

## **The complaint**

Mr C's complaint is about his mortgage with Bank of Scotland Plc trading as Halifax. Mr C says that, in December 2022, when he gave the bank details of his income and expenditure whilst discussing a term extension and a new interest rate for the mortgage, Halifax completed this incorrectly. As a result, the bank had to ask him for additional information.

The request for the new rate wasn't processed in December 2022, as a result of which Mr C has been making higher repayments.

To settle the complaint, Mr C wants Halifax to extend the mortgage term until his 70<sup>th</sup> birthday and apply the five-year fixed interest rate product that was available in December 2022, and refund overpayments made to date.

## **What happened**

I will summarise the complaint in less detail than it's been presented. There are several reasons for this. First of all, the history of the matter is set out in detail in correspondence, so there is no need for me to repeat the details here. In addition, Halifax has accepted it made a mistake and has offered compensation to put this right. So I don't need to analyse what happened in depth in order to decide whether or not the bank is at fault. All I need to consider is whether Halifax has done enough to put things right.

Finally, our decisions are published. I have noted what Mr C has said about his health but it's important I don't include any information that might lead to Mr C being identified. So for these reasons, I will instead concentrate on giving the reasons for my decision

## **Provisional decision of 5 September 2023 and responses**

I issued a provisional decision in which I reached the following conclusions:

The bank's notes record that Mr C told Halifax about his health, and I think this should have resulted in him being referred to specialist help for vulnerable customers. Mr C made it clear when he discussed the term extension that his past earnings would not be a reflection on future income, as his ability to work had been severely impacted.

I appreciate that Halifax wasn't able to accept Mr C's estimated future income figures. However, this income was largely generated through buy-to-let mortgages on properties that Mr C either owns outright or in half-shares with a business partner. The income from this source was therefore fixed and easy to estimate, with Mr C deducting 20% for tax. Mr C also explained how his income from earnings was impacted.

In the circumstances, given what Mr C had told the bank about his situation, I think it wasn't reasonable for Halifax to request accountant's information about the previous two years' earnings. Mr C had made it clear that those earnings were in the past.

Mr C had taken out his mortgage in 2007 and so there are specific rules that apply to his request for a term extension.

These regulations flow from the Mortgage Market Review (MMR) carried out by the Financial Conduct Authority (FCA) which took place after the financial crash in 2008. This has led to a series of major changes, effective since 2014, in the way residential mortgages are regulated. MMR regulations brought about requirements for stricter lending assessments, aimed at protecting consumers and encouraging mortgage lenders to act more responsibly.

The FCA recognised though that existing borrowers who wanted to make changes to their mortgages might have difficulties with this if they had passed tests under the old rules but wouldn't under the new ones. So, it introduced certain rules to address this. The rules are contained in the Mortgages and Home Finance: Conduct of Business Sourcebook (MCOB).

MCOB says a lender doesn't have to carry out an affordability assessment if a borrower wants to vary or replace an existing mortgage and there is no additional borrowing (other than for product fees) and no change to the terms of the mortgage that is material to affordability

There are also transitional arrangements which say that a lender need not carry out an affordability assessment if:

- the borrower has an existing mortgage taken out before 26 April 2014, and is applying to vary that mortgage or replace it with a new one;
- the application wouldn't involve any additional borrowing except for essential repairs to the property, or to add product fees to the balance;
- there's been no further borrowing (with some exceptions) since 26 April 2014; and
- the proposed transaction is in the borrower's best interests.

So, under this rule, even where a change material to the affordability of the mortgage takes place, the lender can, *if it chooses*, waive an affordability assessment. If the lender decides to carry out an affordability assessment, it shouldn't use that as a reason to decline an application if allowing the application would otherwise be in the customer's best interests. But the lender can take the assessment into account as part of its consideration of best interests.

This means there are two routes that an application for an existing borrower can go down. If there's no change to the terms of the mortgage contract material to affordability, there's no obligation to carry out an affordability assessment at all. And if there is a change to the terms of the mortgage contract material to affordability, a lender could still decide to allow an application without an affordability assessment if doing so would otherwise be in the borrower's best interests.

Given what Mr C had told the bank about his personal circumstances, I think that the term extension and product switch should have been allowed. There was no additional borrowing, and the changes Mr C was asking for were clearly in his best interests, taking into account all the relevant circumstances.

I therefore think the bank should have applied MCOB 11.7.6.1 and allowed the product switch Mr C requested, as well as the term extension. I think the bank should

also have taken account of Mr C's vulnerabilities and arranged for him to be contacted by the appropriate team to see what assistance could be provided.

In any event, notwithstanding that Mr C falls within the provisions of MCOB as detailed above, the Mortgage Charter which came into effect on 23 June 2023 also requires the bank to provide assistance to Mr C to help him during this period when his finances have been affected. The Charter says that where customers are in financial difficulty they can switch to a new mortgage deal, or extend their mortgage term. So even if Mr C hadn't fallen within the scope of MCOB as set out above, there were things that the bank could, and should, have been doing to help him, at least since 23 June 2023. If the bank had arranged for Mr C to be dealt with by the appropriate team dealing with vulnerable customers, I think his need for help would have been identified sooner.

In the circumstances, I don't think the bank has done enough to help Mr C and so I intend to uphold this complaint.

Both parties have accepted my provisional decision. Halifax has provided some further comments about its rationale leading to its original decline, which I have noted.

### **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've reviewed the file from the outset and revisited my provisional decision. Because both parties have accepted my provisional decision, I see no reason to depart from the conclusions I reached in that decision.

I must, however, emphasise that, in directing the bank to put the redress detailed below into place, this is not intended to set a precedent; Mr C's situation is unique and therefore requires a resolution that would not apply to other customers whose circumstances are different. I am glad to see that Halifax has recognised this in its agreement to my provisional decision. I hope this outcome eases Mr C's worries, given his current ill health.

### **Putting things right**

I direct Bank of Scotland plc trading as Halifax to do the following:

- extend the mortgage term by five years from its current expiry date;
- transfer the mortgage interest rate onto the five-year fixed interest rate product Mr C had requested in December 2022 backdated to take effect from 1 January 2023;
- refund to Mr C the difference in payments for the five-year fixed rate product from January 2023 to date;
- pay interest on the refund at 8% per annum simple from the date of each monthly overpayment to the date of refund;\*
- in addition to the £150 offered to Mr C, pay compensation of £350, making a total of £500 compensation for trouble and upset.

\* If the bank considers that it is required by HM Revenue & Customs to withhold income tax from any interest, it should tell Mr C how much it has taken off. The bank should also give Mr C a tax deduction certificate if requested, so the tax can be reclaimed from HM Revenue & Customs if appropriate.

**My final decision**

My final decision is that I uphold this complaint and direct Bank of Scotland plc trading as Halifax to settle the complaint as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 16 October 2023.

Jan O'Leary  
**Ombudsman**