

The complaint

Mr and Mrs S complain that Bank of Scotland plc trading as Halifax repeatedly confirmed they were on a variable rate, when it had actually committed them to a new fixed rate. Mr and Mrs S say they didn't want that, and it cost them more when they moved house.

What happened

Mr and Mrs S said they had spoken to a broker about their mortgage in July 2023, when all the rates were going up. They knew their existing fixed rate was coming to an end, at the end of September. They said they had discussed staying with Halifax, and perhaps extending their existing property. They told us the broker said he'd locked in a rate for them, but they could cancel that.

Mr and Mrs S said they then got a letter from Halifax telling them the fixed rate on their mortgage was ending, and they were going onto the variable rate. They said by this time they'd decided not to extend their property, and were planning to move house soon instead. They said they didn't get any paperwork from Halifax telling them they were going to be on a fixed rate. And they said they'd spoken to Halifax a couple of times in the month before this new rate was applied, and Halifax had confirmed on those calls that the rate was variable.

Mr and Mrs S said these calls were important. At the time when those calls happened, they were still in time to cancel the fixed rate, and stop it being applied to their mortgage. They were clear that they were already arranging to move house, so wouldn't have wanted a mortgage deal which was fixed, and would involve a large Early Redemption Charge ("ERC") when they did decide to move.

Halifax accepted it had made a mistake on these calls, and it said it would pay Mr and Mrs S £300 to say sorry for that. It also later said it would pay £40, for problems getting recordings of these calls to Mr and Mrs S. But it wouldn't refund the ERC.

Halifax said Mr and Mrs S applied for a new fixed rate through a broker on 5 July 2023. That was to come into effect on 1 October 2023, after their previous fixed rate ended. Halifax said the broker should have given Mr and Mrs S a mortgage illustration and product transfer offer, detailing the new interest rate. Halifax said they'd chosen a fixed rate of 5.28% until 31 October 2028. The broker accepted this on Mr and Mrs S's behalf, and was responsible for them agreeing to it.

The acceptance of the rate was future-dated by the broker, so the rate was put in place on 5 September 2023, and on 6 September 2023 Halifax wrote to them confirming the new rate would be applied from 1 October 2023.

Halifax said it had also sent a letter telling Mr and Mrs S that their old fixed rate was due to end on 30 September, and they would be going onto the standard variable rate, but that letter was automatically generated before their new deal was completed.

Halifax accepted it had told Mr and Mrs S, on calls on 15 and 18 September, that they were about to go on a variable rate. But it said on the call on 15 September, the agent relied on

what Mr and Mrs S had told her, that they hadn't applied for a new fixed rate. Halifax was sorry its agent didn't check their mortgage, to see a fixed rate was about to be applied. And on 18 September, the agent just confirmed the rate Mr and Mrs S were going onto was variable.

But Halifax said it felt the paperwork Mr and Mrs S were given clearly set out what was happening. The confirmation of the new deal on their mortgage told them what rate was being applied, and their annual mortgage statement then told them they were on a fixed rate.

Halifax said the ERC of £14,237.64 had been properly charged, and it wouldn't refund it.

Halifax wrote again twice, to apologise for not letting Mr and Mrs S know how long it would take for the complaint correspondence to reach them, and to apologise for problems sending them copies of the calls of 15 and 18 September.

When this case came to our service, Halifax stressed that Mr and Mrs S had received two separate mortgage illustrations, the mortgage offer, a completion letter and an annual statement that all made reference to a product transfer to a fixed rate, commencing on 1 October 2023. So it couldn't see how Mr and Mrs S would be unaware of this application or the implications of it.

Our investigator didn't think this complaint should be upheld. She said the offer documents were posted to Mr and Mrs S in July, and an email to their broker confirmed the product transfer would take effect on 1 October 2023. Halifax then sent a product transfer letter to Mr and Mrs S at the start of September.

Halifax accepted it had made mistakes on two calls in September, but our investigator said Mr and Mrs S had told Halifax that no new interest rate had been arranged, on the first call. That was wrong.

Our investigator said that a payment of £300 did fairly resolve this complaint, she didn't think Halifax had to do more than that.

Mr and Mrs S objected, they said they didn't know they were entering into a fixed rate deal on their mortgage, and had received confirmation from Halifax that they were on a variable rate. They said this wrong information was given to them prior to any deal starting and if Halifax hadn't given wrong information then, it would have saved them over £14,000.

Mr and Mrs S also queried whether the broker Halifax showed on the offer was the right one. They said that wasn't their broker. Our investigator said that hadn't formed part of their complaint to Halifax, so we couldn't consider this now.

Because no agreement was reached, this case came to me for a final decision. And I then reached my provisional decision on this case.

My provisional decision

I issued a provisional decision on this complaint and explained why I did propose to uphold it. This is what I said then:

It seems likely that there has been some confusion around Mr and Mrs S's fixed interest rate mortgage application. They told us that they thought this rate had been reserved for them, but have indicated that they didn't understand they were committed to it.

With that in mind, I've reviewed the communications from Halifax. I can see Halifax issued an offer letter, which I do think was clear about what Mr and Mrs S were accepting. But Halifax also told us this acceptance was post-dated, so it was sometime later when confirmation of the deal was issued.

I note this confirmation arrived around the same time as a letter telling Mr and Mrs S that they were going onto Halifax's SVR, of 8.74%. The confirmation letter Halifax issued on 6 September told Mr and Mrs S that they were going onto a rate of 5.28%. That letter gave Mr and Mrs S 28 days to change their mind. But, importantly, nowhere in that letter does it confirm that the rate Mr and Mrs S are about to transfer to, is a fixed rate. The details of the deal they had entered into weren't set out there.

Mr and Mrs S rang Halifax on both 15 and 18 September. On both those dates, the call recordings show they passed security, and Halifax was discussing their own account with them. These were not just general enquiries. And on both those dates, Halifax confirmed that they were moving onto a variable rate.

It does seem likely that this was important to Mr and Mrs S. They didn't call to ask this question, but they did check that the rate was going to be variable, on each call. So it also seems likely that if they had been told they were in fact going to change to a fixed rate, they would have asked Halifax if it could still stop that.

Halifax would have been able to do that for them. They were still within their cancellation period, on both these calls. Halifax said the statement it sent to Mr and Mrs S was clear that they were on a fixed rate, and gave details of this, but that was sent after the end of the cancellation period.

I don't think Halifax is responsible for the initial confusion, however that has occurred, which meant Mr and Mrs S ended up taking out a mortgage deal they didn't want. But I do think it's responsible for the information it gave them after this.

Halifax had a responsibility to give Mr and Mrs S the right information at the right time, in a clear and understandable way. It failed to do that, twice, in response to clear questions from Mr and Mrs S. And if Halifax had given Mr and Mrs S correct information about their mortgage on either 15 or 18 September, they would not have had to pay an ERC of over £14,000, only a few months later.

Because of that, I think Halifax should rework Mr and Mrs S's mortgage now, as if it had gone onto the standard variable rate on 1 October. That will mean Halifax should refund the ERC that Mr and Mrs S were charged when they redeemed this mortgage. Halifax may deduct from this amount the difference between the monthly payments Mr and Mrs S made on their fixed rate, and the higher payments which would have been made on the SVR up until that date. Halifax may also deduct the payment of £300 in compensation which it made for wrong information given on these dates. But Halifax may not deduct the payment of £40 it made for delays in getting call recordings to Mr and Mrs S.

Halifax should pay interest on this refund amount (after the above permitted deductions) at 8% simple from the date Mr and Mrs S paid the ERC, until the date Halifax pays this refund.

Because Halifax isn't otherwise responsible for the initial mistake here, putting Mr and Mrs S onto a deal they said they didn't want, I don't think Halifax has to pay compensation as well.

I think that would provide a fair and reasonable outcome in this case.

I invited the parties to make any final points, if they wanted, before issuing my final decision. Both sides replied.

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 S said they agreed, and had nothing further to add. Halifax replied to object.

Halifax said Mr and Mrs S had suggested they never saw the Key Facts document for their new mortgage, the offer or the completion letter for the product transfer. But Halifax said Mr and Mrs S did get its letter telling them they were moving onto the SVR. That letter confirmed their new monthly payment would be £2,294.48.

Halifax said that on the call of 18 September 2023 Mr and Mrs S referred to having difficulties meeting their payments. So Halifax said, with hindsight, it thought Mr and Mrs S were surprised on that call to be told their upcoming payments were so low, in comparison to the letter they had which told them they were going onto the SVR.

Halifax thought that meant Mr and Mrs S didn't have the letter confirming the product completion. It also thought Mr and Mrs S must have overlooked or misunderstood that they had applied for a product transfer and that it was this rate that was being applied. Halifax said it would agree its agents missed opportunities to double check if a new rate was being implemented, on the calls on 15 and 18 September 2023.

Halifax didn't think the omission of details of their new rate, in the product transfer letter Mr and Mrs S were sent, had affected this case, because it didn't think Mr and Mrs S had received this letter. So it didn't think that's why Mr and Mrs S thought they were on the SVR.

Halifax said it had sent Mr and Mrs S an annual statement on 2 November 2023. But Halifax said Mr and Mrs S didn't get in touch with it, between September 2023 and March 2024, to query the significantly lower payments, or ask why their annual statement said their mortgage was on a fixed rate, with an ERC.

Halifax also said that Mr and Mrs S requested redemption statements, which set out that the mortgage was subject to an ERC.

Halifax said it thought Mr and Mrs had realised their payments were lower than they should be, but that suited them at the time. So they didn't want to do anything to change their outgoings, including cancelling their product transfer.

Halifax said it couldn't understand how Mr and Mrs S could have received a product maturity letter, but not the key facts, the mortgage offer, the completion letter nor the annual statement, and then could overlook all of the redemption quotation. Halifax said those documents made clear that a new fixed rate product was being applied for, had been implemented and would make a difference to their payments. Taken together they also made clear that the mortgage was subject to an ERC.

Halifax wanted me to reconsider.

Although it's not entirely clear, Halifax's argument appears to be that Mr and Mrs S knew full well that they were going onto a fixed rate, then knew they were on a fixed rate, but didn't do anything because it suited them to keep their payments low.

With respect, I disagree. And I don't think that Halifax's summary above fully reflects the facts of this case. I will start there.

Halifax now says Mr and Mrs S didn't get in touch to query their payments and the position of their mortgage between September 2023 and March 2024. But Halifax has previously shown us that Mr and Mrs S raised their complaint during this time. Halifax's letter responding to a complaint about the fixed rate on their mortgage was dated 26 January 2024. And in that letter, Halifax said it would be sending a transcript of the calls from 15 September and 18 September.

I do think it's taken Mr and Mrs S a little while to work out how exactly things have gone wrong here. We know this fixed rate mortgage was taken out through a broker. I understand Mr and Mrs S then stopped working with that broker. And their acceptance was post-dated, which has clearly complicated things for them. But I do not think there is any merit in Halifax's argument that Mr and Mrs S kept quiet about the position of their mortgage, because it suited them to make lower payments, then complained as the mortgage was redeemed.

I still don't think Mr and Mrs S had understood, before the 15 and 18 September calls, that they were going onto a fixed rate mortgage. And on these calls, Halifax very clearly confirmed that they were going onto a variable mortgage.

I don't think, as Halifax has suggested, that Mr and Mrs S thought they were on the SVR. I think that they thought they'd gone onto a new rate, but that rate was variable. That would explain why Mr S said, on the second call, that he would take the rate of 5.28% that Halifax had offered, and he wanted confirmation in writing. This exchange does suggest there had been some confusion here, but Halifax didn't follow this up on the call.

Halifax then points to documentation it issued after Mr and Mrs S's cancellation period was up, the annual statement and redemption statements, which Halifax said made the position clear. I think it is arguable that these don't affect this complaint at all, because Mr and Mrs S were then too late to cancel the fixed rate. However, I do think it's worth considering these, because Halifax has now suggested Mr and Mrs S went along with their new rate, because it suited them to do so.

Halifax tells us it issued an annual statement in November. That does make clear that Mr and Mrs S were on a fixed rate. And it issued a number of redemption statements in early 2024. But I've set out above why I don't think that Mr and Mrs S just ignored these, and the position of their mortgage, until the mortgage was redeemed.

For the reasons set out above, I haven't changed my mind in this case. I'll now make the decision I originally proposed.

My final decision

My final decision is that Bank of Scotland plc trading as Halifax must refund the early repayment charge that Mr and Mrs S were charged when they redeemed this mortgage.

Bank of Scotland plc trading as Halifax may deduct from this amount the difference between the monthly payment Mr and Mrs S made on their fixed rate applied from 1 October 2023 until the mortgage was redeemed, and the higher payments which would have been made

on the SVR from 1 October 2023 up until that date. Bank of Scotland plc trading as Halifax may also deduct the payment of £300 in compensation which it made for wrong information given on these dates.

Bank of Scotland plc trading as Halifax must pay interest on the refund amount (after the above permitted deductions) at 8% simple from the date Mr and Mrs S paid the ERC, until the date Halifax pays this refund. HM Revenue and Customs requires Bank of Scotland plc trading as Halifax to take off tax from this interest. Bank of Scotland plc trading as Halifax must give Mr and Mrs S a certificate showing how much tax it's taken off if they ask for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S and Mr S to accept or reject my decision before 29 October 2024.

Esther Absalom-Gough

Ombudsman