

## **The complaint**

Mr and Mrs O have complained about a mortgage they held with Bank of Scotland plc trading as Halifax.

Their complaint can be summarised into the following points:

- The interest rate they were charged on their mortgage.
- How a field agent treated them in June 2019.
- A letter they were sent in December 2019 was incorrect.
- How Halifax has treated them over the term of their mortgage.

## **What happened**

I won't detail everything that has happened on this account as it is extensive and goes back many years. Instead I'll summarise some key points.

Mr and Mrs O took out this mortgage in April 2005. They borrowed £480,000 on a repayment basis over a 25-year term. The mortgage offer indicated the rate would be 0.04% above the Bank of England base rate ("BoEBR") until 28 February 2007, and then from 1 March 2007 interest would be charged at the standard variable rate ("SVR").

A product transfer mortgage offer was issued in February 2007. That said the new rate would be fixed at 5.14% until 30 June 2009, and after that it would revert to the SVR (which the mortgage noted was 7.25% at that time). That new rate started on 1 March 2007.

On 1 July 2009 the mortgage reverted to the SVR which was 3.50% at that time. The SVR varied over the years:

- 1 May 2012                3.99%
- 1 October 2016        3.74%
- 1 December 2017     3.99%
- 1 September 2018    4.24%
- 1 April 2020            3.74%
- 1 May 2020             3.59%
- 1 February 2022      3.74%

The account has been in arrears since July 2008. The arrears situation at the end of each year has been (all figures are approximate):

• December 2008	£8,300
• December 2009	£6,600
• December 2010	£14,400
• December 2011	£22,400
• December 2012	£23,600
• December 2013	£29,000
• December 2014	£49,800
• December 2015	£81,900
• December 2016	£81,800
• December 2017	£91,200
• December 2018	£123,500
• December 2019	£139,000
• December 2020	£162,700
• December 2021	£195,300

The account has been referred for litigation over the years.

In June 2019 Halifax instructed a field agent to visit the property, and then a court hearing date was booked for mid-September 2019.

In August 2019 Mr and Mrs O raised a complaint with the Financial Ombudsman Service. That complaint covered the following points:

- They wanted Halifax to allow them time to sell the property themselves, rather than seeking a possession order.
- Halifax had refused to capitalise the arrears, despite requests since 2010.
- They wanted to downsize, but Halifax wouldn't agree to a new mortgage on the new property.
- Halifax wouldn't allow them more time to do some works to the property (such as redecoration) before selling it.
- Repossession would render them homeless.
- There was more than adequate equity in the property with the mortgage being around £480,000 and the property worth just over £1m by their estimate.

Halifax responded to the complaint saying the Financial Ombudsman Service had issued a final decision in July 2015 rejecting an earlier complaint Mr and Mrs O had made, and so it would only review what had happened since then. It said Mr and Mrs O were currently over £130,000 in arrears and had said they could only afford £1,600 a month, against a contractual monthly payment of around £3,400 a month, and even with the £1,600 a month the payments hadn't always been made. It said Mr and Mrs O could put their proposals before the court but the matter had been ongoing for a long time giving them plenty of time to have sold the property. Finally Halifax said it couldn't see an application had been made for a new mortgage for downsizing, and Mr and Mrs O would only be eligible for arrears capitalisation once they'd made the full monthly payments for a number of months, and were able to show future affordability of the new higher payment.

One of our Investigators looked at that complaint and didn't uphold it. He said Halifax had agreed concessions over the years (such as temporary changes to interest only) and there didn't seem to be any viable options going forward. He said Mr and Mrs O would receive any remaining equity upon sale; that is, they wouldn't lose it. Overall, he didn't think Halifax had treated Mr and Mrs O unfairly. Although Mr and Mrs O didn't agree, they said they wanted to

drop the complaint. Our Investigator explained that we wouldn't be able to look at the same thing again in the future and gave them the option to refer the complaint to an ombudsman but, after taking some time to think about it, Mr and Mrs O opted instead to close the complaint at that time. The same day our Investigator issued his findings, Halifax chose to not proceed with the hearing, with an order issued stating proceedings were *"Adjourned generally with liberty to restore by consent."*

Halifax wrote to Mr and Mrs O on 6 December 2019, and that letter erroneously said *"As you're aware, we have obtained a possession order on your property..."* It went on to say that the terms of the possession order hadn't been kept to, and so the bank could seek to enforce it. It asked Mr and Mrs O to get in touch as soon as possible and provided the contact number for them to call.

As there was no contact Halifax instructed a further field agent visit on 22 January 2020, sending a letter to Mr and Mrs O notifying them of that. The contact notes indicate the field agent told Halifax they'd received a letter from Mr and Mrs O cancelling the visit, saying they'd be in contact with Halifax directly about the account. A further letter was sent to Mr and Mrs O on 5 February 2020.

Mr and Mrs O made contact with Halifax on 19 February 2020 to say they'd sent a letter in a few days earlier. After some back and forth over the following days a complaint was raised on 28 February 2020. That complaint was about the June 2019 field agent visit and the 6 December 2019 letter. Mr O also mentioned that he and Mrs O hadn't been happy with the service over the past 10 years.

Halifax issued a final response letter on 18 January 2021 apologising for both the June 2019 field agent visit and the December 2019 letter. For those issues it issued a £400 cheque in compensation. The letter also said:

- Calls are answered by one of a team, and if Mr and Mrs O didn't mention their personal circumstances on those calls then the call handlers wouldn't have explored them.
- A payment holiday was turned down due to the level of arrears. It wouldn't have been responsible to increase the mortgage debt, and it could instead look at other options but it would need to talk to Mr and Mrs O to explore those.
- Litigation was now off-hold (following a hold due to covid) and, due to the level of arrears on the account, action would be taken once the complaint had been resolved.
- It had identified an error on the account relating to how a 2018 account adjustment was made. It said if the error hadn't been made, Mr and Mrs O would have needed to make higher monthly payments between October 2018 and March 2019 (which would mean the arrears now would be higher) so it hadn't adversely impacted them at the time. It said it had credited around £900 to the account in respect of the higher payments that should have been made.

Mr and Mrs O told our Investigator they weren't happy with Halifax's response and so we looked into their complaint.

Whilst the complaint was ongoing Mr and Mrs O sold their property in February 2022, redeeming the mortgage.

Our Investigator first set out their thoughts on our jurisdiction to consider this complaint. In that she said we wouldn't consider again any issues that we looked at in any previous complaint. That meant we wouldn't consider how Halifax had treated Mr and Mrs O before September 2019 (except for the June 2019 field agent visit, as that hadn't formed part of the

earlier complaint). She also said that we wouldn't be able to consider a complaint about the interest rate charged (both how it varied and that Mr and Mrs O hadn't been able to get a new preferential rate) before February 2014 because Mr and Mrs O hadn't brought that complaint in time. In summary, she said we could look at complaints about:

- the June 2019 field agent visit,
- the December 2019 letter,
- the interest rate (both how it varied and whether Mr and Mrs O could access a new preferential rate) since February 2014,
- how Halifax has treated Mr and Mrs O since September 2019.

Mr and Mrs O said that whilst they were disappointed with that, they were willing to accept it.

Our Investigator then moved onto consider the merits of the parts of the complaint we could consider. She said:

- Mr and Mrs O's mortgage has been on the SVR since 2009 and, having considered everything, she felt that rate had been applied correctly. She said she felt Halifax had varied it fairly, and that it wasn't linked to the BoEBR.
- Mr and Mrs O hadn't been able to demonstrate a consistent payment history such that a new preferential interest rate would be, and remain, affordable. Especially once the arrears were capitalised, which would need to be done before a new rate was put in place. As preferential interest rate products tend to come with early repayment charges and upfront fees, she felt Halifax hadn't treated Mr and Mrs O unfairly by not offering them a new rate.
- Halifax had already admitted it made a mistake with the field agent visit and December 2019 letter and it had apologised and offered £400 compensation. She felt that was fair and didn't recommend it do anything more.
- Legal action should be a last resort, but the arrears had risen from around £133,500 in September 2019 to around £198,700 in January 2022 so she felt that point had been reached. She didn't think there were any other possible alternatives than the property being sold, as Mr and Mrs O would have struggled to maintain even interest only payments and would have had no way to repay the debt at the end of the term other than selling the property.

Mr and Mrs O didn't agree, saying there was a missed opportunity on the part of the Financial Ombudsman Service to properly investigate and address the issues raised. Mr and Mrs O then provided a detailed response which said, in summary:

- The Investigator had missed the point about the interest rate complaint. They said the complaint was not about the interest rate not following BoEBR, but that (I quote) *"Halifax did not apply the general across the board reductions to their SVRs to our mortgage account on all of those occasions as at when Halifax did reduce, adjusted their SVR in response to the BOE's base rate reduction."* They gave an example; when they were notified of a 0.25% reduction in the SVR, the corresponding payment change was only £13.
- The arrears shouldn't just be looked at as a headline figure, but instead the background and context should be considered.
- Halifax deliberately sends aggressive, bullying, and intimidating field agents to vulnerable customers' houses and it needs to be stopped from doing this.
- The December 2019 letter was deliberately sent by Halifax as part of an orchestrated and protracted sinister plot to break them down and repossess their property.
- Unless there is a deterrent, Halifax will continue to destroy lives, families, and homes.
- Halifax deliberately withheld information from Mr and Mrs O's solicitor for the

September 2019 hearing, knowing he had only a few days to pick the case up and represent them.

- Halifax went back on its word and was heading back to court whilst a complaint was with the Financial Ombudsman Service.

As an agreement couldn't be reached the matter was passed to me to decide.

### **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 issued a decision about our jurisdiction earlier this month. In that I said I will only be considering the following points:

- The interest rate since February 2014,
- The July 2019 field agent visit,
- The December 2019 letter, and
- How Mr and Mrs O have been treated since the September 2019 court hearing.

#### *The interest rate*

There's no general obligation on mortgage lenders for their SVRs to track the BoEBR, and I'm satisfied that this isn't the way Halifax's SVR operated.

I've reviewed the documentation available, and having done so, I haven't seen anything that says Halifax would link the SVR to the BoEBR or that compels it to. Nor is there anything that suggests that the SVR would be a particular margin above or below the BoEBR.

It follows that I'm not persuaded that there was any requirement for the SVR to track the BoEBR or for Halifax to maintain any margin between them.

I've also thought more broadly about whether, and the extent to which, the way in which the terms have been used has resulted in unfair treatment for Mr and Mrs O in the interest charged to them from February 2014 onwards. In doing so, I've considered the historic context which may have contributed to the interest rate charged from February 2014 onwards and whether Halifax had legitimate reasons for varying the rate in the way it did.

I can see that between 2008 and 2009, the difference (or margin) between the BoEBR and Halifax's SVR increased from 2% to 3%. Whilst Halifax's SVR did reduce during this period, it didn't fall by the same proportion as the reduction in the base rate.

Halifax has told our service that, despite a reduction in the BoEBR, its funding costs did not reduce to the same extent between 2008 and 2009.

During this time, there was a significant change in the wider lending market as a result of the global financial crisis. This impacted on the funding costs of businesses, which was reflected in changes to a number of lenders' interest rates charged across the market at that time.

Halifax has provided relevant explanations and reasoning behind the decisions made to vary the interest rate during this period. This is supported by evidence that shows the direct impact of its cost of funding and how this correlated with its decision to vary the SVR. Considering this, I don't think Halifax has acted unreasonably by not passing on all of the reductions in the BoEBR to its SVR.

I can also see that, in May 2012, Halifax increased the SVR from 3.5% to 3.99% when there hadn't been any changes to the BoEBR. Halifax has provided evidence to show that its cost of funds had increased and it increased the SVR by 0.49% in order to account for those increased costs. The terms and conditions of the mortgage allowed it to increase the SVR for this reason. Considering this, I don't think Halifax acted unreasonably by doing this.

Since 2012, Halifax's SVR remained at 3.49% above the BoEBR.

Having considered all the information and evidence available to me, I have not seen any evidence to suggest the changes Halifax made were unfair. Rather, the evidence I've seen satisfies me that Halifax acted in line with its terms and conditions to protect its legitimate interests while balancing its obligation to treat Mr and Mrs O fairly. And I'm further satisfied that the evidence Halifax has been able to provide for this period is corroborated by evidence of wider market conditions at the time.

Taking everything into account, I'm not satisfied that Halifax has acted unfairly or unreasonably in the circumstances.

Mr and Mrs O said our Investigator had missed the point about the interest rate complaint, giving an example as when they were notified of a 0.25% reduction in the SVR, the corresponding payment change was only £13.

What I need to keep in mind for any payment change is that Mr and Mrs O's mortgage wasn't running as it should. The last time Mr and Mrs O had paid an amount that was equal to (or more than) their monthly mortgage payment due had been in August 2017, and that was only because the mortgage was on a temporary interest only concession at that time. The last period Mr and Mrs O had of meeting the full contractual monthly mortgage payment (on a repayment basis) ended in March 2011.

That meant, as the mortgage term went on, interest was being charged on a much higher balance than should have been outstanding at that time. The repayment element of the contractual monthly payment would have been calculated based on a balance that didn't include the arrears. It would exclude a payment towards the arrears, as that would be expected to be cleared separately, on top of the monthly contractual mortgage payment. Taking March 2020 as an example, the annual mortgage statement shows a balance of around £482,000 but of that around £145,000 was arrears, so the recalculation of the monthly payment would be based on paying interest on the full £482,000 but only repaying capital of around £337,000 within the remaining term (that is, a capital reduction in the arrears wouldn't have been included in the monthly payment).

Mr and Mrs O weren't asked for a different mortgage payment each month when the account hadn't run as it should, and I wouldn't have expected them to. Instead, again using March 2020 as an example, the requested monthly payment hadn't changed since April 2019. In that year Mr and Mrs O had missed two payments and had paid less than half what was due in the other ten months. All that would have altered the overall balance to a significant degree such that it would impact the calculation of the revised monthly payment requested from 1 April 2020. Which is why, although the interest rate went down, the monthly payment wouldn't have reduced by as much as it would have for an account that had run as it should, with no arrears.

From what I've seen, I'm satisfied Halifax varied Mr and Mrs O's interest rate in the same way as it varied the interest rate for all its other customers on the SVR, so it's not treated them any differently. And I'm also satisfied that the changes to their monthly payments, recalculated when the interest rate changed, were also fair – because, as I've explained the

re-calculation included interest on the payments Mr and Mrs O had missed (though not the missed payments themselves).

It's not the role of the Financial Ombudsman Service to provide an auditing service or carry out a forensic analysis of mortgage accounts. I've looked at the transaction history and there's nothing on there that appears unusual or incorrect. Of course, it's open to Mr and Mrs O to instruct an independent suitably qualified professional to audit their account. But that would have to be at their expense. As things stand, I'm not persuaded that Halifax mis-managed this account, or that the balance or interest charged was incorrect.

Halifax offers new preferential rates to customers – providing they meet eligibility criteria. Among Halifax's eligibility criteria are that the mortgage must not be in arrears.

Lenders are not required to offer rates, or the same rates, to all customers, and are entitled to have eligibility criteria.

A new fixed rate would come with an early repayment charge ("ERC"). If the borrower is showing signs of financial difficulty – either because of arrears on the mortgage, or because of credit problems elsewhere, or both – there's a greater risk of the mortgage ending early, either because the borrower decides to sell and repay the mortgage, or because the lender repossesses the property. And if either of those things happen, the debt would increase through the ERC.

So it's reasonable that Halifax's eligibility criteria means it generally doesn't offer new interest rates to borrowers in this situation – like Mr and Mrs O

However, a lender is also required to show reasonable forbearance to help a borrower in financial difficulties get things back on track. And in some cases, a reduced rate might be an appropriate form of forbearance, for example because it makes the difference between the mortgage being affordable and unaffordable. In those cases, it might be fair to offer a new fixed rate even though the borrower is in arrears – as the best way to help them out of arrears.

However, I don't think that was the case here. As I said earlier, the last time Mr and Mrs O had paid an amount that was equal to (or more than) their monthly mortgage payment due had been in August 2017, and that was only because the mortgage was on a temporary interest only concession at that time. The last period Mr and Mrs O had of meeting the full contractual monthly mortgage payment (on a repayment basis) ended in March 2011. Even if a new preferential rate had been offered, that wouldn't have reduced the contractual monthly payment (on a repayment basis, which is what this mortgage was) to a level that would have been sustainable for Mr and Mrs O.

And so, in that situation, I don't think the benefit of giving Mr and Mrs O a new rate outweighed the risk of an ERC. It wouldn't have made enough of a difference to make the mortgage affordable for them and could have made things worse. It wasn't unfair that Halifax didn't offer them a new rate.

There's a provision in the rules of mortgage regulation which says that where a borrower is unable to move their mortgage to another lender, it might be unfair for their existing lender to treat them less favourably – for example, by offering less favourable interest rates – than it would treat other borrowers with similar characteristics.

However, even taking that into account I don't think I can safely find that Halifax has treated Mr and Mrs O unfairly. The crucial part of the provision is that borrowers unable to move elsewhere shouldn't be treated less favourably than other borrowers with similar

characteristics. In other words, if Halifax offered new interest rates to some existing borrowers with similar characteristics to Mr and Mrs O, but not to Mr and Mrs O, that might be unfair.

However, that's not what happened. Halifax didn't offer new interest rates to any existing borrowers in arrears. And therefore, in not offering a new rate to Mr and Mrs O, it was not treating them less favourably than other similar customers. All other customers that were in arrears were in the same position. It follows that Mr and Mrs O were not treated unfairly in comparison to other similar customers of Halifax.

I've said that there was no obligation on Halifax to offer existing customers in arrears new rates, and that it's not unfair that it chose not to do so. And since that applied to all customers in arrears, Mr and Mrs O were not being treated less favourably than others. Finally, I'm not persuaded that giving Mr and Mrs O a new rate would have resolved their particular situation

Having considered everything, I don't uphold this part of the complaint.

#### *The field agent visit and December 2019 letter*

Mr and Mrs O told Halifax how the field agent made them feel as the visit was made at a time they had visitors due to a family bereavement. Whilst there would never be a good time for such a visit, it is clear the timing would have had a greater impact on Mr and Mrs O than would normally be expected. Mr and Mrs O also told Halifax about how the field agent acted. They've said Halifax deliberately sends aggressive, bullying, and intimidating field agents to vulnerable customers' houses and it needs to be stopped from doing this.

Field agent visits are a valid and valuable tool a lender can use when a customer is in arrears, there is no agreed arrangement in place and there isn't a current productive dialogue to discuss the situation.

At the time the field agent was instructed:

- Mr and Mrs O were around £120,000 in arrears,
- there was no arrangement to pay,
- Mr and Mrs O had made just three payments of £500 each (against a contractual payment of around £3,200 a month) since July 2018,
- there had been limited contact with Mr and Mrs O in the run up to the instruction.

Having considered everything I don't think Halifax was wrong to make the instruction when it did, albeit it has accepted that the field agent visit didn't go as well as it would expect and hope for.

I understand Mr and Mrs O feel the December 2019 letter was deliberately sent as a malicious act, but I don't think that is the most likely explanation. It seems more likely that it was erroneously sent due to someone making a mistake about the outcome of the September 2019 hearing. Mr and Mrs O knew there was no court order in place, so it should have been apparent to them that the letter was a mistake. Whilst I don't doubt it would have been difficult to have received such a letter, it could have been quickly resolved at the time by Mr and Mrs O calling the number provided. Instead, Mr and Mrs O didn't mention it until a call Mr O had with Halifax on 28 February 2020, saying it had caused Mrs O a lot of worry and they spent time with their solicitor dealing with it.



Having considered everything I think Halifax made a mistake when it issued the letter, albeit Mr and Mrs O could have confirmed it was an error by calling the number provided.

I've thought very carefully about these parts of the complaint, that is the June 2019 field agent visit and the December 2019 letter. Having done so I'm satisfied the offer of £400 compensation (plus the apologies that have been given) are fair and reasonable in all the circumstances, and I don't order Halifax to do anything further.

#### *How Halifax has treated Mr and Mrs O*

As I've explained, I'm only considering the period since the September 2019 hearing.

In September 2019 the arrears stood at around £133,000, and the account had been in arrears for 11 years. Mr and Mrs O had previously had two interest-only concessionary periods; for two years from October 2011 to October 2013, and a further year and a half from December 2015 to August 2017.

Outside of those concessionary periods Mr and Mrs O hadn't met their contractual monthly payment since March 2011, other than one payment in February 2014 (which Mr and Mrs O were unhappy about at the time, as they'd only wanted to pay £1,800 but Halifax had been able to collect the full payment due under the direct debit).

It's important I look at the decisions Halifax made based on what it knew at the time. I think it was reasonable for Halifax to take into account the previous history, since 2005 when Mr and Mrs O took the mortgage out. They had struggled with it for much of that time and had been in arrears since 2008. I don't think it was unreasonable for Halifax to conclude that Mr and Mrs O weren't able to stay on track with their mortgage, that their position was worsening, and that things had reached the point where it needed to take further action.

Mr and Mrs O had already had two significant periods of an interest only concession, and the payments still weren't made in full every month during those periods.

In a period running from September 2014 until July 2016 inclusive (so 23 months) Mr and Mrs O had only made four payments. Those payments totalled around £6,100 against the £35,200 which would have been due even on an interest-only basis.

Further payments were missed between August 2018 and May 2019 inclusive, with only three payments of £500 each made (so a total of £1,500) against the approximately £15,000 that would have been due in that period if the mortgage was on an interest-only basis.

A similar pattern was seen between November 2020 and September 2021 inclusive, with only two payments of £500 each and three payments of £1,000 each made (so a total of £4,000) against the approximately £16,500 that would have been due in that period if the mortgage was on an interest-only basis

The mortgage already ran past Mr O's normal retirement age, and they had no way of repaying an interest-only mortgage at the end of the term other than selling the property. Payment holidays would only increase the balance, as would accepting reduced payment arrangements.

Repossession should be a last resort. Forbearance should be explored first. But the purpose of forbearance is to give breathing space so a borrower can get the mortgage back on track. Given all the history, and what it knew, it was reasonable for Halifax to conclude that was unlikely.

By September 2019 Mr and Mrs O appear to have accepted that they needed to sell the property as the position was irretrievable in the long term, with their letters and contact at that time asking for a short period to allow them to get the property to a standard where it could be placed on the market. In February 2020 Halifax sent a sale pack to Mr and Mrs O as they said the property was on the market. Halifax said, upon receipt of the completed sale pack, it could place a hold on any potential legal action to allow time for the property to be sold. In a letter dated 27 October 2021 Mr and Mrs O said they'd found a buyer, and a sale completed in February 2022. In all that time no further legal action had been taken, despite the increasing arrears situation.

Mr and Mrs O didn't have a Covid-19 payment deferral period with Halifax. At the point they applied for a payment deferral online they were in substantial arrears and it may be a different solution would have been better for them, hence why Halifax wanted to speak to them.

In any event, Mr and Mrs O weren't disadvantaged by not having the payment deferral as by then their account was already many years in arrears (so was reporting at the credit reference agencies as such) and the interest would have still been charged during the payment deferral period. All that would have happened is that Mr and Mrs O wouldn't have made their mortgage payments for those months, and I can see that between January and June 2021 (inclusive) they didn't anyway. Either way the interest would have been charged, and whether these were missed payments or Covid-19 payment deferrals wouldn't have made any noticeable difference to either the mortgage account or their credit files.

Finally, Mr and Mrs O have said *"Halifax going back on their words and heading back to court while our complaint was still being looked into by the FOS, having previously advised us and FOS in writing that no further court action will be taken while the complaint investigation is still pending."*

But Halifax didn't progress any legal action whilst the complaint was with us. Halifax has a regulatory responsibility to send certain letters warning of the potential consequences when an account is in arrears, but that doesn't mean it is actively progressing with legal action on that particular account at that time.

I do understand Mr and Mrs O's upset and frustration. But for the reasons I've given I don't think Halifax acted unfairly, and so I can't fairly uphold this part of the complaint.

### **My final decision**

Bank of Scotland plc trading as Halifax has already made an offer to pay £400 to settle the complaint and I think this offer is fair in all the circumstances.

So my decision is that Bank of Scotland plc trading as Halifax should pay £400 to Mr and Mrs O.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs O to accept or reject my decision before 28 September 2023.

Julia Meadows  
**Ombudsman**