

The complaint

Ms W complains that Bank of Scotland plc trading as Halifax hasn't provided her with appropriate assistance while she is experiencing financial difficulty.

What happened

Ms W's previous fixed rate expired around January/February 2023, and she asked Halifax if she could extend the rate or be given a new rate without an early repayment charge (ERC) while she tried to sell the mortgaged property. At the time, Ms W was quoted rates of just over 4%, but all would be subject to an ERC if redeemed early.

Halifax explained that it would not consider waiving the ERC on a fixed interest rate product and that depending on when Ms W redeemed the mortgage, the charge would be between 1 or 2% of the outstanding mortgage balance. As this was not suitable for Ms W's circumstances at the time, she reached out to Halifax to see what other options it had available and asked for a payment holiday.

Halifax reviewed Ms W's circumstances and explained the options were limited to putting a contact hold on the account while she tried to sell the property, but that her contractual monthly payment would still fall due at this time or that she clear her arrears and take out a new interest rate product with an ERC.

Halifax also declined Ms W's request for a payment holiday as it considers such a measure to only be suitable for short-term financial difficulty. It said granting a payment holiday would lead to Ms W's payments increasing after the payment break and as she was already struggling to meet her repayments as it was, this would not be appropriate for her. This has led to her arrears increasing.

Ms W complained about the lack of options and help being offered by Halifax and explained that she was unable to afford the monthly payment on the SVR. She also disputed the amount she was being charged as she believes she has been overcharged interest on the mortgage since 2009. As a result, she has not been making the full monthly payment and has instead been making a lower payment each month.

Since Ms W's complaint, Halifax has recognised that it introduced a new policy in mid-April that allowed customers in arrears to take out a new fixed interest rate. It accepts Ms W should have been told about this during her conversations with the Bank, but it does not think this would have led to Ms W doing anything differently given the rates would still come with an ERC and Ms W was looking to sell the property.

Ms W was offered a fixed interest rate product by Halifax earlier this year, but she did not want to go ahead while this complaint was with our Service and noted that the rate would still come with an ERC if the mortgage was redeemed early. She did question why the rate presented to her more recently was significantly higher than the rate she originally discussed in branch in early 2023.

One of our Investigators looked into the complaint but did not think it should be upheld. She

was satisfied that Halifax had acted reasonably in declining to offer Ms W a payment holiday given her circumstances. And she thought that while it could've told her sooner that it had interest rate products available for those in arrears, she did not think this would've made a difference as Ms W was still in the process of trying to sell her property. Tying her in to a fixed interest rate with an ERC would not have been in her best interests.

Halifax agreed with the Investigator's assessment and did not provide any further comments for her to consider.

Ms W disagreed with the Investigator's assessment and asked that it be forwarded to an Ombudsman for a final decision. In summary she said:

- This complaint is intrinsically linked to the other complaint she has with our Service relating to overcharged interest since 2009 and the misuse of a capital overpayment she made to her mortgage in 2019. So, she did not think it should be looked at in isolation. Or that the Investigator and Halifax had fully taken into account the individual circumstances of the complaints against Halifax since 2009.
- Halifax has not supported her throughout her time in financial difficulty in terms of the options it has presented her, the rate of interest it is charging, its lack of a tailored solution to the long-standing issues she's had with it and in its communications with her.
- FCA guidance says lenders should not charge higher interest because a consumer is in arrears, and they should take extra steps to help consumers if they are caring for someone with a long-term health condition. She does not think Halifax has complied with this guidance.
- Halifax has not shared what credit information it is relying on when declining to offer her lower rates and has not explained what options she has available.
- The £160,000 overpayment she made to the account in 2019 should give her some grace now in the form of being able to make lower payments to the account.

As the complaint could not be resolved informally it has been passed to me for a final decision.

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 would first like to say that I am aware of how strongly Ms W feels about not just this individual complaint but the treatment she has received from Halifax since 2009 onward. It is clear Ms W has had a difficult time over the years and hasn't always received the help she wanted or needed from Halifax across this period. For Ms W, all these events are interlinked and should be viewed as a whole.

I can certainly understand why Ms W feels this way, but I am unable to consider all the actions she wants me to partly because they have already been considered under her other complaint and because a large portion of what Ms W continues to complain about relates to events that took place too long ago and fall outside of this Service's jurisdiction. I have set out the reasons for this on Ms W's other complaint so I will not restate them here. But I would like to reassure Ms W that I have read and considered everything she has sent us across both complaints when reaching this decision.

Although I have read and considered the whole file, I'll keep my comments to what I think is relevant. If I don't comment on any specific point, it's not because I've not considered it but because I don't think I need to comment on it in order to reach the right outcome.

Ms W is unhappy with the lack of options presented to her by Halifax while she is in financial difficulty and trying to sell her house. Mainly, she considers that the SVR is unaffordable which is leading to arrears on her account while she is trying to sell the property. She thinks given the current situation and what has happened since she has been a customer of Halifax, that it should agree to offer her a fixed interest rate but waive any applicable ERC should she redeem the mortgage early.

Under the relevant rules, Halifax is required to treat Ms W fairly while her mortgage is in arrears. The rules say that lenders should consider, amongst other things, extending the term, changing the repayment type, deferring interest or payment or capitalising arrears. Not all of these would be appropriate in every case – and none will be appropriate in some cases – but they should be considered.

It is also clear from everything that Ms W has said that she was a vulnerable customer, and that is a relevant factor to take into account – particularly as Halifax was aware of this at the time.

If Halifax capitalised the arrears, it would mean that the arrears are added to the balance of the mortgage and the payments recalculated over the remaining term. That would result in significantly higher repayments for Ms W. Given she was struggling to meet her existing contractual monthly repayments, I am not persuaded such an option would have been in her best interests. The same outcome would have occurred had Halifax explored changing the mortgage type to capital and repayment.

Similarly, extending the term of Ms W's mortgage would not reduce the amount of her contractual monthly repayment as this is an interest only mortgage, so this would not have helped to make the mortgage more affordable for her or enabled her to clear her arrears more quickly.

In terms of a payment holiday, this is typically used for short periods of financial difficulty to give the consumer some breathing space while their circumstances stabilise and improve. But it has the negative consequence of increasing their overall indebtedness of the consumer and therefore the monthly payment. And it was not the case that Ms W's financial circumstances were set to change, other than the aim of selling the property. So, I don't think it was unreasonable of Halifax to decline this request.

I can see Halifax initially told Ms W that she could not take out a new fixed rate while her account was in arrears. But it has now accepted that due to a policy change in April 2023, Ms W should have been offered this option – albeit the rates available would've been higher than those Ms W discussed earlier in the year.

Ordinarily this may have led me to conclude that Halifax ought to have applied a fixed rate to Ms W's account, backdated to when it first became available in April. However, Halifax's fixed interest rate products come with an ERC if the mortgage is redeemed which could lead to Ms W incurring a significant financial charge. Given Ms W was actively trying to sell her property at the time, such a product would not be suitable for her needs.

Ms W thinks Halifax are treating her unfairly by not agreeing to waive the ERC on its fixed interest rate products given her individual circumstances, but I disagree.

There's a cost to Halifax in raising the funds to lend, which it recovers with the interest payments. There is also a possibility that interest rates will rise before the fixed rate product ends, which also incurs further costs for Halifax. If Ms W were to repay the mortgage during the fixed rate term, Halifax will stop receiving income in the form of monthly interest, and there is a risk it would not recover its own costs incurred by raising the funds to lend.

This means there is usually a clause in the mortgage agreement which allows the borrower to exit the mortgage early in return for paying an ERC. It's important to note that an ERC is not designed to be a penalty for the borrower. Ms W's personal circumstances do not change this, so I do not agree Halifax has acted unreasonably in refusing to waive any potential ERC that may fall due.

In essence, Ms W thinks that Halifax should create a bespoke product for her until she's able to sell the property. But I'm not going to require it to do this. It has a range of products and rates available to all customers. Unfortunately, there isn't one that matches Ms W's specific needs in her current situation. But this doesn't mean it needs to create one.

Taking all of this into account and Ms W's interactions with Halifax, I do not agree that it has treated Ms W unfairly or failed to offer her support during this period. Ms W's decision to sell the property means the options Halifax can offer her are limited to those it discussed with her over the phone – a full contact hold or a product transfer with an ERC. While I understand Ms W is struggling to meet her repayments, for the reasons I've detailed above, I am not persuaded there was anything else it could have done for Ms W given the circumstances. And I do not agree it has breached or not adhered to FCA guidelines.

Ms W feels the capital payment she made in 2019 should allow her a grace period to make lower monthly repayments without accruing arrears. The terms of Ms W's mortgage require her to make a payment each month toward the interest on her mortgage. The capital payment she made in 2019 reduced the balance of her mortgage and therefore the amount of interest she needs to pay each month towards her mortgage, but it does not allow for Ms W to miss or reduce her monthly payments.

I note Ms W wants access to the credit information Halifax is using when assessing the options and rates available to her. Ms W would need to ask Halifax for this information directly and it is not something this Service can provide.

My final decision

For the reasons detailed above, I do not uphold this complaint against the Bank of Scotland plc trading as Halifax.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms W to accept or reject my decision before 2 January 2025.

Lucy Wilson
Ombudsman