DRN-4542230

The complaint

Miss B's complaint is about her mortgage account with Bank of Scotland PLC trading as Halifax. Miss B says that Halifax would not offer her a new interest rate product due to mortgage arrears, which Miss B believes has exacerbated her financial difficulties.

To settle the complaint, Miss B would like Halifax to offer her a new mortgage interest rate product, backdated to 2021.

What happened

I do not need to set out the full background to the complaint. This is because the history of the matter is set out in the correspondence between the parties and our service, so there is no need for me to repeat the details here. In addition, our decisions are published, so it's important I don't include any information that might lead to Miss B being identified.

So for these reasons, I will instead concentrate on giving a brief summary of the complaint, followed by the reasons for my decision. If I don't mention something, it won't be because I've ignored it; rather, it'll be because I didn't think it was material to the outcome of the complaint.

Miss B has an interest-only mortgage with Halifax taken out in 2004. In 2008 Miss B borrowed an additional £10,000, also on an interest-only basis. The mortgage term has approximately five years left to run. The mortgage is currently on Halifax's Standard Variable Rate (SVR).

In 2008 and 2011 Miss B complained that the further advance had been mis-sold. Halifax issued final response letters on those complaints, but they weren't raised with our service until this current complaint was made.

Miss B's current complaint is that Halifax didn't offer her a new fixed rate in 2021, and she complained about this to Halifax in March 2023. Halifax said that its policy at the time was that it wouldn't tie customers in arrears to a fixed rate product because of the early repayment charge (ERC) that would apply if the property had to be taken into possession. Miss B thought this was unfair and complained to our service in July 2023.

An Investigator looked at what had happened. She explained that we could only look at the interest rate issue for the period from 31 March 2017 onwards, which was six years before the complaint was first raised.

The Investigator noted there was no request for a new rate up to 30 June 2018. Following that, because of arrears, no new interest rate product would have been suitable, due to the ERC. Given this, the Investigator didn't think Halifax had done anything wrong in not offering Miss B a new product.

The Investigator noted that Halifax had changed its policy in 2023 so that it now could offer borrowers in financial difficulty a new interest rate product with a waiver of the ERC, but this policy had not been in place until after Miss B had raised her complaint.

Miss B didn't agree with the Investigator's findings and asked for the complaint to be reviewed. Miss B said that in 2021 she paid more than £5,500 towards the mortgage, and so can't see why she wasn't offered a new interest rate product at the time. Miss B said she was told that this was because she didn't have an endowment policy in place to pay off the mortgage at the end of the term.

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 note Miss B also complained that the £10,000 further advance had been mis-sold. The Investigator explained to Miss B that we couldn't consider this part of the complaint, because Halifax had issued its final response on this part of the complaint in 2011. Because Halifax hadn't consented to us looking at this part of the complaint, and there were no exceptional circumstances to explain the delay, the Investigator said this part of the complaint was out of time.

I note Miss B hasn't challenged the Investigator's findings in this regard, but for the sake of completeness, I confirm that we can't consider this part of the complaint, because it is out of time.

In relation to a new interest rate product, I've reviewed the contact notes since March 2017. There was no request for a new interest rate product by Miss B before the mortgage started to fall into arrears, which seemed to begin in February 2018.

I've looked at whether Halifax has done enough to help Miss B. The starting point is that lenders have a duty to treat all customers, but particularly those facing financial hardship, fairly. Balanced against that, one of the fundamental principles underpinning the mortgage contract is that a lender has the right to receive payment of the money owed to it.

The Mortgages and Home Finance: Conduct of Business Sourcebook (known as MCOB) sets out at MCOB 13 what lenders are required to do to help borrowers in arrears. The Council of Mortgage Lenders (CML) also has its own guidelines about what it expects lenders to do to comply with MCOB, which mirror closely the requirements of MCOB.

A lender is required to explore ways to resolve an arrears situation, especially if the problem that created the arrears to begin with is one that looks to be short-term and capable of being resolved. For long-term difficulties, a lender must also look at other ways to help, such transferring a mortgage from capital and interest repayment to interest-only, deferring interest for a period of time or capitalisation of arrears. Balanced against that is the lender's obligation to ensure that any arrangement is affordable and sustainable.

This mortgage is already interest-only and Miss B's financial difficulties have not been short-term (for example, where a borrower has been off work for a short time due to illness or injury but will be returning to work within a defined period of time). Deferring interest or capitalising arrears would not have assisted Miss B, given the payment history on the account. This is because both options would ultimately have increased monthly repayments, and as Miss B wasn't able to pay even the current interest on the mortgage, it wouldn't have been appropriate – or in accordance with Halifax's regulatory obligations as a responsible lender – for Halifax to have increased her payments further by using either of these options.

Miss B says that she was told in 2021 that she couldn't have a new rate because she didn't have an endowment policy in place. There is no record of any discussion with Halifax about this. I think it's unlikely Halifax would have declined a product transfer for a customer who would otherwise have qualified for it simply on the basis of no repayment vehicle being in place. Rather, if there is no repayment vehicle and no issues around affordability or arrears, Halifax would be more likely to look at whether all or part of the mortgage could be transferred onto a capital repayment basis instead.

Given the level of arrears in 2021 (around £10,000 in January 2021 and £8,000 by December 2021) I doubt Halifax would have had any conversation with Miss B about a repayment vehicle, or a product transfer. At the time, an ERC would have been applied to any new interest rate product. It wouldn't have been in Miss B's best interests to have exposed her to an even greater debt in the event of default, as the ERC would increase her mortgage balance in the event of early repayment of the mortgage, for example, following a sale of the property.

Miss B has argued that she should have been offered a new product because in 2021 she paid £5,500 towards the mortgage. I see from the account history that in April 2021 a lump sum of £5,000 was paid into the mortgage (which I believe was from a compensation payment). Thereafter a single payment of £350 was made in May 2021, and then no further payment was made until £1,500 was paid in January 2023. Nothing has been paid to the mortgage since then. In October 2023 (the last information I have), the arrears were almost £18,000. The payment history doesn't suggest that the mortgage is affordable; otherwise I'd have expected Miss B to be paying whatever she could afford, rather than nothing at all.

Miss B asked the Investigator whether, if she could evidence that she would have had the money to pay the mortgage if she'd been locked into a lower rate, this would help her case. But Miss B hasn't paid anything whatsoever since a £1,500 was credited to the account in January 2023 – and this was the first payment that had been made in 20 months. So even when the mortgage repayment was under £300 per month in late 2021/early 2022, Miss B didn't pay anything.

I note that Halifax can now offer a new interest rate product to customers in arrears, where they are able to satisfy affordability criteria, and where any ERC is waived if the mortgage is repaid during any fixed rate period. So on the face of it, if Miss B is able to show she could afford the repayments on a new mortgage interest rate product, in theory she should be able to have one.

However, I'm satisfied that Miss B hasn't been able to demonstrate any affordability for the mortgage, and that this would be the case whatever interest rate she is on. I understand Miss B is eligible for Support for Mortgage Interest (SMI) through the Department for Work & Pensions (DWP). However, Miss B has said that, because SMI is now a loan which is eventually repaid to the DWP when the property is sold, she has decided not to apply for this. That's a choice Miss B is entitled to make, but it also means that whatever part of her mortgage interest SMI might cover is not being paid by the DWP. Furthermore, Miss B isn't making any payments whatsoever.

Miss B has also explained that she is expecting compensation from a medical negligence claim, and that this will be sufficient to repay the arrears. But compensation from legal action is not a source of income that Halifax can take into account when considering affordability of a mortgage. Even if Miss B was able to clear the arrears in this way, she has still not demonstrated that she is able to afford the mortgage payments each month, as no payments have been made for a considerable length of time.

In the circumstances, I'm unable to find Halifax has done anything wrong in not offering a new interest rate product to Miss B in 2021. I think the bank has shown considerable forbearance, taking into account what Miss B has said about her vulnerabilities. There is, of course, nothing to prevent Miss B from asking Halifax to consider an application for a new rate, and if Miss B considers Halifax has unfairly declined the request, she would be able to raise a fresh complaint about this with Halifax. If Miss B wasn't happy with Halifax's response, she would be able to bring it to our service, subject to the time limits in our rules.

I appreciate interest rates have risen, particularly since September 2022, which in turn has increased the payments due under SVR. In addition, because there is only about five years left remaining on the term, the substantial arrears are required to be repaid on a capital repayment basis over that period, in order that they are cleared by the end of the term. Based on what Miss B has told us, I cannot see that there is any basis on which this mortgage is affordable for her.

The situation Miss B is now in is serious, and I would be remiss if I did not explain to her that, if there is no prospect of Miss B being able to pay the mortgage, Halifax would be entitled to pursue its legal remedies through the courts. I must also explain that, if legal action is taken by Halifax, the extent to which the Financial Ombudsman Service is able to intervene is extremely limited; it is up to the court, not our service, to decide whether any court proceedings should be put on hold.

I am not saying this to alarm Miss B, but I cannot underestimate the seriousness of the situation she is in. My remit is to decide what is fair and reasonable – and this is not just what is fair to one party alone. Miss B entered into a contract with Halifax under which she agreed to pay the interest on her mortgage each month, but she hasn't kept to it. I know Miss B has had difficult circumstances for some years, but that doesn't mean Halifax is under any obligation to allow Miss B to make no repayments. Whilst I note Miss B is expecting compensation from a legal claim, the mortgage requires payment to be made each month, in full and on time, rather than random payments made on an *ad hoc* basis when a borrower receives lump sums from legal proceedings.

There is, of course, some leeway where Halifax has discretion to transfer Miss B onto a new interest rate product. I've explained above that this would be dependent on Miss B being able to provide evidence of long-term, sustainable income that would show she could afford it.

I know this isn't the outcome Miss B was hoping for, and in reaching my decision I've thought carefully about Miss B's vulnerabilities, as well as the various difficult circumstances that have led to her becoming involved in legal action relating to several different parties in recent years. It is to Miss B's credit that during this period she has also been able to complete her studies. I have no doubt that all of these events have been very stressful for Miss B, but I have to put aside my natural feelings of empathy for her, and reach my decision on the basis of the evidence. Having done so, I'm unable to find Halifax has done anything wrong.

It might help Miss B to speak to one of the free debt advisory services such as StepChange, Citizens Advice or Shelter. We can provide Miss B with contact details for those agencies, if she'd like us to.

My final decision

My final decision is that I don't uphold this complaint.

This final decision concludes the Financial Ombudsman Service's review of this complaint. This means that we are unable to consider the complaint any further, nor enter into any discussion about it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 13 May 2024.

Jan O'Leary
Ombudsman