

## **The complaint**

Mr K complains that Bank of Scotland plc, trading as Halifax, mis-sold him a mortgage. He says it lent to him irresponsibly and gave him a residential mortgage instead of a buy-to-let mortgage as he should have had. He also complains about the additional interest rate of 1.5% a year that Halifax charged him for letting the property.

## **What happened**

In 2008, through a broker, Mr K took out a mortgage with Halifax to fund the purchase of an investment property. He says he understood he was getting a buy-to-let mortgage. He already had a residential mortgage with another lender in the same group of companies as Halifax and which Halifax knew about.

The purchase price of the new property was £144,000. Mr K borrowed around £140,000 plus fees on an interest-only basis over a term of 25 years. The mortgage was on a fixed interest rate of 6.09% until 31 March 2010, after which the interest rate reverted to Halifax's standard variable rate.

In 2011 Mr K sold his residential property and consulted a different mortgage broker. He says it was only then that he found out the Halifax mortgage was a residential mortgage and not a buy-to-let. He contacted Halifax to discuss changing the mortgage onto a buy-to-let basis but was unable to do so because the property was in negative equity. He says he also discussed taking a new interest rate on the mortgage but Halifax said he couldn't have one.

Mr K took out a new residential mortgage, also with Halifax, on the new property he was buying to live in. In 2012 Halifax began applying an added interest rate of 1.5% a year to the mortgage Mr K had taken in 2008, because the property was being let without its consent.

In 2023 Mr K asked Halifax for documents relating to the 2008 mortgage, and he then made a complaint. He said the mortgage had been mis-sold to him because it wasn't the buy-to-let mortgage he thought he was getting, and Halifax had lent irresponsibly because it knew he had an existing residential mortgage and another mortgage wasn't affordable. He was also unhappy with the added interest rate Halifax had applied to the mortgage without telling him. He said Halifax's mistake in 2008 meant he couldn't later get new interest rate products, the property has been in negative equity since he bought it, and the situation has had a huge impact on him financially and mentally.

Halifax said that Mr K had applied through his broker for a residential mortgage, so that's what he had got, and the broker was responsible for any advice they had given him. It said it had understood he would be repaying his existing residential mortgage, and the condition in the mortgage offer which said he didn't need to repay the existing mortgage was a mistake. It also said Mr K knew in 2011 that he had two residential mortgages because he discussed the matter with it then. It accepted however that it hadn't told him about the 1.5% added interest rate in 2012 because it had sent letters to the wrong address. It offered to remove the added rate and refund all the additional interest it had charged – either by re-working the mortgage, or by paying Mr K the overpayments he had made plus interest at 8%. It also paid Mr K £150 compensation.

Mr K initially asked for the interest refund to be made to the mortgage, but later asked for the payment to be made to him. On 23 August 2023 Halifax paid him two amounts: £28,311.65 for the overpaid interest and £9,073.79 for interest on the overpayments less tax.

In January 2024 Mr K sold the mortgaged property. The proceeds of the sale weren't enough to repay the mortgage in full, but Mr K settled it by other means. He also referred his complaint to the Financial Ombudsman Service. Our Investigator said we couldn't look at Mr K's complaint about what happened when he took out the mortgage in 2008, because he had left it too late to complain about that. She said we could look at his complaint about the added interest rate of 1.5% that Halifax applied to his mortgage from September 2012 onwards. She considered that and concluded that Halifax had done enough to put things right.

Mr K didn't accept that conclusion and asked for an Ombudsman's review. He thought we should be able to consider all of his complaint, and he wasn't confident that Halifax had paid him the right amount of compensation or a fair amount for the years of stress and hardship he had been caused.

The complaint was referred to me. I issued a separate decision confirming the scope of my power to consider this complaint. I said that I can't consider Mr K's complaint about Halifax's decision to lend him the mortgage on residential terms in 2008, because he has complained about that too late, but I can consider his complaint about the 1.5% added interest rate Halifax applied to the mortgage.

This decision sets out my conclusions about the merits of the part of the complaint I can consider.

### **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.

Halifax began applying the added interest rate of 1.5% a year in September 2012. It did so because Mr K had told it in 2011 that he was letting the mortgaged property. It had written to him several times in 2011 and 2012 saying that it understood the property was being let and he needed to apply for its consent to let. If he didn't do so it said it would add 1.5% to the mortgage interest rate. It didn't hear from him, and so it added the rate.

Halifax had, however, been writing to the wrong address. So Mr K didn't know about the added interest rate or what he needed to do to stop it being applied. The added rate also wasn't set out separately on his annual mortgage statements.

After Mr K complained in 2023, Halifax accepted that it had made mistakes and offered to refund the additional interest it had charged as a result of the 1.5% added rate since 2012. It also removed the added rate from the mortgage. I think that was a fair and reasonable approach for it to have taken, because it had the effect of putting right Mr K's financial loss.

Mr K chose to have the refund paid to him rather than have it taken off the mortgage. Halifax therefore applied interest to the overpayments of interest he had made, at an annual rate of 8% simple from the date of each overpayment, less tax at the basic rate. That's in line with the Financial Ombudsman Service's approach to awarding interest on money that a consumer has overpaid.

There has been some confusion about how much Halifax has paid Mr K after Halifax mistakenly told our Investigator that it had paid him just over £67,000. The Investigator has since clarified that with Halifax and asked for evidence of what it paid and when, as well as its calculations. The Investigator has provided those calculations to Mr K.

Halifax's records show that it has paid Mr K:

- £150 on 10 August 2023
- £28,311.65 on 23 August 2023
- £9,073.79 on 23 August 2023

I recognise that Mr K isn't confident that Halifax's calculations are correct, but he hasn't pointed to any particular mistakes in them and I find no basis on which to say that Mr K should receive further compensation for loss. Halifax stopped charging the extra 1.5% interest and paid Mr K compensation in August 2023, so I can't fairly require it to pay further compensation up to the date the mortgage was redeemed in 2024.

Finally, Mr K says the £150 Halifax has paid him for the impact on him of what went wrong doesn't go far enough, because of the effects of the mortgage on his health and finances. It's clear that he feels very strongly about this matter. I can't however make any award for the impact of Halifax's decision to lend the mortgage or because of the way it was set up in 2008, because I don't have the power to do so. And I think that £150 for the impact of the added interest rate on Mr K is fair in all the circumstances.

The added interest rate meant that Mr K had to find more money to pay the mortgage each month than he otherwise would have done. I've looked carefully at Halifax's records of its contact with him over the years, but there was very little contact. The only note of any financial difficulty was in early 2020, when Mr K took a payment deferral in the early stages of the coronavirus pandemic. I would expect Halifax to have offered other forbearance measures if Mr K had told it at other times that he was struggling, but I find nothing to indicate that he did so. I also think that much of the impact Mr K has described arose because of the negative equity the property was in and because he feels Halifax shouldn't have lent him the mortgage in the first place, and I can't make an award for that because it falls outside my jurisdiction.

For these reasons, I consider that Halifax has done enough to put things right and I don't require it to do or pay any more.

### **My final decision**

My final decision is that I don't uphold this complaint, in the sense that I consider Halifax has already paid fair and reasonable compensation so I make no order or award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 4 November 2024.

Janet Millington  
**Ombudsman**