DRN-4488500

The complaint

Mr and Mrs K complain that Bank of Scotland plc trading as Halifax incorrectly said they could keep a staff concessionary interest rate on part of their mortgage after Mr K ended his employment with it. They say this meant they lost out on securing a better rate elsewhere.

Mr and Mrs K also say the matter has caused them a lot of worry and stress.

What happened

Mr and Mrs K have a repayment mortgage with Halifax, which is held in two parts. I will refer to these as part 1 and part 2 of the mortgage.

Halifax is part of Lloyds Banking Group plc (LBG). Because Mr K was employed by LBG, he was eligible for staff concessionary interest rates with Halifax. In November 2021, Mr and Mrs K agreed to staff concessionary interest rates on both parts of their mortgage. For part 1 of the mortgage, Mr and Mrs K agreed to a variable rate equal to the Bank of England Base Rate. And, for part 2 of the mortgage, they agreed to a five-year fixed interest rate at 0.97% until January 2027.

On 27 June 2022, Mr K spoke to a Halifax adviser on the telephone. He explained that he would be ending his employment with LBG and asked how this would impact his mortgage. The adviser confirmed the existing interest rates on both parts of the mortgage were staff rates, which Mr K would no longer be eligible for - but no Early Repayment Charge (ERC) would be applied for ending the fixed rate early. The adviser ran through the interest rates available for its standard two, five and ten-year fixed rate products and Mr K confirmed he would be shopping around.

On 21 July 2022, Mr K spoke to Halifax again. He explained he'd ended his employment with LBG and wanted to know what fixed rate products were available. Halifax ran through the interest rates available for its standard two, five and ten-year fixed rate products.

Later in the call, Halifax incorrectly told Mr K that the existing five-year fixed rate at 0.97% on part 2 of the mortgage wasn't a staff rate so it could continue until the end of the fixed rate term (January 2027). Mr K was also incorrectly told that an ERC would apply if he ended this product early. The adviser said Mr K needed to provide it with a specific letter from LBG confirming his employment end date before he could apply for a new rate (for part 1 on the mortgage), and Mr K said he'd be back in touch.

Mr K contacted Halifax again in August 2022, and he was told a five-year fixed rate at 3.4% was available, but the adviser was unable to proceed with an application due to a system issue. Shortly after, the adviser went on leave and the issue was left unresolved.

On 1 September 2022, both parts of the mortgage reverted to Halifax's Standard Variable Rate (SVR) which increased the monthly payments substantially.

In September 2022, Mr K complained to Halifax who upheld his complaint. In its final response letter dated October 2022, Halifax said the system issue had been resolved and it had arranged for a five-year fixed rate at 3.4% to be backdated to 1 September 2022 for both parts of the mortgage. It also said it would be paying Mr and Mrs K £80 because it should have provided them with better service.

In November 2022, Mr K wrote to Halifax again because he didn't think his complaint had been properly understood or addressed. In summary, his key points were:

- He'd been told the five-year fixed rate product on part 2 of the mortgage wasn't a staff rate and this could continue until January 2027. So, he wanted Halifax to reinstate and backdate this rate.
- He wanted Halifax to apply a five-year fixed rate at 3.4% to part 1 of the mortgage only.
- He hadn't received an accurate or valid mortgage illustration.

In January 2023, Mr K wrote to Halifax again. He was unhappy that he hadn't received a response to his letter dated November 2022 and the mortgage had continued on Halifax's SVR. He reiterated his concerns and said he was cancelling his mortgage payments until the matter was resolved.

In February 2023, Halifax issued another final response. In summary, it said it wouldn't allow the fixed rate on part 2 of the mortgage to be reinstated because this was a staff rate that Mr K was no longer eligible for. But it was going to pay Mr and Mrs K a further £350 because they should have received better service. It also said it was still willing to offer a five-year fixed rate at 3.4% for both parts of the mortgage.

A product transfer offer was issued in February 2023, and Mr and Mrs K's mortgage was reworked so that a five-year fixed rate at 3.4% was applied to both parts of the mortgage from 1 September 2022.

Halifax told Mr and Mrs K in a further final response dated March 2023, that:

- A refund of £2,712 for the difference in interest charged from September 2022 until February 2023 had been calculated, including 8% interest for the time Mr and Mrs K didn't have the money.
- Halifax had used £2,433,53 of this to clear the arrears and it would pay Mr and Mrs K the remainder.
- It would not apply any rates discussed during the call that took place in June 2022 because Mr K had made it clear that he was shopping around.

Unhappy with Halifax's responses, Mr and Mrs K referred their complaint to this Service. They said they only stayed with Halifax because it had told Mr K the fixed rate on part 2 of the mortgage could continue. But if Mr K had been given the correct information, they would have re-mortgaged elsewhere and secured a cheaper interest rate product.

Our Investigator didn't uphold the complaint. In summary, she was satisfied the fixed rate on part 2 of the mortgage was a staff rate, which Mr K was no longer eligible for because he was no longer employed by LBG. And she didn't think Halifax needed to put Mr and Mrs K in the position they would have been in if the information given to Mr K in July 2022 was true. She thought about what Mr and Mrs K would have done if things had been explained correctly, but she wasn't persuaded from the information available to her that Mr and Mrs K would have secured a cheaper interest rate product elsewhere.

The Investigator also felt the total amount of £430 that Halifax had paid to Mr and Mrs K fairly reflected the distress and inconvenience caused.

Mr and Mrs K didn't accept the Investigator's findings. As agreement couldn't be reached, the complaint was passed to me for a final decision.

Having reviewed the complaint, I intended to uphold it. So, I issued a provisional decision to give both parties the opportunity to comment before confirming my final decision.

My provisional decision

In my provisional decision, I said:

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

Halifax accepts that it made an error. There's no dispute that on 21 July 2022 Halifax incorrectly told Mr K that the existing five-year fixed rate of 0.97% on part 2 of the mortgage wasn't a staff rate and that it could continue until the end of the fixed rate term (January 2027), despite Mr K leaving his employment with LBG. Halifax also told Mr K that there would be an ERC if he ended this product early.

Mr and Mrs K want be put in the position they would have been in if the misrepresentation were true – they want the fixed rate of 0.97% to be reinstated and continue until the end of the five-year term. However, the usual remedy for misrepresentation isn't for the complainant to be put in the position they would have been in if the misrepresentation were true. It's for the complainant to be put in the position they would have been in if things had been explained correctly.

I'm satisfied the fixed rate of 0.97% was a staff rate. This is clearly set out in the mortgage offer dated November 2021. I'm also satisfied Halifax's policy was that it wouldn't apply an ERC if a staff member ended their employment with LGB and the rate had to end. For these reasons, I'm satisfied that the fixed rate of 0.97% couldn't have continued – that option was simply never open to Mr and Mrs K because Mr K had ended his employment with LGB. I'm also satisfied Mr and Mrs K wouldn't have been charged an ERC for ending the fixed rate early.

It follows that Mr K should have been told that both rates on their mortgage were staff rates and Mr and Mrs K were no longer be eligible for these rates because Mr K was no longer employed by LBG. He should also have been told that no ERC would be applied for ending the fixed rate early.

I must now consider what Mr and Mrs K would have done differently, had Mr K been given the correct information.

Mr and Mrs K say they would have re-mortgaged with a different lender (who I will refer to as L1) and secured a five-year fixed rate product at 3.22%. Mr and Mrs K say they were advised by their broker shortly before Mr K's conversation with Halifax in July 2022, that this product was available to them. But they decided to stay with Halifax after Mr K was told they could continue with their existing fixed rate product because this would be the cheapest option for them.

I've listened to the telephone conversation that took place with Halifax on 21 July 2022 and I've noted that after Mr K was told by the adviser that the fixed rate could continue until the end of the term, Mr K said:

"well that's almost certainly better that anything I'd be able to get anywhere else…wow that's good news."

I think it's clear from Mr K's response that he was pleased that he could continue with the existing fixed rate and thought it was the most favourable option. He also checked with the adviser that he'd correctly understood what he'd been told, and the adviser confirmed that he had. It follows that I'm satisfied Mr K relied on the information he'd been given in this call, believing the information he'd been given to be correct, despite being told something different during the June 2022 call. And I think it was reasonable for him to rely on that information, having double-checked and been given an assurance that it was right.

I've taken into consideration that Mr K spoke to another adviser in August 2022, but based on the information available to me, I haven't seen anything to indicate Mr K was made aware that what he'd previously been told about being able to continue with the existing fixed rate was incorrect. But even if he had been told the correct position, publicly available information shows that in August 2022, L1 had increased the interest rate for a five-year fixed rate product to 3.35% and then to 3.8% in September 2022 - so Mr and Mrs K would have already missed out on the opportunity to secure the rate of 3.22%, which had been on offer in July 2022.

Mr and Mrs K haven't been able to provide us with a record of what was discussed with their broker in July 2022, but they have provided us with an email acknowledgement from their broker which indicates they had sought advice from it shortly before Mr K's telephone conversation with Halifax on 21 July 2022. Based on this, and the comment Mr K made to Halifax in the June 2022 call about shopping around, and his comment in the July 2022 call indicating that he was aware of rates available elsewhere, I'm satisfied that Mr and Mrs K were keen to find the cheapest interest rate product available to them and they would have been willing to move elsewhere.

Given that Halifax was offering a less competitive five-year fixed interest rate product at 3.5% in July 2022, I think it's likely that Mr and Mrs K would have opted for the cheaper rate with L1 had Halifax not gone on to tell Mr K they could continue with their existing fixed rate.

I've reviewed the information available for the five-year fixed rate product at 3.22% on offer with L1 in July 2022. This shows the loan-to-value ratio (LTV) needed to be 75% or less for a customer to be eligible for that product. There was also a product fee of £995, but a free valuation and free legal fees were included in the deal.

Mr and Mrs K's mortgage balance in July 2022 was around £280,000 and the estimated value of the property given by Halifax during the July 2022 call was £422,453. So, I think the likely LTV would have been around 66%. I'm therefore satisfied Mr and Mrs K would have met the LTV criteria for this product.

I've also taken into consideration Mr K's change in employment. L1 has confirmed that it required six months continuous employment, although this didn't need to be with the same employer. It has also confirmed that it considered a maximum break of three weeks between employers acceptable. Mr K has confirmed that he left LGB on 15 July 2022 and started working for his new employer three days later, on 18 July 2022. So, I think it's likely that Mr K would have met L1's continuous employment requirement.

Mr K has also provided information which indicates he received a slightly higher salary from his new employer. Further, his new employment contract was full time and permanent – which was the same as it had been with LBG. So, I don't think Mr K's change in employment put him in a less favourable position.

It follows that I haven't seen anything that would indicate Mr and Mrs K wouldn't have been successful had they applied to L1 to re-mortgage with an initial five-year fixed rate at 3.22% in July 2022.

Considering everything, I'm satisfied that if Mr K had been given the correct information during the July 2022 call, Mr and Mrs K would have secured the cheaper five-year fixed rate product with L1 at 3.22%. Halifax has already re-worked Mr and Mrs K's mortgage, applying the rate of 3.4% from 1 September 2022. But given that the rate with L1 was lower than this, I consider that Halifax needs to go further to put things right. I've set out how Halifax should calculate redress below.

I've taken into consideration that L1 would have charged a product fee of £995. Halifax didn't charge a product fee when it re-worked Mr and Mrs K's mortgage, so this would have been an additional cost to Mr and Mrs K and should be deducted from amount calculated.

The start date of the calculation should be 1 September 2022. This was when Mr and Mrs K's staff rates ended. The staff rates were lower than the fixed rate with L1, so I don't think Mr and Mrs K would have ended these early, unless this was required to secure the fixed rate with L1 - but I haven't seen any evidence to indicate that would have been the case.

The end date for the calculation should be 31 October 2027. This is the end date of Mr and Mrs K's existing fixed rate with Halifax. Whilst publicly available information indicates the fixed rate product with L1 would have run to 30 November 2027, I'm unable to say with any certainty what rates of interest will be available to Mr and Mrs K after 31 October 2027 – so I'm unable to conclude that any loss will continue after this date.

I don't intend to require Halifax to pay interest on the extra interest Mr and Mrs K have paid on the higher rate to date, since the payment of a lump sum now to compensate Mr and Mrs K for future losses will offset any interest I might have awarded for loss of use of that money.

Halifax has also confirmed that Mr and Mrs K weren't charged any arrears fees and it hasn't recorded any adverse information with credit reference agencies, so there doesn't appear to be anything to put right there.

I've also thought very carefully about the impact the matter has had on Mr and Mrs K. I appreciate that making unnecessarily high monthly payments and trying to resolve the matter has caused Mr and Mrs K a lot of worry and stress. Halifax has paid Mr and Mrs K £430 for the distress and inconvenience it has caused, and I think this is fair compensation in the circumstances. So, I don't intend to require Halifax to pay anything further for the distress and inconvenience caused.

Putting things right

To settle this complaint, I proposed to require Bank of Scotland plc trading as Halifax to calculate redress as follows:

- From 1 September 2022 to 31 October 2027, calculate the difference in interest each month between 3.4% and 3.22%
- Deduct £995 (L1's product fee).

The remaining balance calculated should be paid to Mr and Mrs K.

Responses to my provisional decision

Halifax responded to my provisional decision and said that it agreed with the proposed settlement I set out in my provisional decision.

Mr and Mrs K responded to my provisional decision. In summary, they said they accepted the proposed calculation for redress. However, they felt that the award for the distress and inconvenience the matter had caused should be increased. Amongst other things, Mr K reiterated his point that Halifax took no action to mitigate the considerable financial strain on their household. Further, that his dealings with Halifax had been extremely frustrating, caused considerable stress, and the matter had taken up a great deal of his time.

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 taken into consideration Mr and Mrs K's view that the award for the distress and inconvenience caused should be increased. I do appreciate the impact the ongoing matter had on Mr and Mrs K, and also the amount of time and effort Mr K spent trying to resolve things. However, I remain satisfied that the amount of £430 that Halifax has already paid to Mr and Mrs K is fair compensation in the circumstances. So, I don't require Halifax to pay anything further for the distress and inconvenience caused.

After reviewing everything, including all of the surrounding circumstances and the responses I received to my provisional decision, I see no reason to depart from my findings in my provisional decision. For the reasons that I set out in my provisional decision, I uphold this complaint and I require Bank of Scotland plc trading as Halifax to calculate and pay redress as set out below.

Putting things right

To settle this complaint, I require Bank of Scotland plc trading as Halifax to calculate redress as follows:

- From 1 September 2022 to 31 October 2027, calculate the difference in interest each month between 3.4% and 3.22%
- Deduct £995 (L1's product fee).

The remaining balance calculated should be paid to Mr and Mrs K.

Halifax should provide Mr and Mrs K with information showing the detail of its calculation.

My final decision

My final decision is that I uphold this complaint and I direct Bank of Scotland plc trading as Halifax to calculate and pay redress as I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K and Mrs K to accept or reject my decision before 28 May 2024.

Michelle Griffiths
Ombudsman