DRN-4910961

The complaint

Mr and Mrs W are unhappy that Bank of Scotland PLC trading as Halifax reduced their contractual monthly mortgage repayment due to overpayments made in the previous year. They do not want this to happen and want to continue making payments at the previous rate. Mr and Mrs W also believe Halifax's actions are in breach of the Consumer Duty.

Mr W has dealt with the complaint throughout.

What happened

I won't 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 all the details here. In addition, our decisions are published, so it's important I don't include any information that might lead to Mr and Mrs W 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.

Mr and Mrs W's mortgage was originally taken out with another lender but was transferred to Halifax in 2020. The mortgage is on a capital repayment basis, spread across various sub-accounts, all on fixed rates of interest. The mortgage has less than five years left to run on the term.

Halifax allows customers on fixed interest rate products to make overpayments of up to 10% per annum without incurring an early repayment charge (ERC). This is calculated on 10% of the mortgage balance annually, not 10% of the contractual monthly repayment (CMP). The mortgage terms and conditions explain that overpayments will reduce the interest charged, but don't reduce the term. If the customer's aim is to reduce the term, Halifax requires the mortgage contract to be amended, for which an application would be required.

In 2023 Mr and Mrs W's monthly repayment was £990 per month. On 31 December 2023 Halifax wrote to Mr and Mrs W explaining that an annual recalculation would be carried out to ensure the mortgage was on track to be repaid at the end of the term. The letter explains that if overpayments had been made, the CMP could decrease.

On 5 March 2024 Halifax wrote to Mr and Mrs W explaining that the CMP would decrease to about £780. This was due to overpayments having reduced the capital balance, so the new repayment was calculated to ensure the mortgage would be repaid by the end of the contractual term.

Mr and Mrs W complained, saying that they didn't want this. Halifax explained that the terms and conditions of the mortgage permitted the bank to do this, but the bank offered to revert the mortgage to its previous CMP or, alternatively, a term review to reduce the mortgage term. However, the CMP would be recalculated following any of the following trigger events:

- a mortgage review or product transfer at the expiry of an existing product;
- a further advance application;
- a future annual instalment review;
- or the annual recalculation to ensure customers' CMPs remain on track, including customers with a fixed interest rate;
- a base rate change, for customers on a variable interest rate.

Halifax said it wasn't able to waive any ERCs if Mr and Mrs W wanted to move to another lender. Halifax also said that it wasn't able to provide an illustration of how the annual recalculation would impact the mortgage. Mr and Mrs W had asked Halifax to pay compensation for the effect Halifax's process had had on them, but the bank declined to do so.

Mr and Mrs W chose to retain their monthly repayments at the existing level. But they were still dissatisfied with Halifax's response, and raised their complaint with our service.

An Investigator looked and what had happened. She was satisfied Halifax had provided clear information to Mr and Mrs W in the mortgage terms and conditions explaining how overpayments would affect the mortgage, and that this could result in a recalculation of the CMP.

The Investigator also thought Halifax's offer to revert the CMP to its former level of £990 per month was reasonable, and noted Mr and Mrs W had agreed to this. Mr and Mrs W also wanted Halifax to waive any ERC should they move to another lender, but the Investigator didn't think Halifax was required to do this. Nor did the Investigator think Halifax was required to provide an illustration showing the impact on the mortgage of the reduced repayment. Finally, the Investigator didn't think Halifax was required to pay any compensation for the upset Mr and Mrs W had been caused by receiving Halifax's letter in March 2024.

Mr and Mrs W disagreed with the Investigator's findings and asked for an Ombudsman to review the complaint.

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 won't set out all the various terms and conditions which apply here; the Investigator set them out in detail, so there's no need repeat them here. I'm satisfied Mr and Mrs W would have received the mortgage booklet with the terms and conditions, which includes Halifax's entitlement to recalculate the CMP.

I'm satisfied the terms and conditions explain that overpayments will not result in a reduction of the mortgage term, but that any reduced balance will be used to recalculate the CMP. Halifax's terms say *"Any recalculation of your new 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."*.

The "*Information about your mortgage"* booklet says that Mr and Mrs W could make annual overpayments of up to 10% of the mortgage balance each year as a concession without incurring an ERC, but that Halifax may recalculate the CMP based on the current balance and the remaining mortgage term. Therefore if overpayments had been made, the CMP would go down. This is supported by the mortgage conditions.

Mr and Mrs W were on a fixed rate, so I can understand why they were surprised when they were told their CMP would reduce. Halifax has said that it introduced the recalculation to comply with the Consumer Duty, which came into effect in July 2023. The recalculation means Mr and Mrs W would not be paying more than they needed to repay the mortgage in their chosen mortgage term. I consider that to be reasonable, because there is the potential harm to consumers whose payments are higher than they need to be. This is how Halifax has chosen to interpret the Consumer Duty rules. But there is also a requirement under the Consumer Duty to enable and support customers to meet their financial objectives.

Mr and Mrs W have said that their objective was to pay the amount that was agreed when they took out the mortgage. Their understanding was that the CMP would stay the same, and they could make overpayments of up to 10% per year.

Notwithstanding this, I consider Mr and Mrs W's objective has to be balanced against the terms and conditions of the account, which allow Halifax to recalculate payments in this way and only allow an overpayment of up to 10% of the mortgage balance each year. The mortgage is at a fixed rate of interest, not a fixed payment. Furthermore, if Mr and Mrs W were to maintain the original CMP *and* make overpayments, they are likely to exceed their overpayment allowance, and could incur an ERC on any overpayments over 10% of the account balance.

In the circumstances, I consider Halifax's offer to reinstate the £980 monthly payment until the next annual recalculation (or any earlier trigger event) is a fair way to settle the complaint. I think that this balances Halifax's rights under the mortgage and its genuine aim to protect consumers against Mr and Mrs W's objectives to reduce their capital balance.

Halifax has explained that in order to carry on with the higher CMP after the next annual review, it will be necessary for Mr and Mrs W to speak to a mortgage adviser. I appreciate they don't want to do this, but making overpayments will have an impact on the mortgage balance, and in turn the potential for an ERC to become payable where overpayments are made that exceed the annual 10% allowance. Therefore, if Mr and Mrs W continued to make the £980 CMP, even if the monthly repayment had been recalculated, they would be at risk of incurring an ERC due to exceeding the annual 10% overpayment limit.

Mr and Mrs W want Halifax to provide an illustration of the effect of the annual recalculation on the mortgage. However, I'm not persuaded the bank is required to do this. If no further overpayments are made, and the mortgage was paid at the reduced CMP of £780 per month, it would be repaid by the end of the original mortgage term. But if overpayments are made, the CMP would be recalculated based on that figure. As it isn't known how much would be overpaid, it's therefore not possible for Halifax to provide an illustration.

I note Mr and Mrs W would also like Halifax to pay compensation for distress and inconvenience. However, once the complaint was raised on 8 March 2024, Halifax responded quickly, by 18 March 2024, and Mr and Mrs W confirmed shortly afterwards that they wanted their CMP changed back to £980. I'm satisfied the core issue in the complaint was resolved quickly with Mr and Mrs W accepting Halifax's offer to keep the payment at £980 until the next review (or trigger event, whichever came first). Given that Halifax hadn't made an error in recalculating the CMP, I'm not persuaded any compensation is payable.

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 Mr and Mrs W to accept or reject my decision before 11 December 2024.

Jan O'Leary
Ombudsman