Halifax has confirmed product code 005 was withdrawn a matter of days after the original offer was issued, but didn't think the award of £400 was warranted. It hasn't provided any evidence to suggest the cheque for £150 was cashed, so I am taking Mr and Mrs H at their word when they say it wasn't.

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 afresh everything that both parties have said and provided. Having done so, I won't be departing from my provisional conclusion.

Halifax asks how Mr and Mrs H were inconvenienced by what happened on 24 August 2020 bearing in mind it had no impact on when the mortgage would have completed, and they were unaware the product had been withdrawn. As I explained in the provisional decision, Mr and Mrs H were wrongly led to believe they could still have that rate, only to find out weeks later that they couldn't.

It's for having their hopes raised and then dashed that I have made this award. It would have had less impact on them if they'd been given the right information on 24 August 2020. Finding out when they did, so much closer to the transaction end point, will have caused

much more upset, and contributed to the rush of getting a valid offer in place ready for completion.

My final decision

My final decision is that I uphold this complaint in part by ordering Bank of Scotland plc trading as Halifax to pay Mrs and Mr H £400 compensation for their time, trouble and upset. My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further consideration or discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs H to accept or reject my decision before 18 October 2022.

Jeff Parrington

Ombudsman