DRN-3773176

The complaint

Mr S complains about his mortgage with Bank of Scotland Plc trading as Halifax. He says it has charged him too much interest over the years, which has caused him significant financial difficulty.

What happened

Mr S owned a house which was subject to a mortgage with another lender. In 2007, following the breakdown of his marriage and his own redundancy, he moved to another city for work. At the time, this was intended to be a short-term move.

Around the time of his move, also in 2007, Mr S re-mortgaged his home, taking out a new mortgage with Halifax. He took a two year fixed rate.

This was a residential mortgage. But Mr S says he took it out intending that, to start with, he would not live in the property because he was working away – though at that time, his intention was to return after around two years and he still regarded the property as his permanent home at this time. The property was left empty while Mr S was working away and he says he only returned to it on occasional weekends.

Things worked out in the new city and Mr S decided to stay. In 2008, he says he decided that he would rent out the property. He found a tenant and spoke to Halifax about his mortgage.

Mr S says that Halifax told him that because this was a residential mortgage, he would need its consent to let the property out. He says that Halifax told him that he couldn't formally apply for consent to let while he was on a fixed rate. However, he says that the agent he spoke to at Halifax at that time told him to go ahead and let the property, that he would send Mr S a consent to let application form, but that Mr S would not need to return it. Mr S says the agent told him that Halifax had noted that he was letting the property, and would get in touch when it needed him to return the form.

Mr S says that as a result of this conversation, in 2008, he understood that Halifax was aware he was letting the property, had agreed that he could do so, and that he didn't need to take any further action until Halifax got back in touch to ask him to return the form. Mr S says that he understood he had been given verbal consent to let, and that the agent he spoke to had had to implement a "workaround" because system limitations meant Halifax couldn't formally record a consent to let while he was still on a fixed rate.

Mr S says that in the years after this, he had problems with his divorce and personal life. As a result he didn't focus on his mortgage. He was aware that he had reverted to the standard variable rate (SVR) in 2009 and was content to let the mortgage continue while he dealt with other things. Also around this time, he began to develop mental health problems which have impacted him in the years since.

From around 2013, Mr S's illness worsened, impacting his ability to work. At the same time, the property was between tenants. And so the mortgage fell into arrears. Later, Mr S says

that although the property was tenanted he used the rent for living expenses because he was out of work, rather than for paying the Halifax mortgage.

By around 2016, Mr S says he realised that the interest rate he was paying on his mortgage was much higher than he expected it would be and he started to look into things. Mr S found that, in addition to the SVR, he was paying a premium of 1.5% for letting his property out without authorisation.

And Mr S says that he also found that his mortgage offer said that the SVR would never be more than 2% above Bank of England base rate – but that in fact the SVR he was on was significantly higher than this cap.

Mr S began complaining to Halifax about his situation. He said he'd been significantly overcharged interest over the years – both because of the 1.5% unauthorised letting premium, and because the SVR was more than 2% above base rate.

Mr S said this was unfair, because he did have consent to let following the conversation in 2008. And because Halifax had never given him notice that it was changing his interest rate, and therefore had no power to change it. It was only later, following a subject access request, that Mr S realised that while Halifax had sent him notices, it had sent them to the mortgaged property address rather than to his new address – even though it knew that was where he was living.

As a result, Mr S said Halifax had never given him valid notice. And so it had no power to change his interest rate. As a result his monthly payments were too high – and this had made his arrears significantly worse than they should have been. And that had had a big impact on him and his health.

Halifax didn't agree that it was charging an unfair rate of interest. It said that it had changed the interest rate on Mr S's mortgage in line with the terms and conditions, and had written to him at the time. And it said that it had never agreed to allow Mr S to rent the property out. It had written to him several times to say that it thought he was doing so without authorisation, which would lead to a 1.5% interest rate premium. But Mr S had never replied and had never asked for consent.

Mr S said that wasn't right. He said he had asked, in 2008, and been given verbal consent and had been led to believe that would continue until he was told otherwise, or until he was asked to send in the application form. He said that Halifax had written to the property address despite knowing he wasn't living there and despite using his actual address to write to him about other things. So he had never seen the letters, and it wasn't fair for Halifax to rely on them as giving valid notice when it had not sent them to the address it knew he was living at.

And he said that any letters about the level of the SVR, including whether or not the 2% cap applied and whether it had been changed, had also been sent to the wrong address. Halifax was required to give him notice of any changes to his interest rate – it hadn't done so, so the changes were invalid.

Halifax has accepted that it knew of Mr S's changed address in 2011. It accepted that it could have written to him at his new address about letting the property. However, it said that if it had done so, it was likely Mr S would then have applied for consent to let. And as the interest rates it had available at that time for consent to let mortgages were higher than the SVR plus 1.5% Mr S was being charged, it didn't think he had lost out – he was better off than he would have been had he applied for consent to let and taken a consent to let rate.

Halifax said that it had spoken to Mr S in September 2014, when he asked for a payment holiday. Mr S had told Halifax that the property was let out, and it told him that there was no consent to let in place. It offered to put Mr S through to the relevant team to apply for consent, but he refused.

However, Halifax accepted that while it had told Mr S on this call that no consent to let was in place, it didn't tell him on this call that he was being charged an extra 1.5% as a result. It re-worked Mr S's account to remove the 1.5% premium between October 2014 and October 2016. It did so on the basis that had Mr S known of the 1.5% premium he might have applied for consent which would be likely to have been granted, and so the premium would have been taken off. At this time, Halifax didn't offer consent to let rates, it just allowed mortgages to continue on the SVR – so between 2014 and 2016 Mr S would have been better off had he applied for consent to let.

However, consent would need to be reviewed annually and by October 2016 Mr S was in arrears – even after the account had been re-worked – and so further consent would have been refused and the 1.5% added back on again. So Halifax would not offer a further refund after that date.

This adjustment of interest between 2014 and 2016 resulted in a refund of interest of around £11,000, which was used to reduce the mortgage balance and arrears. Halifax also agreed to amend Mr S's credit file to reflect the re-worked arrears position.

Mr S brought his complaint to us. Halifax then made a further offer to resolve the complaint – while it didn't accept that it had done anything wrong, it said it was conscious of the length of time these issues had been going on and the impact they were having on Mr S in his particular circumstances. Halifax said that it had previously paid redress on three occasions:

- A refund of interest, totalling £2,449.49 in March 2010
- £250 compensation in March 2011
- A refund of interest of £11,121.37 in November 2018.

Halifax said that when Mr S complained, he had estimated the total amount he believed he had been overcharged as around £30,000. While Halifax didn't accept that, in an effort to resolve the complaint it would offer to reduce Mr S's mortgage balance and arrears by a further £16,200, making just over £30,000 including the previous redress. It also said that it would grant Mr S consent to let for 12 months, removing the 1.5% interest rate premium for that period, even though the mortgage would still be in arrears even after the interest rate refund.

Our investigator thought that was a fair offer. But Mr S didn't. He said that the amount he had been overcharged had increased since he'd made that estimate. And he wanted Halifax to compensate him for everything that had happened, and to adjust his interest rate for the future. As no agreement could be reached, the case comes to me for a decision to be made.

I issued a provisional decision setting out my thoughts on the complaint.

My provisional decision

In my provisional decision, I said:

> "I'm grateful to Mr S for the detail and clarity with which he's explained his complaint. That's given me a good understanding of what he's concerned about and what he

thinks has gone wrong. And I've also taken note of everything he's said about the impact his situation has been having on his mental health. That's a good reason of itself for bringing this long-drawn out complaint to a close – so that Mr S can move forward with certainty whatever the outcome.

It seems to me there are two key issues in this case – whether it's fair that Mr S has been charged the 1.5% unauthorised letting premium; and whether it's fair that the SVR Halifax has charged him since 2009 has been set at more than 2% above the Bank of England base rate. I'll deal with each of those in turn. Mr S has also told me about a third issue, concerning a separate mortgage on the property he's now living in (not the property which is the subject of this complaint) – but, as I explained to him, the lender on that mortgage is not Halifax but another firm in the same group and so not something I can consider as part of this complaint.

The consent to let premium

I've set out above Mr S's recollection of the conversation he had in 2008, in which he says he was told that he had permission to let the property on a verbal basis, and was told he'd be notified if he ever needed to send in the form to apply in writing.

I've thought about this carefully. I've noted the certainty with which Mr S recollects this conversation, and I've taken that into account.

I've also taken into account that no call recording of this conversation survives – unsurprisingly given the passage of time. And that there's no note of it in the records Halifax have provided us. So I don't have Halifax's version of what was said.

However, even so, I'm not persuaded by Mr S's recollection of the call. There are several reasons for that.

Firstly, I have to bear in mind the fallibility of human memory. It's well known that memory doesn't act as a snapshot, freezing a moment in time. Rather, memories change and adapt over time as they are accessed. This happens subconsciously, and is influenced by later feelings and the memories of other events. In short, human memory is fallible and unreliable as a guide to what was said or done in the past – particularly the distant past. It's for this reason that the courts have repeatedly warned against over-reliance on evidence based on memory of events, particularly where that's contradicted by the documents from the time.

As I say, there's no recording or note of this conversation that I've seen. However, Halifax's policy was that consent to let requires a formal application to be made. I don't think it's likely that Halifax would have told Mr S that it could disregard its policy and give him a verbal agreement to let the property for an indefinite period and then not record that in its systems. In this respect, the absence of a documentary record is persuasive.

Mr S still has a copy of the consent to let application form he says Halifax sent him around this time, and he's given it to us. It's a formal application, requiring the borrower to agree to various declarations. And the form also makes clear that the maximum duration of consent to let is three years. So even if Mr S's memory of the 2008 call is right, receiving the form ought to have led him to question why he wasn't being asked to complete the form and to question what would happen from 2011 onwards.

I think it may well be the case that Mr S had a conversation with Halifax in 2008, and in that conversation Halifax told him he would need to apply and sent him the form. But I'm not persuaded that his recollection – that it told him he wouldn't need to apply, and had been given verbal consent indefinitely until such time as Halifax invited him to re-apply – is accurate, however honestly held and however strongly Mr S believes it to be true.

There are records of later calls with Halifax. Mr S told Halifax of his change of address. On 15 March 2011, he called Halifax to ask why it hadn't implemented the change but was still writing to the property. Halifax's notes of this conversation say:

> *Mr [S] called in to ask why his address has not changed, I question the customer and he confirmed he is renting the property out without ctl [consent to let]. Tried to pass the customer through to ctl team but too busy. Direct number provided customer will call back but is aware this will be classed as an unauthorised tenancy*

This is a contemporaneous note, and while the call recording doesn't survive I have no reason to doubt its accuracy. I'm satisfied this call took place and that the record in the notes reflects what was said. It shows that by 2011 – before it started to apply the 1.5% premium – Halifax had made clear to Mr S that he didn't have consent and would need to apply. So even if Mr S's recollection of the 2008 is accurate, this call would have told him that he no longer had consent to let in place by 2011.

Following this call, Halifax wrote to Mr S at the property address on several occasions. When it received no reply, it applied the 1.5% unauthorised letting premium from May 2011.

It may be that Mr S doesn't now recall the March 2011 call, and is relying on his memory of the 2008 call to support his belief that he has in fact had consent to let all along. But as I say, human memory is fallible, and I place greater reliance on the contemporaneous call note.

That's not to say I doubt the honesty of what Mr S says – I'm sure he genuinely remembers the 2008 call and has accurately described to us his memory of it. But while I don't doubt the honesty of his memory of it, I'm not persuaded that his recollection is reliable and should be preferred to the documentary evidence.

On balance, I'm not persuaded that Halifax told Mr S in 2008 that he could have consent to let without the need for a formal application, and that consent would last indefinitely until Halifax got back in touch to ask him to return the form.

And even if Halifax did say that to him in 2008, it made clear in the March 2011 call that, as far as it was concerned, he did not have consent to let and would need to apply for it. Therefore any verbal agreement from 2008 was no longer in place.

But Mr S didn't make that application, and it was only after this conversation – from May 2011 – that the 1.5% premium began to be applied. And at this time there was no consent to let in place, and Mr S knew that at the time (even if he doesn't recall knowing it now).

Mr S has also pointed to Halifax's policy, which says that in cases of suspected unauthorised tenancies, Halifax should write to borrowers at *"all known addresses"*. Halifax only wrote to the property address – even though it knew he wasn't living there, it didn't write to the address he'd given where he was actually living.

And under the rules of mortgage regulation (known as MCOB, available in the Financial Conduct Authority Handbook online) – specifically MCOB 7.6.1 R – Halifax is required to give Mr S reasonable notice in advance of any changes to his monthly payments resulting from interest rate changes. In addition to this, the wider principles of regulation say that a firm must pay due regard to a customer's information needs, communicating in a way that's clear, fair and not misleading (Principle 7).

The evidence I've seen shows that Halifax did only write to the property address. It did have his other address, and its policy says it should have written to him there too.

However, I don't think this means that Halifax wasn't entitled to apply the 1.5% premium.

Under condition 6.6 of the terms and conditions, it was allowed to do so where the property is let. Condition 2.2 of the terms and conditions says that Halifax can give notice *"by writing to you at the property or the last address you gave us"*. Halifax did write to the property, which is one of the alternatives in condition 2.2. So Halifax complied with the requirements of the terms and conditions.

And while it's arguable that Halifax didn't comply with MCOB 7.6.1 R or Principle 7, in that it didn't write to the address it knew Mr S was living at, it doesn't follow that Halifax is not entitled to charge the 1.5% premium. The regulatory rules don't set out a specific consequence for a firm if they're not complied with. So this becomes part of the wider circumstances that I need to take into account in deciding what's fair and reasonable in all the circumstances.

Mr S had given Halifax a different address, and it should have used that address instead – or as well – to notify him of changes. But Mr S was aware – as shown by the March call – that this wasn't always happening. Mr S has told us that he wasn't receiving annual statements or other documents he would have expected around this time either. And it doesn't seem that he took steps such as having his mail diverted.

I think the key point is that by March 2011, Mr S knew that Halifax considered the letting to be unauthorised and that he needed to make an application for consent to let. But he didn't make that application. He knew he wasn't receiving documents because Halifax was writing to the mortgage address but he wasn't living there. I appreciate this was a difficult time in Mr S's life and he was managing many other things besides the mortgage. But the fact is that he didn't take the steps Halifax told him he needed to take to get consent to let.

I'm therefore satisfied that at the point at which it started applying the 1.5% premium, from May 2011:

- Mr S was renting his property out;
- Mr S did not have Halifax's consent to rent his property out;
- Halifax had made clear to him that he needed consent, and that until it was granted, his tenancy would be treated as unauthorised;
- Mr S knew he needed to apply for consent to let;
- Mr S did not in fact apply for consent to let;

- The terms and conditions allowed Halifax to increase the interest rate by up to 2% where the property was let.

I'm not therefore persuaded that it was unreasonable in those circumstances for Halifax to treat Mr S's tenancy as unauthorised and apply the 1.5% premium.

Even if I'm wrong, and the failure to write to Mr S's new address rather than the property address meant that it wasn't fair for Halifax to apply the 1.5% premium, I still wouldn't uphold this part of the complaint. That's because Halifax has shown that, at this time, it required borrowers who had been on SVR when they applied for consent to let to take out a specific consent to let interest rate. Those interest rates were not lower than the SVR + 1.5% Mr S in fact paid.

That means that if Halifax had written to Mr S at his new address, then one of two things would have happened. Either – as happened with the March 2011 phone call – Mr S would have taken no action despite being advised that he needed to apply for consent to let. And in that situation, he would still have been charged the 1.5% premium. Or Mr S would have applied for consent to let, and been required to take out a consent to let interest rate – which was at least as high as SVR + 1.5%.

Therefore, my conclusions on this part of Mr S's complaint are that:

- It was fair for Halifax to apply the 1.5% unauthorised letting premium from May 2011,because Mr S knew he needed consent to let, didn't apply for it, but continued to let the property, and the mortgage terms and conditions allowed a premium of up to 2%;

- Alternatively, if it was not fair for Halifax to apply the 1.5% premium because it failed to write to Mr S's new address, this did not cause Mr S any loss, since had it done so Mr S would either:

    - Not have applied for consent to let, and still have paid the same SVR + 1.5%; or
    - Have applied for consent to let, and been required to take a new interest rate which was higher than SVR + 1.5%, so paying more than he did for the unauthorised letting.

I'm therefore not persuaded that Halifax did anything wrong in applying the premium – but if it did, doing so did not cause Mr S any loss.

In 2018, Halifax re-worked Mr S's mortgage to remove the 1.5% premium for the period between 2014 and 2016. It did so because following a further discussion about consent to let in 2014, it doesn't think it made clear enough that Mr S would need to apply for consent to let to avoid the 1.5% premium continuing – had it done so, he might have applied.

But it said that by October 2016, when Mr S would have needed to renew consent to let, he was in arrears even with the refunded interest and so consent would have been refused.

Therefore it didn't agree to refund the 1.5% premium after October 2016. I'm satisfied it was Halifax's policy to refuse consent to let when a mortgage was in arrears. I think that was a fair offer and I don't require Halifax to take any further action in respect of this part of Mr S's complaint.

The level of the SVR

From 2009, Mr S's mortgage reverted to the SVR.

Mr S's mortgage offer contains the following wording:

Halifax Standard Variable Rate is the base rate which applies to this mortgage.
…

> *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.*

This supplements the general provisions about interest in the terms and conditions. The terms and conditions say, at section 6:

> *6.10* ***We*** *can change the* ***interest rate*** *on any part of the* ***capital*** *at any time, unless the offer, any* ***extra agreement*** *or any* ***flexible options agreement*** *says we cannot. We can change the interest rate for any of the following reasons:*
> *….*
> *6.15* ***We*** *will give* ***you*** *notice, as set out in condition 2.2, of any changes in the* ***interest rate*** *under condition 6.10…*

Condition 2.2 says:

> ***We*** *will give you notice as follows:*
> *(a)* ***We*** *may give you notice by writing to* ***you*** *at the property or the last address* ***you*** *give us*
> *(b)* ***We*** *may give* ***you*** *notice of a change in the* ***base rate*** *or the* ***tracker base rate*** *by putting the notice in at least three national newspapers.*

Words in bold have specific definitions as set out in condition 1. Of particular relevance is the definition of "base rate" – which is *"the base rate of interest set out in the offer"* – as the offer says, in this case the base rate is the Halifax SVR.

Condition 2.2 contains the general notice provisions in the terms and conditions – so apply to all situations where notice is required, unless special provisions override them. I've quoted the relevant section of the offer above, which says 30 days' notice direct to the customer is required – but only where Halifax changes the cap (rather than changing the SVR within the cap), and then only where the customer is currently subject to an early repayment charge (ERC).

Taken together, what all that means is:

- the base rate of Mr S's mortgage is the Halifax SVR;
- At the start of the mortgage, there was a cap on the SVR of 2% above base rate;

- Condition 6.10 says that Halifax can vary the SVR for one of the reasons given;

- The offer says that Halifax can also vary the cap;

- When Halifax changes the SVR but does not change the cap, it must give notice of the change by putting the notice in national newspapers;

- When Halifax changes the cap, it is only required to give 30 days' notice to customers who are subject to ERCs at that time, and then should allow three months for those customers to redeem without charging an ERC;

- The 30 days' notice of change to the cap does not apply to customers who are not subject to an ERC at that time. Those customers will instead be subject to the ordinary notice provisions in condition 2.2 – that is, putting notice in the national newspapers.

In addition to those provisions in the terms and conditions, there is the regulatory rule I've quoted above – under MCOB 7.6.1 R, Halifax is required to give Mr S reasonable notice in advance of any changes to his monthly payments resulting from interest rate changes.

Halifax changed the cap from 2% to 3% in 2008, while Mr S was still on his fixed rate. And it later increased the SVR further, so that by 2011 it was more than 3% above base rate.

There were no further changes to the SVR until 2016.

In March 2010, Halifax wrote to Mr S – at the property address – saying that it had increased the cap from 2% to 3% in 2008. It had not written to him at the time, because Mr S was then on a fixed rate not the SVR and so wasn't affected by the change. But when he reverted to the SVR in 2009, by then the rate was more than 2% above base rate.

Halifax said it should have given him 30 days' notice of the change because he was subject to an ERC at the time it took effect. Halifax accepted it hadn't done so, and said this letter was the 30 days' notice, and it would refund the extra interest charged between when he had reverted to SVR in March 2009 and 30 days from the date of the letter (to April 2010)

This amounted to a refund of around £2,500 plus interest which was applied to Mr S's mortgage.

The SVR changed again in 2011, and again notification was sent to the property address – not the address Mr S was living at.

Mr S's complaint is that Halifax is not entitled to rely on changes to the interest rate because it failed to give him proper notice – because it did not write to him at the address it knew he was living at. It only wrote to him at the mortgage address. In the absence of proper notice, it hasn't complied with the requirements necessary before it can change the rate applicable to his mortgage – and therefore any changes to the rate are void. In particular, this means that he should never have been charged more than the 2% cap set out in his offer.

I've thought carefully about this. And I agree that Halifax should have written to him at the correspondence address he had given – certainly from 2011 onwards, as I've set out above, there's evidence that it had the new address and that Mr S was trying to sort out why post wasn't being sent there.

But I don't think that means that the changes Halifax made to the rate are of no effect. I've set out above that under the terms of the contract, Halifax can give notice of "base rate" (SVR) changes through the press – it's not required to write to Mr S directly.

The one exception is where a change is made to the cap while Mr S is subject to an ERC. That is not changes to "base rate" – which only need to be advertised in the press. Instead, Mr S must be given notice personally.

But even in that case, condition 2.2 says that Halifax can give notice by *"writing to you at the property or the last address you gave us"*. These are alternatives, and Halifax did write to Mr S at the property in 2010 (accepting it should have given him notice in 2008, and reversing the rate increase in the meantime). So I don't think it can be argued that Halifax acted in breach of contract by writing to him at the property – meaning that I can't say it didn't have the contractual power to change the cap due to failure to give proper notice.

The regulator doesn't require lenders to give borrowers notice of changes to their interest rate. But it does require notice to be given of changes to monthly payments arising out of changes to the interest rate – which, where a customer is on SVR (as is the case here) amounts to the same thing.

The rule doesn't specify how notice is to be given, it just says that a firm must give a customer reasonable notice in advance. This is MCOB 7.6.1 R – the same rule I've referred to above.

In addition to this, the wider principles of regulation say that a firm must pay due regard to a customer's information needs, communicating in a way that's clear, fair and not misleading (Principle 7).

I think there's an argument that, in this case, Halifax didn't do that. It knew where Mr S was living – it had his address – from at least 2011 onwards but it continued to send information to the property even though it knew he wasn't living there. I'm not persuaded that this paid due regard to his information needs, or amounted to fair communication or reasonable notice.

However, the regulator's rules and standards are matters for me to take into account in deciding what's fair and reasonable in all the circumstances (alongside relevant law, and what I consider to have been good industry practice at the time).

The regulations don't set out the consequences if a firm fails to comply – they don't say, for example, that if a firm doesn't give reasonable notice of a payment change then it can't change the payment.

It's therefore a matter for me to decide whether I think it's fair and reasonable for Halifax to have changed the monthly payments on Mr S's mortgage even though it arguably didn't give him reasonable notice, because it didn't write to the right address when it increased the SVR in 2011. The same may be true of the 2010 letter – though it's not clear exactly when Mr S gave Halifax his new address as a

correspondence address for the mortgage, by March 2011 (in the call I've cited above), he was complaining that address wasn't being used.

At this time, Mr S was up to date with his mortgage and was paying it each month. He'd therefore have been able to see that the amount being taken by Halifax had changed. Mr S was not living in the property. He knew that there were issues with correspondence being sent there and was trying to resolve this with Halifax – but doesn't seem to have taken other steps such as diverting his mail to make sure he got important letters. He says he was receiving annual statements around this time, though there was a gap later when they stopped.

Halifax did comply with the terms and conditions of the mortgage – it sent Mr S the belated notice of change to the cap in 2010 to the property address, and advertised later changes to the SVR in accordance with the offer and condition 2.2. And while that may not amount to enough to comply with its additional regulatory obligations, it doesn't follow that Halifax *can't* charge the increased rate. And I bear in mind that I'm not persuaded that this caused Mr S significant detriment at the time. He was up to date with his payments and continued to be so – it was only some years later that he began to go into arrears. The arrears were not caused by the changes in interest rate, but by later changes in Mr S's circumstances. I'm not therefore persuaded that it would be fair and reasonable to say that Halifax is required to refund ten or more years of interest because it wrote to the wrong address in 2010 and 2011. And so I don't think I can fairly uphold this part of Mr S's complaint either.

Putting things right

I've set out my view of this complaint. I don't think that, ultimately, Mr S has been treated unfairly in the interest rate he's been charged – either because of the unauthorised letting premium, or in the notice given of changes to the SVR.

However, I note that Mr S feels very strongly about this complaint. He's pursued it determinedly for several years – despite the impact on his mental health. I understand that's because he feels he's been the victim of an injustice, and his treatment at the hands of Halifax has compounded his already difficult situation.

For the reasons I've explained above, I don't think that Halifax has charged Mr S interest unfairly. But I also note that – while it doesn't accept it has done anything wrong – Halifax has taken the view that it and Mr S will need to have an ongoing relationship for the rest of the mortgage term. That relationship has substantially broken down and needs to be repaired.

In that context, and without admission of liability, Halifax has offered to reduce Mr S's balance and arrears by a further £16,200 – being the difference between what it has already paid and the total amount that Mr S estimated he had lost out on when he first complained. And it would grant him 12 months' consent to let, giving him time to make decisions about what to do.

In all the circumstances, I think that's a fair offer, and I hope it will go some way to allowing Mr S to move on and resume a working relationship with Halifax, coming to an agreement about how to resolve the remaining arrears on his mortgage, whether or not the property is to be let, and the long term future."

The responses to my provisional decision

Halifax accepted my provisional decision. But Mr S didn't.

Mr S said that my provisional decision was biased and prejudiced against him. He said I had mis-stated his complaint, which in fact was:

- Halifax didn't inform him of a material change in his mortgage interest rate before it came into force in July 2011 (the consent to let premium). It sent letters to the property address despite knowing he wasn't living there.

- Halifax didn't inform him of a material change in his mortgage interest rate before it came into force in 2009 and 2010 (the increase in the SVR). It did not provide the required 30 days' notice in advance.

- Halifax should not include payment shortfall balances in a customer's contractual monthly payments. Halifax had breached this requirement each time it recalculated Mr S's monthly payment following a change in the SVR. I should require it to follow the regulator's guidance on remediation in this situation.[1]

Mr S said that Halifax changed his address on its systems in 2007 and again in 2008 – for example, that is where it sent his credit card statements, his savings accounts statements and correspondence about an insurance policy – but it sent information about the mortgage to the property address. Halifax's policy is to use the same address for all customer accounts, but it failed to do that and as a result Mr S didn't receive any correspondence about his mortgage or the interest rate until he made enquiries after 2017. Mr S also referred to a letter from a complaint handler in 2019 who said "*I feel the evidence you've provided is sufficient to show you made Halifax aware of your address"*.

Mr S said that this shows that Halifax failed to maintain its systems properly to ensure it used his correct address across all products he held with it, and therefore that Halifax was in breach of the regulator's principles for firms.

Mr S said that I had questioned whether or not he notified the bank – and in doing so, I had ignored the evidence he provided and Halifax's acknowledgement, quoted above, that he had done so.

Mr S said that the then Financial Services Authority had issued a final notice to Halifax in October 2012[2], in which it had found that Halifax had relied on incorrect customer information to communicate changes in their mortgages, which meant that around 15% of customers did not receive important information they should have received, including about changes to interest rates. This is further evidence that it failed in his case.

Mr S said that Halifax wrongly wrote only to the property address. It failed to give him notice. As he is entitled to 30 days' notice before any change in the SVR cap, the increase is not valid until 30 days after he was actually given notice.

Mr S said the outcome in my provisional decision was inconsistent with the regulator's findings and interpretation of the terms and conditions of the mortgage. I have disregarded those matters and therefore my provisional decision is irrational and biased in favour of Halifax.

Mr S said that I had taken a partisan view of the events around the unauthorised letting loading. I had speculated about what had happened and taken my speculation as evidence, which is shocking and casts a shadow over my findings. Mr S said that his version of events

[1] https://www.fca.org.uk/publication/finalised-guidance/fg17-04.pdf
[2] https://www.fca.org.uk/publication/final-notices/bank-of-scotland.pdf

had not been challenged by Halifax and should be accepted by me. Halifax told Mr S that he should wait to be contacted before submitting a consent to let form; Halifax did not contact him - it wrote to the wrong address repeatedly – and was therefore in breach of the mortgage terms and conditions and the regulator's rules. It was not entitled to apply the unauthorised letting premium.

Mr S said I had also taken the wrong approach in considering what would have happened had he been given the correct notice. To do so assumes there is no law protecting consumers, which is absurd and prejudiced. The regulator's approach is that compliance with its requirements is mandatory.

Mr S said that if he had been told that he needed consent to let, he would have switched his mortgage to a buy to let mortgage as he had already decided that he would not be returning to live at that address. He would have been better off with a buy to let than on consent to let, and therefore Halifax's failure to prompt him to do so has caused loss.

Halifax's failures led to Mr S being overcharged interest for many years – and hastened the time at which he ran out of savings, and therefore increased the impact of his inability to work following a worsening of his illness from 2016.

Mr S said that I had not reached a fair and reasonable outcome or taken full account of relevant law and the regulator's principles, requirements and guidance. And I hadn't given sufficient weight to Halifax's failings and their consequences. I had failed to take into account that a direct consequence of not being given sufficient notice was that Mr S was unable to make informed decisions about his mortgage.

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'll deal first with Mr S's complaint that Halifax has included shortfall balances when re-calculating his contractual monthly payment. The regulator issued guidance to firms on this in 2017. It had found that some firms had been including payment shortfalls – missed payments, or arrears – when re-calculating monthly payments, including following changes in interest rates.

The guidance said that firms should look at their mortgages, and where this issue – known as automatic capitalisation of arrears – had happened, firms should put things right in line with the guidance.

However, I don't think this has happened in this case. This is primarily an issue with repayment mortgages, and Mr S has an interest only mortgage.

I've looked carefully at what has happened. The only time the interest rate changed (and the monthly payment was re-calculated) before the guidance was issued and at a time when Mr S was in arrears was in October 2016.

In August 2016, the Bank of England reduced base rate by 0.25%, and shortly afterward Halifax reduced its SVR by the same amount, from 5.49% to 5.24%. Halifax then re-calculated Mr S's monthly payment. With effect from October 2016, the monthly payment increased from £1,360.72 to £1,510.45.

I can see why, on the face of it, Mr S might find this odd. One would generally expect that when interest rates go down, the monthly payment goes down too – and that didn't happen

here.

However, the reason for that is because by this point Mr S was in around £18,000 worth of arrears. That means he had missed over a year's worth of monthly payments.

With an interest only mortgage like this one, Halifax charges interest daily and adds it to the balance each month. Mr S is then asked to pay the monthly payment, which is the same amount as the interest charged. And so if he makes the payment, the balance stays the same – and therefore the same amount of interest is chargeable the next month.

But where Mr S doesn't make a payment, the interest for the month is added to the balance but not then taken off again with the payment. This means the balance goes up. And next month, because the balance is higher, so is the amount of interest charged. At the same time, the missed payment is recorded as arrears, since Mr S has an ongoing obligation to make those payments even if they are late. The increased balance is not the same as the arrears, and even if Mr S later clears the arrears in full the balance would still be higher because of the extra interest charged in the meantime.

This means that over the year and more Mr S hadn't been making payments, his balance had increased because of the unpaid interest and because of extra interest charged on the higher balance. When the interest rate changed, Halifax re-calculated Mr S's monthly payments – again, so that the amount he was charged each month matched the amount of interest he was charged each month.

But as the balance was now higher, that meant that even though the interest *rate* was lower, the *amount* of interest charged each month went up slightly – and so did Mr S's monthly payments.

This is not the same as automatic capitalisation of arrears. Mr S's arrears weren't capitalised and remained outstanding. But because of the arrears, the mortgage balance had also gone up and the effect of a higher balance outweighed the reduction in interest rate. In addition to this, the arrears remained outstanding and Halifax still required Mr S to repay the arrears. The monthly payment was not increased to recover the arrears – which is what capitalisation means. It was increased to reflect the fact that more interest was being charged now the balance was higher.

I'm therefore satisfied that Halifax has not, in this case, acted in contravention of the regulator's rules on automatic capitalisation of arrears. This means that it is not required to remediate Mr S's mortgage in line with the 2017 guidance – and has not acted unfairly in not doing so.

I'll turn now to the matters I dealt with in my provisional decision – the unauthorised letting premium, and the increase to the SVR following the change to the cap.

The unauthorised letting premium

I said in my provisional decision that I didn't think Halifax had acted unfairly here. On further reflection, and having taken into account what Mr S has said, I remain of that view.

I said in my provisional decision that I wasn't persuaded by Mr S's recollection that Halifax had verbally given him consent to let and told him not to submit an application until he was asked to do so. I don't agree that this conclusion was partisan, or speculative. And I don't think that Halifax accepts Mr S's version of events. In any situation where the facts are unclear, or in dispute, or where the evidence is incomplete, it is my role to analyse the evidence, weigh it up and decide, on the balance of probabilities, what I think is more likely

than not to have happened.

In this case, Mr S says that he was given verbal consent to let in 2008. He has a clear recollection of that conversation and believes he has acted in reliance on it ever since.

However, Halifax does not accept that this happened. It has no record of such a conversation with Mr S. It does not agree that he was ever given consent to let.

Therefore, there is a clear dispute of fact. And I need to resolve that dispute. If Mr S is right, then he was given consent to let in 2008. If Halifax is right, he wasn't. It is not partisan, or speculative, for me to decide which of those options I think is more likely – it is the essence of my obligations as an ombudsman.

I've noted the strength of Mr S's feeling about this, and the clarity of his recollection. I don't doubt that he now honestly believes such a conversation took place, and that he was given verbal consent to let.

However, I still don't think that it's likely that he's right about this. I explained in my provisional decision the problems with relying on uncorroborated memory, especially after such a long passage of time. Human memory is fallible, and does not act like a fixed snapshot – it is liable to become distorted and changed over time, and recollection is often influenced by later beliefs and emotions, so that later mistaken beliefs about what happened override the original events. This is not a conscious process and does not imply any dishonesty on Mr S's part. It's just how memory works.

That means that I attach limited weight to Mr S's recollection of a conversation from almost fifteen years ago. And I also have to set against his recollection the fact it was not Halifax's policy at the time to grant consent to let in this way; that there is no record in Halifax's systems of such a conversation having taken place; and that the form Mr S was given, he says at the time, says that an application is required and that consent to let would be granted for a maximum of three years.

On balance, I still think it's more likely than not that either this conversation did not happen, or that it did and that Halifax told Mr S he would need to make an application and send in a form. I don't think it's likely that Halifax gave him verbal consent to let or told him that there was no need for him to apply formally until it invited him to do so.

In any case, I don't think it makes any difference to the overall outcome even if Mr S's memory of this 2008 conversation is accurate. That's because it was only in May 2011 that Halifax began charging the unauthorised letting premium. In March 2011 Mr S called Halifax, and Halifax told him that there was no consent to let in place and that he would need to speak to the relevant team to make an application.

This means that even if Mr S had been given verbal consent to let in 2008, he knew by March 2011 that this was no longer in place and that he would need to apply again. He did not do so, and it was only after this that Halifax began charging the unauthorised letting premium.

Overall, therefore, I am not persuaded that Halifax gave Mr S consent to let in 2008. But even if it did, it told him in 2011 that there was now no consent in place and he would need to make an application – which he did not do. So regardless of what happened in 2008, Mr S knew in 2011 – before Halifax added the premium – that he was letting the property, needed consent to do so, did not have consent and had not made the application Halifax told him he would need to make.

Halifax added the unauthorised letting premium from May 2011, when Mr S didn't make the application it told him he would need to make in the call in March of that year, and when he didn't reply to letters sent to the property.

Mr S says that Halifax knew where he was living, and should have written to him there. And he says its failure to do so means that the unauthorised letting premium is invalid and should be removed. He says that by failing to do so it's in breach of its regulatory obligations, including to maintain adequate systems and to communicate with its customers.

I've said in my provisional decision that under condition 6.6 of the mortgage terms and conditions:

> *We may charge you an added rate if we say so in the offer, any extra agreement or any flexible options agreement. We may also charge you an added rate of not more than 2% a year because*
>
> *(a) You have let the property*

I don't think this is unfair or unreasonable in principle. This is a residential mortgage, lent on the basis that the borrower lives in the property for the duration of the mortgage term. Where a borrower does not live in the property, that presents additional risks to the lender which it didn't factor in when agreeing to lend and setting the price for lending. For example, a vacant property can fall into disrepair and is more likely to be broken into; a let property may be less well maintained than an owner occupied property; where the borrower depends on the rent to pay the mortgage, the lender is dependent on the actions of a third party (the tenant) to ensure the mortgage is maintained.

For all these reasons – and no doubt there are others – it's reasonable for Halifax to conclude that there is greater risk associated with let property rather than owner occupied property and increase the interest rate to reflect that increased risk. I don't think a comparison with buy to let mortgage rates adds much here either – there are different risks associated with a residential borrower who has been forced by circumstances (or has chosen) to let their property as compared to a landlord who always intended to let their property and borrowed on that basis.

Condition 6.6 continues with a series of other reasons why an added rate can be applied. This condition concludes with:

> *We may cancel or reduce an added rate at any time by giving you notice as set out in condition 2.2*

There is therefore no obligation in the terms and conditions to give notice at all when an added rate is applied – only when cancelling or reducing it. The obligation to give notice of increases as well as reductions only applies to changes to interest made under conditions 6.10 and 6.13, not condition 6.6.

And, as I said in my provisional decision, even if the contractual notice requirements did cover applying an added rate – which they don't – condition 2.2 says that where notice is required it must be given in writing, and can be given by writing to Mr S "*at the property or the last address you gave us"*. Halifax did write to Mr S at the property.

So even if, by writing to the property address rather than where Mr S was living, Halifax failed to give him notice that it was adding the unauthorised letting premium, it was not acting in breach of contract since there was no obligation to give notice at all.

However, as I said in my provisional decision, Halifax has obligations that go beyond the terms and conditions. I referred to MCOB 7.6.1 R and Principle 7, and Mr S has also referred to Principle 3.

I don't think Principle 3 adds anything to this case, since it's concerned with a firm's overall management systems and controls and risk management – not with obligations to individual customers. But under Principle 7, Halifax is required to have regard to Mr S's information needs and communicate with him in a way that is clear fair and not misleading, and under MCOB 7.6.1 R it is required to give him reasonable notice in advance of any changes to his payments resulting from interest rate changes.

I do think it's arguable Halifax didn't do all it should have done here. While this was a residential mortgage – and therefore it was entitled to expect that Mr S was living at the property, as he was contractually obliged to do – the fact is that Halifax did know from other products he had with it that he was actually living elsewhere. But it only wrote to him at the property address, not the address that it knew – from other contacts – that he was actually living at.

However, as I said in my provisional decision, I don't think it follows that any failure to comply with Principle 7 and / or MCOB 7.6.1 R means that the addition of the unauthorised letting premium is null and void. The regulations don't say that any failure to comply with them renders an interest rate change null and void, or prescribe any other action a firm must or must not take if in breach. So these regulatory requirements are factors for me to take into account in deciding what's fair and reasonable in all the circumstances – but they don't mean I must find that Halifax couldn't add the premium.

In deciding what is fair and reasonable in all the circumstances, there are a number of factors I must weigh up. On the one hand, Halifax didn't write to the address it knew in other contexts he was living at – and the regulator says that Mr S should be given notice in advance of any change in payments resulting from a change in interest rate. But on the other hand, Halifax did write to the property address, which the terms and conditions say it can; it was entitled to apply the premium under the terms and conditions and doing so reflects pricing for increased risk to the lender; it told Mr S in March 2011 that he did not have consent in place and would need to apply, but Mr S did not apply; and the change did not at that time cause Mr S financial difficulties such that it meant he was no longer able to pay the mortgage (the arrears did not start until some years later).

It's also relevant to note that, at this time, Halifax had specific interest rates for mortgages with consent to let, all of which were higher than the SVR plus premium Mr S ended up paying. Had he gone through with an application for consent to let in 2011, therefore, he would have needed to take one of those interest rates and would have ended up paying more than he in fact did. Even with the premium added, this means Mr S was better off than he would have been had he actually had consent to let. And if I were to require Halifax to remove the premium, Mr S would effectively be treated as if he had consent to let in place without having to pay the higher interest rate Halifax reasonably expected consent to let customers to pay. This would leave him better off that he should have been.

I don't agree with Mr S that this is not a relevant consideration, or that it is not reasonable for me to take this into account. Where there's a failure on the part of a firm, the right approach to resolving matters is to put the borrower back in the position they would be in had the failing not happened. Applying that to this case, if Halifax ought fairly to have written to Mr S at the address he was living at and if it had done so, one of two things would have happened:

- Mr S would have applied for consent to let – which would mean taking a consent to

let interest rate, which was higher than the SVR plus premium he ended up paying; or

- Mr S would not have applied for consent to let, or would have applied and been refused – which would mean that, as the property would still have been let out, Halifax would have added the premium to the SVR.

In the first scenario, Mr S would have ended up paying more than he in fact did; in the second, he would have paid the same. I've concluded above that the failure to give notice does not render the addition of the premium null and void, either contractually or in regulatory terms. I therefore need to decide what would have happened had Halifax given him notice at the address he was living at, and whether the failure to do so caused Mr S financial loss. And given the above, I'm satisfied that even if Halifax ought fairly to have written to him at the address he was living at, doing so didn't cause Mr S financial loss in either of those two scenarios.

Mr S says there's a third scenario - that if Halifax had prompted him, he could and would have applied for a buy to let mortgage instead, and that a buy to let mortgage would have been cheaper than either the consent to let rates or the SVR plus premium – so its failings did cause him financial loss. But I'm not persuaded by that.

That's because of the phone call in March 2011, in which Halifax did make clear that Mr S needed to apply for consent to let. Even if it didn't make him aware that there would be a premium on the SVR if he didn't apply, I think it was clear at this point that Mr S's plans were to let the property out long term, that Halifax had told him that was not what his mortgage was designed for, and that he would need its consent to continue letting.

Ultimately it's a matter for Mr S to manage his own financial affairs, and I think he had enough information at this point to know that a buy to let mortgage might be more appropriate for him. If he chose not to apply for one – or didn't think about it at the time – I don't think I can fairly hold Halifax responsible for that. It's also the case that Mr S may not have been successful in obtaining a buy to let mortgage even if he had applied for one – or what interest rate he might have been charged if any application had been successful.

And so for all those reasons I'm not persuaded that Halifax is responsible for Mr S continuing with this mortgage rather than a buy to let. I can't therefore fairly say that Halifax caused Mr S financial loss because of this.

Taking all of that into account, while I do think that Halifax could have done more to ensure Mr S knew that it would apply the unauthorised letting premium to the SVR, I'm not persuaded that not sending the letters to the address he was living at makes it unfair in the circumstances of this particular case for it to have applied the premium. And even if I'm wrong about that and that did make it unfair, I'm not persuaded it resulted in any financial loss for which Halifax is required to compensate Mr S.

Later, in 2018, Halifax re-worked Mr S's mortgage to remove the 1.5% premium for the period between 2014 and 2016. It did so because following a further discussion about consent to let in 2014, it doesn't think it made clear enough at that time that Mr S would need to apply for consent to let to avoid the 1.5% premium continuing – had it done so, he might have applied.

But it said that by October 2016, when Mr S would have needed to renew consent to let, he was in arrears even with the refunded interest and so consent would have been refused.

Therefore it didn't agree to refund the 1.5% premium after October 2016. I'm satisfied it was Halifax's policy to refuse consent to let when a mortgage was in arrears. I think that was a fair offer and I don't require Halifax to take any further action in respect of this part of Mr S's complaint.

The level of the SVR

I've quoted the relevant sections of Mr S's mortgage offer and the terms and conditions in my provisional decision, reproduced above.

In response to my provisional decision, Mr S made essentially the same arguments in respect of the changes to the SVR cap that he made in respect of the unauthorised letting premium – that Halifax was required to give him notice; it failed to give him notice; therefore the increases are of no effect; and the only reasonable and rational outcome is for me to direct Halifax to re-work the mortgage to remove the increases in SVR to the extent they exceed the 2% cap.

I've re-considered this aspect of Mr S's complaint very carefully in light of what he's said. But again, I haven't changed my mind.

The relevant part of the terms and conditions which allow for changes to the SVR is to be found in condition 6:

> *6.10* ***We*** *can change the* ***interest rate*** *on any part of the* ***capital*** *at any time, unless the offer, any* ***extra agreement*** *or any* ***flexible options agreement*** *says we cannot. We can change the interest rate for any of the following reasons:*
> *….*
> *6.15* ***We*** *will give* ***you*** *notice, as set out in condition 2.2, of any changes in the* ***interest rate*** *under condition 6.10…*

Condition 6.10 and condition 6.15 are related terms. Condition 6.10 says that Halifax can change the interest rate at any time (provided it is for one of the reasons set out). And condition 6.15 says that Halifax will give Mr S notice of any change made under condition 6.10. But those are two separate clauses – Halifax has the power to change the rate (6.10) and, separately, if it does so, Halifax is obliged to give notice of the change (6.15). The power to change the rate is not subject to the obligation to give notice; the obligation to give notice arises once the decision to make the change is made.

Therefore, if Halifax decides to change the rate, and then fails to give notice, it will be in breach of the contractual requirement to give notice of a change. But I don't think it's likely a court would find that such a breach of contract invalidates the earlier decision to change the rate, or renders it automatically null and void. Rather, it would look to the effect of the breach. And in my view this is relevant law for me to take into account.

There's separate wording about changes to the SVR cap, which is to be found in the mortgage offer:

> *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.

This wording does say that the giving of notice is a pre-condition for a change in the cap – "*before we do, we will give 30 days notice"*. But only in limited circumstances – *"we will give 30 days notice to customers who pay interest at Halifax Standard Variable Rate… and are subject to an early repayment charge"*. This does not apply to Mr S – because in 2008, he was not paying interest at the standard variable rate. And in 2011 he was paying the SVR, but was not subject to an early repayment charge.

However, following an agreement with the regulator, Halifax accepted that it should fairly have given notice to all customers who had the cap included in their mortgage offer since customers could have been confused about whether or not the cap applied in their specific circumstances. And in 2010 it wrote to Mr S – at the property address – giving him notice, accepting it hadn't given him notice of the 2008 change at the time and refunding around £2,500 to his mortgage (so that it was as if the 2008 increase hadn't happened up to the point it gave notice in 2010).

There was a further change in 2011, and this time Halifax did write to Mr S to give him notice of the planned change – but did so by writing to the property address.

Mr S says this means that in both cases he didn't receive the notice, the notice isn't valid, and therefore neither changes to the SVR and cap that resulted are valid.

Mr S has pointed to regulatory findings against Halifax, which he says support his view that Halifax didn't maintain proper systems and as a result didn't give him the proper notice. And I've considered these, but I don't think they take the matter much further – since it's not in dispute that Halifax wrote to the property address rather than the address it knew, from other contexts, that Mr S was actually living at.

So the question I have to consider is whether, in the particular circumstances of this case, giving notice by writing to the property address rather than the address Mr S was living at amounted to a failure to give Mr S proper notice, and whether – if so – this invalidates the changes to the SVR and cap or means that Halifax couldn't fairly rely on them in the interest rate it charged Mr S.

I've already quoted condition 2.2 of the terms and conditions, which says that Halifax can give notice, where notice is required, by writing to the property address or the last address it has for Mr S. And it did write to the property address. So I don't think I can fairly say that Halifax failed to give notice in the terms strictly required by the contract and I don't think it's more likely than not that a court would find that Halifax was in breach of contract by writing to the property address. That's relevant law for me to take into account.

As with the unauthorised letting premium, while I take relevant law into account, what I have to decide is whether in all the circumstances it's fair that Halifax increased Mr S's SVR and cap even though it didn't write to him at the address where he was living. And for much the same reasons as I've given in respect of the unauthorised letting premium, and that I gave in my provisional decision, I don't think it was unfair.

Under MCOB 7.6.1 R Halifax should have given him notice, though the rule does not specify how notice should be given other than that it should be in advance of the change. Halifax did write to the property address – which the terms and conditions says is one way it can give notice. And while that might not have been enough to satisfy Mr S's communication needs (taking into account Principle 7), it doesn't follow – as I said above – that if there was a

breach of these requirements it automatically invalidates the increases to the cap and SVR. Rather, these requirements are one of the factors I need to take into account in deciding what's fair and reasonable in all the circumstances.

Mr S would have seen that his payments were increasing. He knew by 2011 that there were problems with him receiving information about the mortgage and was taking steps to resolve that with Halifax. Though he has said he was receiving annual statements at the time – which would also have set out any changes to the interest rate.

I also need to bear in mind that the purpose of the notice requirements is so that Mr S can exit the mortgage without early repayment charge – but he wasn't subject to one anyway at this time. And in my view the other purpose is to allow him to plan for the need to make increased payments. So I need to consider whether he was caused any detriment by Halifax not writing to him at the address it knew he was living at.

At this time Mr S was not living in the property, but was letting it out. He was not in arrears or financial difficulty – that came some years later. He would have seen the increases through changes to his monthly payments and through the annual statements he said he was receiving at this time. If he wasn't happy with the increases to the SVR he could have asked Halifax for a new fixed rate (though that would likely have been refused while he was letting the property out) or he could have moved his mortgage elsewhere – for example, by taking a buy to let mortgage. But there's no evidence he made any attempts to mitigate the impact of the increased payments, or that they caused him financial difficulty at the time of the changes.

Taking everything I've said into account I'm satisfied that Halifax has not acted unfairly in the circumstances of this particular case. It didn't give Mr S any notice in 2008, but it dealt with that through the redress payment in 2010. This put Mr S back in the position he would have been in had the change not happened until 2010 rather than in 2008.

While Halifax could have done more to contact Mr S at the right address at the time of the changes in 2010 (the redress payment for 2008) and in 2011, I don't think it would be fair and reasonable, bearing in mind the factors I've set out above, to say that the increases to the SVR and cap were applied to Mr S's mortgage unfairly in the particular circumstances of this case.

Putting things right

As I said in my provisional decision, I don't think that, ultimately, Mr S has been treated unfairly in the interest rate he's been charged – either because of the unauthorised letting premium, or in the notice given of changes to the SVR. I've not seen anything in the further arguments Mr S has made which would lead me to change my mind about that.

However, I note that Mr S feels very strongly about this complaint. He's pursued it determinedly for several years – despite the impact on his mental health. I understand that's because he feels he's been the victim of an injustice, and his treatment at the hands of Halifax has compounded his already difficult situation.

For the reasons I've explained above, I don't think that Halifax has charged Mr S interest unfairly. But I also note that – while it doesn't accept it has done anything wrong – Halifax has taken the view that it and Mr S will need to have an ongoing relationship for the rest of the mortgage term. That relationship has substantially broken down and needs to be repaired.

In that context, and without admission of liability, Halifax has offered to reduce Mr S's balance and arrears by a further £16,200 – being the difference between what it has already paid in the past and the total amount that Mr S estimated he had lost out on when he first complained. And it would grant him 12 months' consent to let, giving him time to make decisions about what to do.

Mr S says that it's not fair that the refund offered only runs to when he complained, not up to today's date or beyond. But given my findings above, I think the offer Halifax has made goes further than I would have asked it to go had it not made an offer. And I don't therefore think I can fairly ask it to go even further.

In all the circumstances, I think Halifax has made a fair and reasonable offer to draw a line under Mr S's complaints, and I hope it will go some way to allowing Mr S to move on and resume a working relationship with Halifax, coming to an agreement about how to resolve the remaining arrears on his mortgage, whether or not the property is to continue to be let, and the long term future.

My final decision

For the reasons I've given, my final decision is that Bank of Scotland plc trading as Halifax has made a fair and reasonable offer to resolve this complaint, and I direct it to give effect to that offer.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 1 December 2022.

Simon Pugh
Ombudsman