DRN-4683620

The complaint

Mr and Mrs D complain about their interest only mortgage with Bank of Scotland plc trading as Halifax. They say the mortgage was mis-sold in the first place. They're unhappy with action Halifax took in 2011 and 2014 when they were in financial difficulty. And they're unhappy that Halifax won't allow the mortgage to continue now the end of the term has been reached, and that it's not willing to discuss the mortgage with them by email.

What happened

Mr and Mrs D have a mortgage with Halifax. They borrowed around £240,000 on interest only terms, over 12 years, in January 2009. The mortgage term therefore came to an end in January 2021.

Mr and Mrs D's original repayment strategy was savings they'd built up. But their savings were used up following Mr D's redundancy. The mortgage then fell into arrears. Halifax took possession proceedings in 2012. But the mortgage continued once agreement was reached.

In 2014, Halifax capitalised the arrears, which by then were around £33,000. Mr and Mrs D maintained their payments thereafter.

In 2020, with the end of the term approaching, Mr and Mrs D got in touch with Halifax and asked it to extend the mortgage term. Halifax refused to agree. Mr and Mrs D complained about that, and brought their complaint to us where it was considered by one of our investigators.

In 2022 Mr and Mrs D asked Halifax about switching to a retirement interest only mortgage (often known as a RIO). Halifax assessed their circumstances and said it didn't think that would be appropriate. Mr and Mrs D then spoke to an independent mortgage adviser about taking out a lifetime mortgage, again without success.

In 2023, Mr and Mrs D asked Halifax to extend the mortgage term. Halifax wouldn't agree. So Mr and Mrs D brought this complaint.

Their complaint covers the following issues:

1) The mortgage was mis-sold at the outset.

2) Halifax acted unfairly in taking repossession action in 2011.

3) Halifax didn't explain the consequences of capitalising the arrears in 2014.

4) Halifax hasn't agreed to allow the mortgage to continue even though Mr and Mrs D are making the monthly payments and even though they're trapped and unable to re finance elsewhere.

5) As a result, Halifax is now expecting the balance to repaid and threatening action if it isn't.

6) Halifax refuses to communicate with Mr and Mrs D via email, which is their preference.

Our investigator said that we couldn't consider the complaints about the mis-sale or what had happened when Mr and Mrs D were in financial difficulty in 2011 and 2014. She said we could consider the action Halifax was taking now, at the end of the term, but only in respect of things that had happened since the previous complaint. She went on to say that she didn't uphold that part of the complaint.

Mr and Mrs D didn't agree either about what things we could and couldn't consider, or about the outcome the investigator reached. They asked for an ombudsman to review their complaint.

I've previously issued a decision setting out which parts of their complaint I can consider. I said I can consider whether Halifax should communicate by email. And I can consider how it has treated them at the end of the term – but only since their previous complaint was made in March 2020. What follows is my decision on those parts of the complaint. All other parts of the complaint are either out of time, or have already been considered by the Financial Ombudsman Service.

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.

Mr and Mrs D's mortgage expired in 2020. When they took it out, in 2008, they agreed it would be repaid then. They or their broker said they were planning to do so via a combination of savings and investments. But it seems those were no longer available after the financial difficulties of 2011 – and certainly not available by the end of the term in 2020. So Mr and Mrs D were unable to repay the capital.

Halifax offered them a one year grace period to explore their options and make arrangements to repay. I think that was fair.

Mr and Mrs D did then explore their options. They asked Halifax about a RIO, which was a product Halifax offered at the time, and it assessed their eligibility for it. Halifax said that Mr and Mrs D weren't eligible for a RIO because their loan to value was above the maximum 50% that Halifax was willing to lend a RIO based on. So it said it couldn't offer them a RIO to replace their existing mortgage.

Halifax explored the option of a RIO again in 2022. This time it said it didn't think a RIO would be affordable. Because a RIO is intended to be for life, it's standard to consider the income of both borrowers separately – because in the event one were to pass away, the other would still have the mortgage and have to continue the repayments on their own income rather than joint income. As Mrs D's only income in retirement would be from state pension, a RIO wouldn't be affordable for her if she were left as the only one repaying it.

I think this was a reasonable decision. Lenders are required by the mortgage rules to assess affordability – and only lend where it can be shown that a mortgage is affordable. And in the case of a RIO it's important to make sure that it would be affordable not just for both borrowers jointly but also either individually – because, as I've said, it's designed to run for the lifetime of the last survivor. As the mortgage payments alone, without considering other expenditure, would be almost double Mrs D's income from state pension, I think it's clear a RIO wouldn't be affordable for her alone, and therefore it wouldn't be responsible for Halifax to offer it. I'm satisfied its refusal to offer a RIO wasn't unfair.

Halifax doesn't offer any other form of later life borrowing, such as lifetime mortgages. So Mr and Mrs D took advice from an independent mortgage broker specialising in equity release. But it wasn't possible to arrange a lifetime mortgage for them. Halifax isn't responsible for that. Though I understand that was in part because of Mr D's particular circumstances – if so, Mr and Mrs D may be able to explore that option again when his circumstances change, as I understand is anticipated in the coming months.

However, it may well be the case that even then they may not be able to borrow the amount required because the loan to value would be too high. Mr and Mrs D have suggested that Halifax accept part payment from a lifetime mortgage, and agree a term extension on the remaining balance. But that wouldn't be possible, since both Halifax's mortgage, and any lifetime mortgage, would need to be first charge mortgages – and it's not possible to have more than one first charge mortgage. Even if Halifax were to agree to allow a lifetime mortgage to take priority over its own – which it doesn't have to do and I can't reasonably expect – most lifetime mortgage providers wouldn't agree to a second charge either. So I don't think this proposal would be possible even if Halifax had agreed to it.

I think Halifax has shown reasonable forbearance. It's now over three years since the term of the mortgage first came to an end. Halifax is entitled to expect Mr and Mrs D to repay their mortgage as they agreed to do. When they weren't able to, it's so far allowed over three years for Mr and Mrs D to explore their options and find another way to repay. Halifax has considered whether to offer them a RIO, but concluded it wouldn't be affordable. Mr and Mrs D haven't been able to find another way of re-financing their loan either. It's possible they may be able to do so in the future – but there's no guarantee of that. House prices might fall rather than rise, for example, leaving Mr and Mrs D unable to raise enough from a lifetime mortgage even if they are older.

I appreciate this is a very difficult situation for Mr and Mrs D, and they want to avoid having to sell their property if at all possible. But they've had three years to find an alternative, without success. I don't think it's reasonable to expect Halifax to wait an indeterminate further period for repayment, and I'm conscious that as Mr and Mrs D get older sale of the property would have a greater impact on them in the future even than now. Their situation might worsen in other ways too – if house prices fall, for example. Their mortgage is also getting more expensive as interest rates have risen, and Mr and Mrs D are no longer paying enough to clear the interest each month. So there's a risk their balance will grow if the loan isn't repaid, further eroding their equity and making it harder to find other options in the future.

With all that in mind, I don't think I can fairly say that a term extension on interest only terms would clearly be in their best interests. I think Halifax has offered reasonable forbearance since the term ended, and it's not unreasonable that it now wants to bring the mortgage to an end.

If Mr and Mrs D have any further proposals for repayment, Halifax will need to give them careful consideration. But as I don't think it has acted unreasonably so far, I don't uphold this part of their complaint.

Finally, I've thought about Mr and Mrs D's request that Halifax communicate with them via email. I appreciate they'd rather communicate in that way than have to speak on the phone, and wait in queues for their calls to be answered. But this isn't a service that Halifax generally offers. Its mortgage advisers are telephone based. This isn't a case where Mr and Mrs D are unable to communicate by phone – for example, because of a disability which would require Halifax to make a reasonable adjustment. Mr and Mrs D can communicate with Halifax in writing, as they've been doing, as well as by phone. I don't think it's unfair that Halifax hasn't agreed to add email to the options available to them. So I don't uphold this part of their complaint either.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D and Mrs D to accept or reject my decision before 15 April 2024.

Simon Pugh
Ombudsman