

The complaint

Mr and Mrs R complain that Bank of Scotland plc trading as Halifax:

- Has not given them all of the information it should have under a data subject access request (DSAR) and withheld evidence relating to another complaint.
- Did not put in place the new interest rate product they'd agreed.
- Misrepresented and mishandled their complaint.

What happened

Mr and Mrs R have a mortgage with Halifax. They made a DSAR. But they consider that Halifax has not given them all of the information it should have and that it did not give us information relevant to the outcome of another complaint they had.

In May 2023, Mr and Mrs R applied for a new fixed interest rate product. But it was not put in place as they expected. Halifax said that was because they'd not returned documents it had sent to them. Mr and Mrs R complain that the email Halifax sent looked like spam – so they did not open it. And Mrs R was not sent the email at all.

Mr and Mrs R said when they complained, Halifax would not speak to them because it had deliberately set Mr R up to fail the security check. And it had misrepresented their complaint in its final response and did not call Mr R back as promised.

I issued a provisional decision. Subject to any further submissions I found:

- The complaint about the DSAR was not one we could consider. That was because it was not about the provision of a financial service.
- If Mr and Mrs R consider that there is relevant new evidence in relation to the previous complaint then the proper process is to send the new evidence to Halifax and ask whether it makes any difference to its decision. If they were not happy with the final response, they can then refer the complaint to us again. We would then decide if there was (1) material new evidence which was (2) not previously available to Mr and Mrs R, and which (3) the ombudsman considers is likely to affect the outcome.
- The reason the product transfer did not go ahead was not because Halifax acted unfairly or unreasonably. It set out what it needed in a clear, fair and not misleading way and it did what it said it would do. There was no requirement for mortgage lenders to format email addresses in a certain way. And looking at all of the information provided to Mr and Mrs R about the rate switch, I consider they were given enough information about what they needed to do for the rate switch to go ahead.
- Halifax applied its security policy correctly when it spoke to Mr R on 3 August 2022. But it should pay Mr and Mrs R £100 for any distress and inconvenience caused by saying it would call Mr R back when it would not do so.

I have issued a separate decision regarding our jurisdiction. I said we could not consider the complaint about the DSAR and we would likely dismiss any attempt to reopen the previous complaint – there was no material new evidence.

Mr and Mrs R did not accept my provisional findings. They made a number of points, including:

- Mrs R was not involved in the decision making or any correspondence. It was inaccurate to suggest she was.
- They were not told about the documents regarding the new rate until two months after the agreement on 31 May 2023. When they contacted Halifax, they were told they were in arrears and had to pay off arrears, which they consider was as a result of illegitimately applied interest rates.
- The email containing the mortgage documents was not discovered by them until 28 July 2023 – and we have the call recording where Mr R discovers it.
- Mr R did not open the email because it registered to him as spam – there would have been no conscious decision not to open it. The email header refers to a mortgage on its second line – but Mr R would not have got that far. He was on notice to expect an email from Halifax – but the email did not look like other emails from Halifax.
- Nobody checks if an email they think is spam is legitimate.
- When Mr R spoke to Halifax on 28 July 2022, it re-sent the email, but he was unable to open it because of technical issues. There is a recording of this call.
- Mr R spent over an hour and a half on the phone to Halifax between 31 May and end of July 2023. But he was told the new product wasn't able to go ahead because of the arrears. In the confusion he ended up paying twice for June 2023 – but he wasn't guided to the email until the end of July 2023. As the new emailed documents had technical issues, Mr and Mrs R went further into arrears in August 2023.
- They did not take the steps set out in the letter dated 31 May 2023 because they don't remember receiving a letter and because of the issues with the online documents set out above.
- There was no phone call on 9 August 2023 between Mr R and Halifax.
- There is evidence of several errors by Halifax which contributed to them not completing the process. And we had not taken account that Mr R has attention deficit disorder.
- Halifax had no doubt that it was speaking to Mr R and that was the whole point of a security check.

I put Mr and Mrs R's response to Halifax. To try and mend its relationship with Mr and Mrs R, Halifax said it would honour the interest rate it offered to Mr and Mrs R on 31 May 2023. It agreed to backdate the rate to 1 July 2023 – which was the earliest the rate could have started. Halifax said it would reconstruct the account and adjust Mr and Mrs R's credit files. Any surplus will be refunded with interest or Mr and Mrs R could choose to apply it as an overpayment to their mortgage.

Mr and Mrs R rejected the offer. They want Halifax to apply the rate they could have had in 2022, apologise and to pay them £250,000 compensation for the impact of this matter on 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.

When I refer to “Mr and Mrs R” it reflects that this is a complaint brought by both of them about a mortgage that is in joint names. Even though it primarily regards Mr R’s interactions with Halifax, he was acting on behalf of both him and Mrs R. That is why I refer to “Mr and Mrs R”.

I’ve reviewed everything Mr and Mrs R have said and provided. Having done so, I consider Halifax’s offer is a fair way to settle this complaint.

Interest rate

On 31 May 2023, Halifax wrote to Mr and Mrs R at their home address. They were sent a letter that enclosed the illustration for the product they’d chosen. The letter also said:

“Declaration Form – How to accept your documents

If you still need to accept your documents, you need to do this before we can complete processing your application.

Online

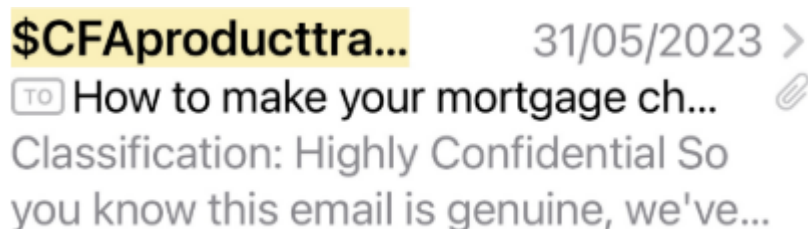
If you choose to accept your documents online, we’ll have emailed you with instructions on how to do it. If you haven’t received the email please let us know and we’ll resend it.


By post

You can sign date and return all pages in the envelope provided in this pack.”

The letter is correctly addressed. It seems more likely than not it was sent by Halifax. So I consider Halifax took reasonable steps to tell Mr and Mrs R that they needed to accept the documents before the rate was put in place and they should expect an email from it. Mr and Mrs R said they can’t remember receiving the letter.

The email was sent on 31 May 2023. Mr R has provided a screenshot from his inbox where it appears as follows:



SCFAproducttra... 31/05/2023 >
TO How to make your mortgage ch... 
Classification: Highly Confidential So
you know this email is genuine, we've...

Mr and Mrs R said they did not know that the email was from Halifax and that it looked like spam, so they did not open it. Of course, consumers are told to be cautious and look out for suspicious emails. But in the circumstances, the email clearly referred to a mortgage and Mr and Mrs R were on notice to expect an email from Halifax about their mortgage.

If Mr and Mrs R were unsure about the email, they could have checked with Halifax. I agree that it would not be reasonable for consumers to check every email they suspect is spam is genuine. But in this case, snapshot of the email Mr and Mrs R have provided shows that is it about a product and a mortgage. They knew the email was about a mortgage and Halifax is their mortgage lender, they’d recently asked to switch interest rate products and they’d been

told to expect an email from Halifax.

In any event, if Mr and Mrs R had not received the letter or any email from Halifax then they ought to have contacted Halifax to ask why they had not received any communication from it regarding the new interest rate.

I am satisfied that Halifax set out in a clear, fair and not misleading way that action was required by Mr and Mrs R if they wanted to accept the new interest rate. I don't consider there was any reason for Halifax to be on notice – at least initially – that Mr and Mrs R had not received the letter or the email.

It is reasonable for Halifax to ask Mr and Mrs R to formally accept the offer before putting it in place. That is so Mr and Mrs R have a fair opportunity to read and understand the terms of the new offer and so that Halifax has a clear record of their acceptance. Halifax could not put a new rate in place without Mr and Mrs R's acceptance – even taking into account everything they've told us about their personal circumstances.

There is no evidence that Mr and Mrs R took the necessary steps to accept the offer. Mr and Mrs R say that is for a number of reasons. But in the circumstances, I don't consider they prevented Mr and Mrs R from accepting the offer if they wished. I will explain why.

Mr and Mrs R said they thought the email was spam and they do not remember receiving the letter. I've already found that Halifax sent the letter and it did not act unfairly in sending the email. Mr and Mrs R knew they were expecting correspondence from Halifax regarding the rate and had not received anything to confirm that the rate had been put in place. They ought reasonably to have taken steps to tell Halifax if they did not receive anything.

When Mr and Mrs R were in contact with Halifax, they said there was some confusion. They said they were told they'd need to pay off arrears and things would be "back on track". But looking at the context and all of the information given to Mr and Mrs R, I don't consider Halifax led Mr and Mrs R to believe that the new rate was in place. Mr and Mrs R did not accept the new rate and there was no formal confirmation they had done so.

Mr and Mrs R said they discovered the unread email during a phone call with Halifax on 28 July 2023, but they experienced technical difficulties and were unable to accept the offer. But Halifax set out in its letter of 9 August 2023 that Mr and Mrs R had until 29 August 2023 to accept the offer and what they needed to do if they were experiencing technical difficulties. It set out clearly what the next steps were for Mr and Mrs R to accept the offer.

Importantly, Halifax took reasonable steps to make Mr and Mrs R aware that there was further action required after 28 July 2023 if they wanted to accept the offer. Mr and Mrs R have put forward a number of reasons why they did not accept the offer. Generally, there is an expectation that consumers should take reasonable steps to mitigate any financial loss to prevent any loss or harm growing. I understand why from their point of view, Mr and Mrs R consider they were unable to accept the offer – in particular the sequence of events from late July 2023. However, ultimately, they did not accept the offer. Nor did they take steps to arrange another product when the offer lapsed.

Mr and Mrs R highlight that Mr R has attention deficit disorder. They don't consider Halifax offered them adequate support in view of that. Mr and Mrs R consider it should have followed up when they had not accepted the offer. Looking at the circumstances here, and in particular Mr R's lack of trust in Halifax, it's not clear that if Halifax had done more, that it would have made any difference. I say that as it communicated a number of times what Mr and Mrs R needed to do to accept the rate by different methods but they never did so. It follows that even if Halifax had contacted Mr and Mrs R to remind them about the rate that it

would have made any difference. Nevertheless, Halifax has offered to honour the interest rate it offered Mr and Mrs R on 31 May 2023 – and to backdate it to July 2023.

I consider Halifax has made a fair offer to reflect any shortcomings in its approach – but taking into account that it took reasonable steps to tell Mr and Mrs R what they needed to do and that the offer was never accepted. In all the circumstances, I consider Halifax's offer is a fair and reasonable way to settle this complaint.

Halifax has explained that it only sends emails to the first named account holder unless it is aware of a dispute. That is not out of line with industry practice in my experience. I understand it sent an email to Mrs R in July 2023 after it was requested.

I do not have the power to tell Halifax to give Mr and Mrs R a rate that was available in 2022. As I explained in my jurisdiction decision, that was dealt with as part of a previous complaint where we issued a final decision. We can't reopen that complaint or change the outcome. While Mr and Mrs R might consider this complaint is linked to the previous complaint, they are separate complaints under our rules.

Complaint

It is reasonable for financial businesses to have processes in place to verify they are speaking to the right person. I don't agree that it would be reasonable to say that a financial business should waive its usual checks even if it thought it was likely speaking to the right person – there would be risks in that.

Halifax did not act unfairly when it asked Mr R to go through its usual security checks. Mr R was unable to correctly answer all of the questions. It was fair and reasonable for Halifax to decline to speak to him further. Mr R might have been very upset by that. But there is no evidence that Halifax deliberately set him up to fail. It merely asked the questions that were part of its process and was unable to continue to speak to Mr R when he did not provide the correct answers.

There is no obligation for Halifax to communicate with Mr and Mrs R by email.

I agree that Halifax should pay Mr and Mrs R £100 for any distress and inconvenience caused by saying it would call him back when it would not do so.

My final decision

My final decision is that Bank of Scotland Plc should:

- Honour its mortgage offer from 31 May 2023 – backdated to 1 July 2023 – and rework Mr and Mrs R's mortgage accordingly.
- Any resulting surplus should be refunded to Mr and Mrs R with interest at 8% simple per year from the date each payment was made to date of settlement – or Mr and Mrs R can choose to have the surplus applied to their mortgage as an overpayment.
- Amend Mr and Mrs R's credit files to reflect the reworked mortgage.
- Pay Mr and Mrs R £100

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R and Mr R to accept or reject my decision before 10 October 2024.

Ken Rose
Ombudsman