DRN-5068670

The complaint

Ms M complains that Bank of Scotland plc trading as Halifax wouldn't allow her to port her mortgage to a new property.

What happened

Ms M has an interest only mortgage with Halifax. For personal and family reasons she needed to move to another property with more space. She applied to Halifax to port the mortgage to a new property – intending to keep the same mortgage balance without further borrowing.

Ms M had an initial conversation with Halifax staff who told her that she could port her existing fixed rate. However, when she formally applied, Halifax wouldn't allow her to port her existing mortgage balance in full. It said that she didn't have an acceptable repayment strategy for her interest only mortgage. Having assessed her application, it didn't think it would be affordable for her to switch to repayment terms – it would offer her a lower balance on repayment, but not the full amount of her current mortgage. Her current balance is around £130,000 but Halifax would only agree to lend around £50,000.

Ms M complained. She didn't think it was fair that Halifax wouldn't allow her to port her existing mortgage on a like for like basis. She said that without the full balance she couldn't afford to move house. This was having a substantial impact on her because her current property was no longer suitable for the needs of her family. As a result of Halifax's decision she lost out on the property she wanted to buy and this caused great upset not only for her but also for the rest of her household.

Halifax said it hadn't acted unfairly. It said it was willing to allow Ms M to port her interest rate to a new mortgage – but only if the new mortgage met its lending criteria. It said that Ms M didn't have an acceptable repayment strategy for interest only lending, and didn't meet its other interest only lending criteria – based on her income and the loan to value on the property she wanted to buy. So it could only offer a repayment mortgage at a reduced amount – but Ms M would be able to port her interest rate to that mortgage if she chose to accept it. Halifax offered Ms M £50 compensation for a delay in responding to her complaint.

Ms M wasn't happy with that and brought her complaint to us. Having reviewed it, I was minded to uphold the complaint. So I issued a provisional decision setting out my thoughts.

My provisional decision

I said:

> "This is a regulated mortgage, and so the rules of mortgage regulation apply. The rules were changed in April 2014, to strengthen the affordability and interest only checks lenders must carry out, following the financial crisis.
>
> The new rules say that lenders must apply a strict affordability assessment. And they also say that lenders must not offer interest only mortgages where the borrower does

not have a credible repayment strategy to repay the capital at the end of the term.

In addition to the rules, Halifax has its own lending criteria. It will only offer new interest only mortgages to borrowers whose income is above a certain threshold, and below a certain loan to value.

Porting doesn't mean simply administratively moving an existing mortgage from the old property to the new. It means repaying the old mortgage on sale, and replacing it with a new mortgage to buy the new property. It's the existing interest rate, not the mortgage, that's ported – the interest rate is moved from the old mortgage to the new to avoid paying an early repayment charge (ERC).

Many borrowers who took their mortgages out before the rules changed in April 2014 would have passed the old rules – but not the new, stricter, ones. So the regulator included provision for this in the new rules.

The rules say that, where a new mortgage is being taken out to replace an old one:

- An affordability assessment is not required provided there is no additional borrowing, and no other change to the mortgage terms which is material to affordability.

- An assessment of interest only repayment strategy is not required provided the old mortgage was taken out before 26 April 2014, provided that there has been no increase in the borrowing since that date, and provided the change is otherwise in the borrower's best interests.

The rules don't require lenders to apply these exceptions. However, lenders must also act fairly and reasonably – so I need to think about whether Halifax acted fairly in all the circumstances.

I'm satisfied that Ms M meets all the criteria. She wanted to port her mortgage on a like for like basis. So there was no further borrowing – and there hadn't been any since April 2014 either. Her mortgage was taken out in 2005, before the new rules were introduced. And, given what Ms M has said about her personal and family situation, I'm satisfied that porting her mortgage on this basis would have been in her best interests. It would enable her to move to a property that was more suitable for her and her situation. And while she wouldn't have a repayment strategy acceptable to Halifax, that would also be the case if she didn't port and retained the existing mortgage – so nothing would change there. Neither she nor Halifax would be exposed to any greater risk than was already the case. It's also worth noting that it's not the case that Ms M has no repayment strategy – she does, in the form of an investment property. It's just that her strategy wasn't acceptable under Halifax's current lending criteria.

Ms M also didn't meet its lending criteria for new interest only borrowing based on her income and the loan to value. But I don't think it was fair for Halifax to apply those criteria to her. She wasn't a new borrower. She had an existing mortgage which she simply wanted to replicate. Nothing would change other than the property over which the mortgage was secured. In applying new borrower criteria to an existing borrower, Halifax prevented Ms M from making a change to her living arrangements that was otherwise clearly in her best interests and which wouldn't have put either her or Halifax in a worse position than was already the case. I don't think that was fair and reasonable in all the circumstances.

For all those reasons, I'm satisfied that Halifax ought to have allowed Ms M to port her mortgage, on a like for like basis, to a new property. Refusing to allow her to do so wasn't fair, and so I intend to uphold this complaint.

In order to put things right, I'm currently minded to require Halifax to reconsider Ms M's porting application and allow it to proceed – provided that any new mortgage doesn't involve further borrowing or any other material change, and provided that any new property is suitable security for the lending, Halifax should offer her a new interest only mortgage over the same term and up to the same balance. The new mortgage should also not be at a greater loan to value than was available for the interest rate product code "FBI187" that Ms M took out in 2020. When it replies to this provisional decision, Halifax should confirm the loan to value band for that product.

Given the impact that Halifax's refusal to allow Ms M to port has had on her, in her particular family situation and in light of the unsuitability of her current property, I also think substantial compensation is merited. The refusal means that Ms M and her family will be living in a property that doesn't meet their needs for at least a year longer than would have otherwise been the case – potentially more as Ms M will now have to re-start her search for a new property and for a buyer for her current one. In the circumstances I think Halifax should pay her £750 compensation. That's in addition to the £50 it offered for delays in handling her complaint."

The responses to my provisional decision

Neither party had any further points to make.

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 done so, and having considered again my provisional conclusions, I see no reason to change my mind. I adopt what I said in my provisional decision as my final view of the complaint.

My final decision

For the reasons I've given, my final decision is that I uphold this complaint and direct Bank of Scotland plc trading as Halifax to:

- Allow Ms M to port her existing interest only mortgage on a like for like basis, provided that any new property is adequate security for the lending and within the loan to value range for product FBI187; and

- Pay Ms M a further £750 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 6 November 2024.

Simon Pugh
Ombudsman