

## The complaint

Miss M's complaint is about a mortgage she has with Bank of Scotland plc trading as Halifax (BoS). She is unhappy that the consent to let she has attached to the mortgage prevented her from accessing assistance under the Mortgage Charter and attaching a new interest rate product to the mortgage. She considers that this is discriminatory. In addition, Miss M thought she would have up to three years before she would need to apply for a buy-to-let mortgage to replace the residential one, but the refusal to allow a new interest rate product was forcing her into doing so earlier than expected. She doesn't think she is being treated fairly.

Miss M is also unhappy that the consent to let terms changed after it was attached to her mortgage. The change being that she believed a review of the CTL would not happen for three years, and yet BoS reviewed after one year. Miss M is unhappy that this review didn't include an assessment of her financial circumstances and the affordability of the mortgage. In addition, Miss M is unhappy that she was not provided with the updated terms and conditions.

## What happened

In October 2017 Miss M took out a mortgage with BoS to assist her in purchasing her home. The repayment mortgage was for just over £180,000 and over a term of 33 years. In 2021 Miss M attached a new interest rate product to the mortgage. This provided a fixed interest rate until 31 October 2023.

In 2022 Miss M increased her borrowing by almost £99,000 over a term of 28 years. The advance was on a repayment basis and a fixed interest rate product was attached, which will end in April 2024.

In the summer of 2022 Miss M was made redundant. At this point she decided to rent her home out and do some travelling. She assumed the rental income would cover the mortgage payments while she was away.

Miss M applied to BoS for consent to let (CTL) her property in the middle of July 2022. The application was agreed toward the end of that month for a period of 12 months and this was confirmed to Miss M in a letter of 4 August 2022.

The CTL application included a statement that Miss M had to agreed to:

*'My/our mortgage will remain on the current mortgage product or lender variable rate for the letting period. If the current mortgage product expires within the letting period my/our mortgage will revert to the lender variable rate. Whilst the property is let I/we will not be able to transfer onto any other mortgage products. If I/we reoccupy the property I/we will provide reasonable evidence of re-occupation to you after which I/we will be able to transfer to a new product available to existing mortgage customers.'*

and

*'I/we tick the box to confirm that I/we understand that if consent to lease is granted, it'll be for 12 months. After this letting period, if I/we still wish to let the property I/we must reapply for consent.'*

The CTL conditions dated January 2018 state:

*'I/We acknowledge that:*

- If you consent to me/us letting my/our property, any tenancy I/we grant must comply with the following conditions. If the tenancy I/we grant does not comply with the conditions, it will be unauthorised and will not be binding on you.*
- If consent to lease is granted it will be for 12 months. After this letting period if I/we still wish to let the property I/we must reapply for your consent.*
- My/our mortgage will remain on the current mortgage product or lender variable rate for the letting period. If the current mortgage product expired within the letting period my/our mortgage will revert to the lender variable rate. Whilst the property is let I/we will not be able to transfer onto any other mortgage products. If I/we reoccupy the property I/we will provide reasonable evidence of re-occupation to you after which I/we will be able to transfer to a new product available to existing mortgage customers.'*

In December 2022 BoS wrote to Miss M and informed her that from 27 April 2023 it would be increasing the interest rate payable on mortgages with CTL by 0.5%.

In June 2023 BoS introduced a change to its process for extending existing CTL arrangements. Rather than requiring an annual application, it would automatically review the borrower's eligibility and, if that remained unchanged, BoS would allow CTL to remain in place until told by the borrower to remove it. At the end of that month BoS wrote to Miss M again. It told her the CTL arrangement would be reviewed and if agreed for another year, a 0.5% increase to the interest rate would be applied.

BoS confirmed to Miss M on 28 July 2023 that it would allow the CTL arrangement on her mortgage for another year.

Miss M has told us that she spoke to her mortgage broker about a new interest rate product to replace the one that was due to expire at the end of October 2023. She was made aware that she wasn't eligible for a new product because of the CTL. Miss M has said she was told, presumably by her broker, she would have to change to a buy-to-let mortgage to obtain a fixed interest rate product, or to move back into the property. Miss M says she's also been told that she would not be eligible for a buy-to-let mortgage because her income is too low.

Subsequently, Miss M has said she was told by her broker, in October 2023, to apply for a term extension and a temporary change to an interest-only basis, under the Mortgage Charter. Miss M has told us that when she completed the form online for concessions under the Mortgage Charter, it would only allow her to apply for either a term extension or a temporary change to interest-only, but not both. She completed the form for a term extension, with the intention to then ask for the interest-only change. BoS' then arranged for Miss M to speak to a mortgage adviser.

On 12 October 2023 Miss M spoke to a mortgage adviser. The discussion was somewhat confused at times, but essentially Miss M explained to the mortgage adviser that once the fixed rate on part of her mortgage ended, she would not be able to afford the monthly mortgage payments as they would be more than the rent she was receiving. She commented that she was already subsidising the monthly costs of the property from her savings. Miss M made it clear that in an ideal world she wanted a new fixed rate product for

the mortgage. She also explained that she had spoken to her mortgage broker and had been told to ask BoS for a term extension and a six month change to interest-only under the Mortgage Charter.

BoS confirmed that the reason Miss M could not have a new interest rate product was because she had CTL on the mortgage. Miss M said the consequences of having CTL on the mortgage had not been explained to her and she would be making a complaint. The mortgage adviser also confirmed that she was not sure whether Miss M was eligible for the Mortgage Charter as she was a non-UK resident. However, the mortgage adviser was not persuaded the term extension Miss M had asked for would materially help her situation as the underlying problem of the interest rate increasing significantly would still happen. The mortgage adviser indicated that she could not help Miss M as BoS' procedures required her to refer any customer who had said they would be unable to afford their mortgage to another team – the financial assistance team. Contact details were provided for that team, so Miss M could contact it when convenient.

The same day Miss M spoke to the financial assistance team and explained her situation. The adviser offered to walk Miss M through the Mortgage Charter form to apply to change to an interest-only basis for six months. Miss M told the adviser that she had already filled in a form, spoken to a mortgage adviser and had been told that she needed to speak to the team that dealt with financial assistance. She said that she needed to be told what all of her options were. BoS explained that it could look at reduced and zero payment concessions for up to three months, which might then be extended after review. The remainder of the conversation related to an assessment of Miss M's income and expenditure to establish if BoS could offer her any financial forbearance options outside of the mortgage charter. BoS offered a three-month plan of reduced payments. It was confirmed that most of the underpayments would be covered by some historic overpayments, so she would only be in around £200 of arrears at the end of the arrangement. Miss M accepted the payment arrangement.

The fixed interest rate on part of Miss M's mortgage ended on 31 October 2023. This meant the rate increased from 1.86% to 9.24% including the 0.5% CTL addition.

BoS responded to the complaint in a letter of 26 October 2023. It confirmed that if a mortgage had CTL attached to it, any existing residential interest rate product would continue to apply, but when it expired, the mortgage won't be eligible for a new one. BoS quoted from the CTL application from Miss M which detailed this fact. As such, BoS was satisfied it had made Miss M aware that her mortgage would revert to SVR on 1 November 2023.

Miss M wasn't satisfied with BoS' response and asked this Service to consider her complaint. One of our Investigators did so, but she didn't recommend that the complaint should be upheld. She was satisfied Miss M had been made aware when she applied for CTL that she couldn't have new interest rate products while it was attached. Furthermore, as BoS reviewed Miss M's circumstances when she told it she would find the increased monthly payment difficult to pay, offered her an arrangement and the option of looking at further forbearance in the future, the Investigator considered BoS had treated Miss M fairly.

Miss M didn't accept the Investigator's conclusions and was unhappy with how the Investigator had set out her conclusions and had explained Miss M's situation and submissions. Miss M complained that the Investigator didn't comment on her concerns that the terms of the CTL had changed from there being no review for three years, to it being done yearly, which she thinks is unfair. She said that she wanted us to review BoS' process around CTL and its terms and conditions updates not being sent to customers like her. Miss M said that the correspondence in June 2023 about the extension of the CTL had been

'very, very confusing' and she confirmed that was her focus in making the complaint. She said when BoS said it would be doing checks to decide whether to extend the arrangement, she assumed it would not allow her to continue with CTL if it had knowledge that her circumstances had changed, e.g. she wasn't moving back into the property as she had indicated on the original application, or that her mortgage product was coming to an end, which could impact affordability. Miss M said that the automatic renewal of the CTL and the whole experience with BoS had caused her stress.

The Investigator provided a further response, but her conclusions didn't change – that she thought Miss M had been treated fairly by BoS. As Miss M didn't agree, it was decided that the complaint should be referred to an Ombudsman for consideration.

It has been confirmed that a six-month interest-only concession was applied to Miss M's mortgage under the Mortgage Charter on 1 March 2024.

I issued a provisional decision on 6 September 2024, in which I set out my conclusions and reasons for reaching them. Below is an excerpt.

*'As I have detailed above, Miss M applied for CTL in the summer of 2022. The CTL was granted for a period of 12 months and, if she wanted to continue to rent the property, she could request that the CTL be extended for further 12-month periods, up to a maximum period of three years if she remained eligible. If at any point Miss M no longer wanted the CTL, she had to inform BoS that was the case and provide evidence that she had moved back into the property.'*

*In 2023 BoS didn't change any of these terms; all it did was remove the need for borrowers to remember to ask for the CTL to be renewed. I note that Miss M is unhappy that she was not provided with new terms and conditions, but I don't think she was materially disadvantaged by this. The only difference to the terms and conditions was that Miss M didn't have to remember to fill out a new form each year - it was simply a change to the administrative arrangements for the CTL.*

*Miss M has said that she found the correspondence about the CTL being reviewed confusing. Miss M would have known that her CTL was due to expire in a couple of weeks when BoS wrote to her, and that if she wanted to keep the arrangement, she would have to ask for it to be renewed. Having not actively asked for the CTL to be renewed, I can understand that BoS telling her it was in the process of reviewing the CTL could have been a little confusing. However, it doesn't appear that Miss M raised any questions about the situation at the time, nor did she object to the CTL being renewed, as I would have expected had she not wanted it to continue.*

*As for Miss M not being aware that CTL would stop her being able to get a new fixed interest rate product when the existing ones expired, I am satisfied that BoS did make her aware that would be the case. It is clearly documented in the terms and conditions and on the application form she completed:*

*'... If the current mortgage product expires within the letting period my/our mortgage will revert to the lender variable rate. Whilst the property is let I/we will not be able to transfer onto any other mortgage products.'*

*Miss M may not have realised the impact this would have on her when she first applied for the CTL, as her first interest rate product was not due to end until around 18 months after she applied. However, I am satisfied she would reasonably have been aware that was the case when she decided to continue to rent the property after the first tenancy agreement ended. I can't find BoS was at fault in applying the terms of the CTL Miss M had agreed to.*

*That said, when Miss M asked BoS for assistance in October 2023, I don't think it handled things well. Miss M has said that the mortgage adviser told her that she couldn't convert her mortgage to interest-only or extend the term under the Mortgage Charter. Firstly, I would confirm that the Mortgage Charter didn't give Miss M the right to extend her mortgage if she was likely to struggle with her payments because of rising interest rates. Rather had BoS agreed a term extension under its normal forbearance arrangements, the Mortgage Charter would have given her the right to change the term back to what it was originally without having to prove she could afford to do so. That said, Miss M didn't get an answer to whether BoS would allow her to extend the term. Indeed, BoS didn't even seem to start an assessment of whether it would be willing to grant an extension.*

*In relation to the request Miss M did make under the Mortgage Charter, to convert the mortgage temporarily to interest-only, the mortgage adviser admitted that she was not sure if Miss M was eligible because she was not resident in the UK. The information provided by the mortgage adviser was not clear and unfortunately, Miss M seems to have, not unreasonably, left the conversation thinking that she could not have either of the alterations she'd requested. That was not the case in relation to at least the change to interest-only.*

*I am also persuaded having listened to the call recording more than once that, because the mortgage adviser was not sure of what Miss M was entitled to or eligible for, she wanted to move her on to someone else. Unfortunately, once Miss M got through to a member of staff who seemed to be more knowledgeable and knew Miss M was eligible under the Mortgage Charter for a temporary conversion to interest-only, she believed that she was not eligible. As such, when the member of staff offered to walk her through an application to change to interest-only, Miss M declined the offer. BoS' member of staff seems to have had the understanding at that point that Miss M had applied for changes to the term and repayment basis of the mortgage, and she had either been ineligible or those options could not help. The discussions moved on to consideration of alternative forbearance options. That was not unreasonable in the circumstances that the member of staff understood.*

*However, overall, I can only find that BoS failed Miss M when she initially asked for help. I am satisfied that, had the mortgage adviser gone to the effort of checking whether Miss M was eligible for the Mortgage Charter, Miss M would have applied for and been granted the interest-only concession under it, as she did after the three-month payment arrangement ended. I can't say for certain what would have happened at the end of the six-month concession if it had been granted from November 2023. However, given she returned to BoS for further assistance when the November 2023 payment arrangement ended, I think it likely that would still have been the case if BoS had it provided the level of service it should have. So I think what is likely is that Miss M would have had both the six-month interest-only concession and payment arrangement as she did, but in the opposite order. I don't consider that it would make any real difference to Miss M for the mortgage account to be rebuilt so that the sequence of the two forbearance arrangements is changed. However, BoS' poor service does mean that the mortgage account went into a small amount of arrears six months earlier than it should have. As such, I consider that BoS should reverse any interest that accrued on the arrears during that six-month period.*

*I also consider that Miss M was left confused and had the worry about making underpayments and the mortgage going into arrears six months earlier than should have been the case. I consider that BoS should pay her £350 compensation for the upset she was caused by its poor service.'*

Both parties confirmed that they accepted my provisional decision and the redress set out therein.

## **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.

Having revisited my provisional decision following reviewing the file again, and in light of the acceptance of both parties, I see no reason to alter my conclusions in this case.

## **Putting things right**

Bank of Scotland should:

- reverse any interest that accrued on the arrears that occurred from the November 2023 payment arrangement from January 2024 until July 2024; and
- pay Miss M £350 compensation.

## **My final decision**

My final decision is that I uphold this complaint in part. In full and final settlement of the complaint Bank of Scotland plc trading as Halifax should complete the actions detailed above in 'putting things right'.

Under the rules of the Financial Ombudsman Service, I am required to ask Miss M to accept or reject my decision before 11 October 2024.

Derry Baxter  
**Ombudsman**