DRN-5040653

Financial Ombudsman Service

The complaint

Mr S complains that Bank of Scotland plc trading as Halifax acted unfairly by declining his request to extend his interest only mortgage.

What happened

Mr S took out an interest only mortgage in 2009 for an initial ten-year term. The mortgage was extended via a broker application in 2016 and was due to be repaid in full in March 2024.

Mr S received a notification that the fixed interest rate on the mortgage was due to expire on 31 July 2022, after which the mortgage would revert to Halifax's standard variable rate (SVR). The letter invited Mr S to contact Halifax to discuss his options.

Mr S contacted Halifax and asked for a new fixed interest rate to cover the remaining term of his mortgage. Halifax declined this request as the shortest fixed interest rate it offered was for two years and Mr S' mortgage term was due to expire in approximately 19 months.

Mr S then asked that Halifax extend the term of his mortgage by a couple of months to allow him to take out a new fixed interest rate. He explained that if he were to revert to the SVR he would face financial difficulty and would see his monthly mortgage payment increase from around £240 to just under £800 in the first month, only for it to climb higher as rates continued to rise.

Halifax said it would not look to extend Mr S' mortgage on an interest only basis for a few months but it would be open to considering a switch to repayment and extending the term across several years. This initially looked affordable for Mr S, although he was unsure that this was the route he wanted to take. However, upon further review, Halifax declined this request on the ground that Mr S failed its affordability criteria when stress testing for possible future interest rate rises.

Mr S reverted onto the SVR, and Halifax suggested he utilise one of his other properties as a repayment vehicle to clear the debt ahead of the term end if he did not want to pay the higher rate of interest. Unhappy with how Halifax handled things and its ultimate outcome, Mr S complained.

Halifax looked into the complaint but did not uphold it. It reiterated that Mr S had the means to repay his mortgage early and avoid paying the SVR for too long. It also said it would not be in Mr S' best interests to extend his mortgage term as this would lead to him paying more in interest. It confirmed it did not have any fixed interest rate deals that matched the remaining term of Mr S' mortgage and highlighted that at one stage, Mr S was intending to sell the mortgaged property which would lead to an early repayment charge (ERC) being applied if this happened before the end of a fixed interest deal.

Dissatisfied with Halifax's response, Mr S referred his complaint to our Service.

I issued a provisional decision upholding the complaint earlier this month. While I accepted

Halifax was entitled to set its own eligibility criteria and that a fixed rate must end no later than the end of the mortgage term, I did not think it had fairly applied its internal policy to Mr S' individual circumstances. In declining to consider an interest only extension, Mr S experienced acute financial difficulty which could have been avoided and ended up paying Halifax significantly more in interest on the SVR than he would have done had Halifax extended his mortgage term to allow him to take out a fixed interest deal.

Mr S responded to my decision to say he accepted my findings.

Halifax also accepted my provisional decision but asked for clarification on how the compensation should be paid.

As both parties have now responded it is appropriate for me to move to 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 have included my provisional findings below as they form part of this final decision.

"When Mr S' previous fixed interest rate ended on 31 July 2022, he had less than two years remaining on his mortgage. Halifax offers a range of rates to its customers, the shortest being a two-year fixed interest rate. A fixed rate must end no later than the end of the term of the mortgage, and as Mr S' mortgage had less than two years to run, that meant he was not eligible for a new rate without amending his existing mortgage.

Halifax is entitled to decide what products it makes available to its customers, and it's entitled to have eligibility criteria, which some customers will meet and others won't. But Halifax should think about whether that results in a fair outcome in an individual case. Very occasionally, as in this case, there will be cases at the margins where a rigid application of a policy or procedure produces an unfair result.

The reason Halifax says Mr S could not take out a new rate was because the term on his mortgage was too short. And while it did explore extending the term of his mortgage if he were to switch to a capital repayment mortgage, it declined to consider extending Mr S' mortgage on interest only terms for such a short period.

I think Halifax should have looked to extend Mr S' mortgage on an interest only basis in July 2022 when he first asked for help. At that time, Mr S was not in arrears, but explained he would struggle financially to meet the repayments on the SVR and was looking for assistance.

The rules of mortgage regulation say that lenders should treat their customers fairly – including by assisting them to avoid arrears. The rules say lenders should consider, amongst other things, extending the term, changing the repayment type, deferring interest or payment and capitalising arrears. Not all of these will be appropriate in every case – and none will be appropriate in some cases – but they should be considered.

In this instance, in addition to its own policies and the regulatory requirements set out above, Halifax needed to consider whether extending Mr S' interest only mortgage was in his best interests. In response to the complaint, it has said it did this but did not think it was in Mr S' best interests to extend the term. It explained this would lead to him paying Halifax more interest across those additional months which, given he had assets that he could use to redeem the mortgage, would not be appropriate.

But Mr S was not out of term or at the end of his term and refusing to repay his mortgage by the pre-agreed date. Instead, he still had around 19 months to go before the debt fell due. By reverting to the SVR for this time, he would experience acute financial difficulties and I'm not persuaded Halifax's response that he repay his mortgage early, was fair or reasonable in the circumstances.

I also disagree with Halifax's rationale that extending Mr S' mortgage on interest only terms by a few months would lead to him paying more interest. Instead, by not extending the term Mr S paid significantly more in interest to Halifax across the remaining mortgage term than he would have done had the mortgage been extended by five months to allow a new fixed rate to be taken out. And Mr S has told us that this caused him financial difficulty and significant worry about how to meet the substantially increased mortgage payments across the period in question.

I find it hard to see that extending Mr S' mortgage by a couple of months would have significantly altered the risk of lending for Halifax. And not doing so has had significant consequences to Mr S, in that it almost instantly quadruped his monthly mortgage payment and that he would face unpredictable and notably higher monthly repayments for around 19 months. I can understand why that came as a shock to him.

I don't therefore think it was fair for Halifax not to consider extending the term of Mr S' mortgage on an interest only basis in 2022. Doing so, at that time, would have helped Mr S with his immediate financial difficulties and made his monthly payments more affordable by virtue of allowing him to select a fixed interest rate which would have been lower than Halifax's SVR."

Having reviewed the complaint in full again and as both parties have accepted my initial decision, I see no reason to depart from my provisional conclusions. So, it follows that I uphold this complaint.

Putting things right

In all the circumstances of this case, I think the fair thing for Halifax to have done was to have extended the term by approximately five months so that Mr S could take a new fixed rate for the remainder of his mortgage. So that is the position Halifax should now take steps to replicate.

As Mr S has repaid his mortgage, Halifax should:

- Calculate how much Mr S paid towards his mortgage between 1 August 2022 and the date it was redeemed.

- Calculate how much Mr S would have paid towards his mortgage between 1 August 2022 and the date the two-year fixed interest rate would have expired had he been able to take it out at the time.

- Refund the difference to Mr S and add 8% simple interest per annum* from the date Mr S paid each instalment toward his mortgage to the date of settlement.

**If Halifax considers that it's required by HM Revenue & Customers to deduct income tax from that interest, it should tell Mr S how much It has taken off. It should also give Mr S a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.*

I am aware Mr S repaid his mortgage before the two-year fixed interest rate would have expired, but I'm satisfied this was because Halifax did not agree to extend his mortgage term. Had it agreed to extend the term to allow a new fixed rate to be taken, I am satisfied Mr S would have waited to the end of the fixed term before redeeming the mortgage in order to avoid paying an ERC.

Halifax has suggested that it would normally just pay the difference between what Mr S paid toward his mortgage on the SVR and what he would have paid had he been on the fixed rate for the months Mr S actually made payments to the mortgage. However, I have allowed Halifax to deduct the extra Mr S *would have* paid towards his mortgage had his term been extended by a further five months. It says this makes it difficult to calculate the 8% interest element of the award.

I am satisfied its fair for Halifax to take into account that Mr S would have had to pay further instalments towards his mortgage had the term been extended to allow a new fixed rate been taken out. To not take this into account would lead to Mr S being overcompensated which would not be fair.

I acknowledge this makes the 8% interest element of the award harder to calculate. But I see no reason why Halifax can't carry out the three steps set out above before then deducting the extra Mr S would've needed to pay under the term extension. While this may not be an exact reflection of how Mr S' finances would have looked had things happened as they should have at the time, I'm satisfied it puts Mr S as close to that position as possible while taking account of the practical realities of retrospectively calculating redress.

I also maintain my conclusion that Halifax's decision caused Mr S considerable upset. And having to find such a significant extra sum of money over a notable period of time caused him substantial inconvenience. So, I direct Halifax to pay £300 to recognise the avoidable distress and inconvenience caused.

My final decision

I uphold this complaint for the reasons detailed above and direct Bank of Scotland plc trading as Halifax to compensate Mr S in the way I have set out.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 23 October 2024.

Lucy Wilson
Ombudsman