DRN-4563973

The complaint

Mr and Mrs J complain that Bank of Scotland plc trading as Halifax recalculated the repayments on their fixed rate mortgages.

What happened

In August 2021, a mortgage broker recommended that Mr and Mrs J should take a mortgage with Halifax. The mortgage had a fixed rate product that applied until September 2026. The monthly payment was £944.

In September 2023, Halifax sent Mr and Mrs J their annual mortgage statement. It said that from October 2023, their new monthly payment would be £740.99.

Mr and Mrs J complain:

- They did not want their monthly payment to go down – they took the product on the understanding their monthly payment would be £944 and that they could make annual overpayments of 10%.
- Halifax offered two options: 1) keep the payment at £944, but with the difference between the existing and revised payment counting towards their overpayment allowance, or 2) apply to reduce the term of the mortgage so that the payment remains at £944. Neither of these options was fair.
- The communication from Halifax about the recalculation was misleading.
- The 2022 mortgage statement said, "*Your mortgage is on a fixed rate, this means your mortgage payments will stay the same during the fixed rate period*". The wording on the 2023 statement was changed to "…*your rate will stay the same*…"
- Halifax had never given them a copy of the terms and conditions it is relying on.
- They are being penalised for making overpayments when that was the major selling point of the product.
- They had planned to make annual overpayments and a monthly payment of £944. The reduction in the monthly payment will mean they will pay more interest overall.
- They want to continue to pay £944 a month, without that counting towards their overpayment allowance.

From the information available to me, Mr and Mrs J have made one lump sum overpayment to their mortgage.

The investigator said that Halifax had offered, as a one-off, to either maintain the £944 until the next annual recalculation without it counting towards their annual overpayment allowance or another "trigger event", or reduce the term of the mortgage without going through a full review. The investigator thought the offer was fair.

Mr and Mrs J did not accept what the investigator said. They reiterated the above points, and added:

- They did not wish to reduce the term of their mortgage.
- When they took out the mortgage there was no government requirement to check each year to recalculate the mortgage payments. So they did not understand how the terms and conditions of the mortgage could have told them about that.
- The documents they've provided contradict the terms of the agreement Halifax said were in place.
- They want evidence that the information about your mortgage booklet was sent to them.

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.

<u>Information</u>

When Mr and Mrs J took out the mortgage, they received advice from a third-party mortgage broker. So Halifax is not responsible for how the mortgage was sold to them. The broker was responsible for making sure the mortgage met their needs and circumstances. Halifax was responsible for the information it gave Mr and Mrs J when the mortgage was taken out.

Mr and Mrs J have disputed receiving a lot of the information that Halifax said it sent them when the mortgage was taken out. That information was important because it included how the overpayments worked and the parts of the agreement Halifax is relying on to change the monthly repayments.

First of all I am satisfied that Halifax sent all of the documents to Mr and Mrs J. All of the documents are correctly addressed. And Mr and Mrs J accept hey received part of some of the documents. But after looking at the evidence we have I consider it is less likely Mr and Mrs J did not receive all of the documents – or at least it ought to have been apparent to Mr and Mrs J if they hadn't received all of the documents. I say that because:

- The pages of the offer letter and illustration were numbered. So it should have been reasonably clear to Mr and Mrs J if they'd not received all of the pages.
- The offer letter said it enclosed the information about your mortgage booklet. So if Mr and Mrs J hadn't received it, they had a reasonable opportunity to ask for a copy.
- The information about your mortgage booklet is also referred to in the illustration.
- The illustration also said that the agreement was made up of the mortgage conditions and the offer letter.
- Mr and Mrs J signed the mortgage deed, which said "*The mortgage deed incorporates the mortgage conditions. The borrower has received a copy of them*".
- Mr and Mrs J said they did not receive section 9 of the illustration, the information about your mortgage booklet or the mortgage conditions. But it is those parts of the sales

documents which set out the ability to make overpayments. If, as Mr and Mrs J said, overpayments were an important feature of the mortgage, then I might have expected them to query the lack of any information about the ability to make overpayments in the documents they'd been given.

I am satisfied that Halifax sent all the relevant documents to Mr and Mrs J. The documents were set out in such a way it ought to have been reasonably clear if Mr and Mrs J hadn't received all of the documents.

I consider that Halifax took reasonable steps to give Mr and Mrs J all of the sales documents. And they have signed to confirm they accepted the relevant mortgage conditions. So it is reasonable for Halifax to rely on the mortgage conditions.

<u>The conditions</u>

The mortgage illustration, which accompanied the offer said:

"*Overpayments*

You are able to make overpayments to this mortgage at any time subject to any early repayment charges detailed in the Early repayment section above.

Sometimes you may be offered the opportunity to make lump sum or regular overpayments without having to pay an early repayment charge. Details of any current offers, which can change from time to time, can be found in the 'Information about your mortgage' booklet issued with mortgage offers."

The "Information about your mortgage" booklet said:

"*Currently, as a concession, in each calendar year you can make regular or lump-sum overpayments of up to 10% of the amount owed at 1 January, without having to pay an early repayment charge. (This is for any product where an early repayment charge applies.) If the total amount you overpay during the year exceeds 10%, we'll only charge you an early repayment charge on the proportion you overpay above 10%*.

…

If you decide you want to make regular or lump-sum overpayments, it's always a good idea to contact us and check if the policy has changed. We'll give at least three months' notice before withdrawing or reducing the concession.

…

Will overpayments reduce my term?

No. Overpayments will not reduce your mortgage term. Whenever we recalculate your monthly payment, we will use the reduced balance to work out the new payment over your existing term. If you want to use regular overpayments to repay your mortgage sooner, but don't want to formally change the term of your mortgage agreement, remember:

• Any recalculation of your monthly payment will include the overpayments. This means that if you only pay the new monthly payment, your loan will be repaid over your existing mortgage term.

If you would like to permanently reduce the remaining mortgage term, you will need to speak *to a qualified Mortgage Adviser, who will discuss your current and future plans with you*."

The mortgage conditions said:

"*When we can change your monthly payments*

…

We may also make an extra change to your monthly payment every year to ensure it remains on track to pay off everything you owe, other than any arrears, by the end of your mortgage term."

Payment recalculation

The information about your mortgage booklet said that Mr and Mrs J could make annual overpayments of up to 10% of the mortgage balance as a concession – but also that it may recalculate monthly payments based on the current balance and the remaining mortgage term. So if overpayments had been made, the monthly payment would go down. That is supported by the mortgage conditions, which say that Halifax can recalculate the mortgage payment each year.

I agree that the 2022 mortgage statement is misleading as it said that the payment was fixed. There was also no recalculation during the first year of Mr and Mrs J's mortgage – although it does not appear that they had made any lump sum overpayments at that point. So I can understand why Mr and Mrs J were surprised when their 2023 mortgage statement said that Halifax was going to recalculate and reduce their monthly payments. I would add that Halifax has provided evidence that it sent Mr and Mrs J a letter in June, which said that it would recalculate their payments to make sure the mortgage was on track – even if they had a fixed rate. It seems more likely than not that the letter was sent.

Halifax was entitled under the terms and conditions of the mortgage to recalculate Mr and Mrs J's monthly payment in the way it has. Halifax has said that it has introduced the recalculation to comply with the consumer duty, and in particular to avoid foreseeable harm to consumers. The recalculation will mean that Mr and Mrs J are not paying more than they need to repay the mortgage in their chosen mortgage term. I consider that is reasonable. There is the potential for harm to consumers whose payments are higher than they need to be.

I'd note that the recalculation is not, as Mr and Mrs J have said, a government requirement. Rather it is how Halifax has chosen to interpret the consumer duty rules, that came into force on 31 July 2023. But there is also a requirement under the duty to enable and support customers to meet their financial objectives.

Mr and Mrs J said their objective was to pay the amount that was agreed when they took out the mortgage. They said it was confirmed in writing that the payment would stay the same, alongside overpayments of 10%.

Nevertheless, I consider Mr and Mrs J's objective, has to be balanced against the terms and conditions of the account. They allow Halifax to recalculate payments in this way and only allow an overpayment of up to 10% of the mortgage balance each year. If Mr and Mrs J overpay and maintain their payments, they will effectively exceed their overpayment allowance – they will make an overpayment each month on top of their 10% annual allowance.

In the circumstances, I consider that Halifax's offer to either maintain the £944 payment until the next annual recalculation or trigger event – such as making other changes to the mortgage – or to reduce the term of the mortgage without a review, is a fair way to settle this complain. I think that balances Halifax's rights under the mortgage and its legitimate aim to protect consumers, against Mr and Mrs J's objectives and that the communication regarding the ability to recalculate could have been clearer.

I understand why Mr and Mrs J feel they weren't given enough information by Halifax to understand that payments might be recalculated in this way when the mortgage was taken out. That might be because they didn't get all of the information that was sent to them when the mortgage was taken out.

I've already found that Halifax took reasonable steps to send that information to Mr and Mrs J and they accepted the mortgage conditions. And it was for Mr and Mrs J's broker to explain the terms of the mortgage to them. Ultimately, I consider Halifax is entitled to recalculate the payments in this way. Its offer gives Mr and Mrs J time to consider their options. I know Mr and Mrs J have said that they don't want to reduce the term of the mortgage. But the effect of making overpayments without recalculating their payments will be to do that.

Overall I consider Halifax's offer is fair and reasonable.

My final decision

My final decision is that Bank of Scotland plc trading as Halifax should allow Mr and Mrs J to either:

- Maintain the current monthly payment of £944 until the next annual recalculation or trigger event; or

- Reduce the term of the mortgage to maintain a similar monthly payment amount without the need for advice.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J and Mrs J to accept or reject my decision before 22 April 2024.

Ken Rose
Ombudsman