

The complaint

Miss T complains that Bank of Scotland plc trading as Halifax has failed to treat her fairly when she asked for support with her mortgage payments.

What happened

The facts of this complaint are well known to both parties, so I won't repeat them all here. But in summary, Miss T has raised concerns with Halifax and the information and support it has provided her over a number of years. She feels it failed to provide her with correct information about her options which had a knock-on impact on the actions she took.

Miss T believes Halifax unfairly declined her applications for a payment holiday on her mortgage and unfairly increased her interest rate when it was aware she was in financial difficulty and would have found it difficult to move to a new product or change lenders. She feels it should have frozen the interest rate on her mortgage when she entered into an Individual Voluntary Agreement (IVA).

Our investigator said that we cannot consider all of the complaint points Miss T has raised as some of these had been brought to the service too late as more than six months had passed since Halifax addressed these concerns in its final response. But we could consider anything addressed in its final response issued in October 2022. This was accepted by Miss T and Halifax.

Our investigator looked at Miss T's complaint and said that they didn't think Halifax had acted unfairly. He said Miss T didn't qualify for a payment holiday in June 2022 when she asked for one – so even if he thought she wasn't aware of her ability to request this on her own – it made no difference as it would have been declined, even if requested sooner. He also didn't think Halifax had acted unfairly when it hadn't offered a product transfer. He didn't think Miss T had made a full application for one in June 2022 as she didn't come back to Halifax after discussing her options. So even if she was given incorrect information in the call, Halifax hadn't been given the opportunity to assess an application and see if it could offer a new rate.

Miss T disagreed with the outcome. She feels the crux of the complaint is that Halifax didn't give her correct information about her ability to make changes to the mortgage with her sole authority. Because of its misinformation, she didn't take action that she otherwise would have and she's lost out as a result.

Our investigator's opinion didn't change. He accepted Miss T had been given incorrect advice about the consent from the second party to the mortgage, but he didn't think this made a difference. The May 2022 payment had already been missed when she was given this advice and no application for a product transfer was made as Miss T didn't come back to Halifax about this.

Because Miss T disagreed, the complaint was passed to me for decision. I issued a provisional decision on this complaint on 28 July 2023. I explained I was planning on

reaching a different outcome to that of our investigator and that I intended to uphold Miss T's complaint in part. I've included below what I said:

Miss T's mortgage is in joint names with her estranged ex-husband, he would also be an eligible complainant and we'd generally expect both parties to be joined to the complaint. However, based on the circumstances of Miss T, I feel it right we continue to look at the complaint in her name only and Halifax has agreed to this.

Payment holiday requests

Halifax feels it made it clear to Miss T in June 2021 that it has a sole authority policy. So she should have been aware that she could request a payment holiday without her ex-partners consent and she should have been aware that she could apply for a product transfer with her sole authority. Having reviewed the information available, I don't think this is a fair expectation.

The notes provided to support the conversation that took place with Miss T and Halifax in June 2021 say there is "sometimes ways around the joint party" so I think it was indicated that Miss T had an option to make this request on her own. But I don't think it would be fair to say this was made clear in any great detail. Miss T said she didn't call Halifax before missing her payment in May 2022 because she believed she needed the consent of her ex-husband to have this agreed. And as previous payment holidays had not been agreed without this consent and with the lack of clarity on the messaging, I don't think Miss T would have been aware she could request the payment holiday on her own.

However, even if Miss T had called Halifax ahead of missing her May 2022 payment, I don't think a payment holiday would have been agreed. Halifax has provided the requirements it places on customers when a payment holiday is requested. One of these is a requirement that the account must not be in arrears or have been in historic arrears in the 12 months prior to the request. Based on this, I don't think Miss T would have met Halifax's requirement or that the payment holiday would have been granted. So although I'm not persuaded it was as clear as it could have been on her options around sole authority and requests, I don't think its impacted what was available here or Miss T's actions.

The product transfer request

When Miss T spoke with the product transfer team she was told that her ex-husband would need to provide consent for any product transfer. This was not correct as Halifax does allow some customers to transfer a product with sole authority/consent. It has said that Miss T would likely have qualified for this but as she didn't complete an application to transfer the product, it wasn't able to confirm if this was the case. And based on the level of arrears on Miss T's mortgage now, she would not qualify for a product transfer.

Miss T has said she didn't request the product transfer because of being told she needed her ex-husbands consent. I appreciate Halifax feels Miss T was aware previously that she didn't need this consent, but I'm not persuaded this can be relied on when its adviser told her explicitly, this was something they needed.

When Miss T spoke with the adviser in June and a product transfer was discussed, she said she was not sure whether she might need to sell her property in the near future. But Miss T wanted to stop her monthly payments increasing and a product transfer would have offered certainty for a period of time with these.

Although Miss T met Halifax's criteria to request a product transfer on her sole authority, a product transfer was not guaranteed. Had a full application been made, Halifax would have

needed to consider Miss T's needs and circumstances at the time. In short, it would have needed to consider whether it was right to recommend a fixed rate product to Miss T at that point.

A fixed rate would have given Miss T certainty on her repayments for a period of time, but Miss T mentioned in the call that she was considering selling her property in a year or so to pay off some of her debts that were part of her IVA. The adviser in this call explained what this could mean if Miss T was in a fixed rate product. Depending on whether she was in a two- or five-year product, she would incur an early repayment charge (ERC). He said Halifax didn't have any fixed rate products that didn't include an ERC if the property was sold and the mortgage needed to be repaid early.

An ERC would have added to the costs Miss T had to pay if she took this option. So a fixed rate product may not have been in Miss T's best interests and Miss T would have needed to consider this when deciding whether to apply for a new product.

I accept that it cannot be confirmed if Halifax would have been able to offer a new product had a full application been made. But I think the incorrect information would have reasonably resulted in Miss T feeling like the product transfer wasn't an option when it was. And although I think a potential ERC may have added a barrier to Miss T and her thoughts on the best next steps, it is more likely she didn't request a transfer because of the false information about needing her ex-husbands authority.

Miss T is a vulnerable consumer who has requested support from Halifax at different points over the years. It was aware of her personal circumstances and the impact of her separation from her ex-partner. The incorrect information has left Miss T with a loss of expectation as she now feels like she would have been able to secure a rate in June 2022. I think it's right that Halifax recognises the additional distress caused here.

Should Halifax have frozen Miss T's interest rate

Miss T also complains that Halifax has treated her unfairly by allowing the interest rate on her mortgage to increase after her IVA was put in place.

Miss T's mortgage was on a fixed rate product from February 2016 and her repayment amount was set as the interest rate was fixed until 30 April 2020, after which point it reverted to the Halifax Homeowner Variable Rate. So the IVA was put in place when the mortgage was still within the product term.

After her product expired in April 2020, Miss T could have requested a new product from Halifax if she wished to secure her repayments. And I don't think Halifax acted unfairly when the repayment increased as its variable rate increased with changes in the Bank of England base rate. These increases have been in line with the mortgage contract and I see no reason to ask Halifax to do anything else in relation to this part of Miss T's complaint.

What I've provisionally 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 don't think it is fair to ask Halifax to offer Miss T a retrospective rate from June 2022 as I cannot be certain it would have offered this based on her needs and circumstances at the time. She was considering selling her property in the near future and this will have meant an ERC and the impact of this would have needed to be considered and it could have resulted in Miss T being in a worse position if a rate was secured.

But I think it is fair that Halifax recognise that its misinformation will have had an impact on Miss T and the choices she made, adding to the distress she now faces with financial situation as she feels she's lost out previously.

To recognise this impact, Halifax should pay Miss T £350.

Halifax responded to say it accepted the proposed outcome and provisional decision.

Miss T responded to say that she didn't think the decision went far enough and the proposed outcome is not fair. She does not feel the decision fully takes account of the impact of the misinformation provided by Halifax. She said she was offered a fixed rate when she spoke with Halifax's adviser but this wasn't applied for because of the misinformation. With this in mind, Miss T has challenged whether she would have been successful in securing a new rate had she made an application in June 2022.

As both parties have responded to the provisional decision, the complaint has been passed back to me for consideration.

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.

Having reconsidered this complaint, I'm not persuaded that I should depart from the provisional decision set out above. I know Miss T will be disappointed with this, but I'll explain why I still believe it wouldn't be fair to ask Halifax to apply a retrospective rate to her mortgage.

Miss T has not made comment in relation to all of my provisional findings, so I've not revisited this here. Instead I've focused on the comments she has made and why my decision is in line with my provisional one.

Miss T has highlighted in her response to the provisional decision that I believe misinformation provided by Halifax was a significant contributor to her not making a full application to apply for a new product in June 2022. She has also said Halifax told her in this call that she would be able to fix a new rate in her circumstances. So had it not provided the incorrect information, she would have proceeded with the application.

I agree that the most likely reason Miss T did not speak to Halifax again about the rate change is because of the misinformation. But I don't agree Halifax said the product transfer was guaranteed.

Halifax has a sole authority policy which would allow it to progress an application made by Miss T. But it also would have needed to assess her needs and circumstances at the time as part of this process. As I've said, Miss T had explained she was thinking about selling her property in the future and she asked questions about any potential fees when doing this when first talking about her options applying for a new product.

The adviser explained it was a quick process to make an application and that Miss T could have called and made this right up until there was only a few days left in the month. But they spent a long time talking about the need to consider her circumstances and not rush into fixing a rate which could end up making her situation worse if she decided to sell her property in the near future. I think it is likely this would have been focused on had a full application been made and I'm not persuaded that Halifax would agree it was in the best

interest of Miss T to fix her rate. I say this as all of the fixed rate options it had available included an early repayment charge (ERC) which would need to have been paid if the mortgage was repaid ahead of the product term end.

Miss T didn't make an application to complete a product transfer and I believe this was due to misinformation. I cannot be sure what the outcome of the application would have been had Halifax provided correct information. So I don't think it is fair to ask Halifax to apply a retrospective interest rate to Miss T's mortgage now. But it is clear that Miss T will be disappointed by the realisation that she could have had an application considered with her sole authority and this loss of opportunity will be distressing. Halifax should compensate Miss T for this.

Putting things right

Halifax should pay Miss T £350 for the distress and inconvenience caused as a result of the loss of opportunity due to the misinformation provided.

My final decision

For the reasons I've set out above, I uphold Miss T's complaint in part.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss T to accept or reject my decision before 26 September 2023.

Thomas Brissenden
Ombudsman