

## **The complaint**

Mr S complains that Bank of Scotland plc trading as Halifax should've offered him a new fixed rate on his mortgage sooner than it did.

## **What happened**

Mr S took a mortgage with Halifax in 2017. The interest rate was fixed until June 2022. When the fixed rate expired, the mortgage moved to Halifax's standard variable rate (SVR).

Mr S' business was affected by the Coronavirus pandemic. By March 2022, he'd missed a number of payments and was in arrears of around £27,000. A suspended possession order (SPO) granting Halifax possession of the property was issued by a court in March 2022. This order couldn't be enforced as long as Mr S made the minimum payments the order set out.

By the time Mr S' fixed rate ended in June 2022, he was still in arrears of £26,000. At this time, Halifax didn't offer new rates to borrowers who were in arrears.

In April 2023, Halifax changed its policy so that it did offer new rates to borrowers in arrears. But Mr S was behind on the amount he should've paid under the SPO, and Halifax was seeking to enforce the possession order. So, it wouldn't offer him a new rate.

In February 2024, Mr S brought the payments due under the SPO up to date. Halifax then offered him a new five-year fixed rate, which he accepted.

In June 2024, Mr S complained that he'd been unfairly placed on a higher rate of interest since 2022. He wanted to know where in his contract it said he'd be placed on to the SVR if he didn't agree a new deal following expiry of his original fixed rate.

Halifax didn't uphold the complaint. It said the mortgage offer set out that Mr S' mortgage would revert to the SVR once the fixed rate expired. Halifax explained that it didn't offer new fixed interest rates to borrowers in arrears until April 2023 and, at this time, Mr S was facing eviction, so he wouldn't qualify for a new fixed rate.

Unhappy with this response, Mr S referred his complaint to our Service. One of our Investigators looked into the complaint, but he didn't think it should be upheld. He was satisfied the mortgage offer Mr S original agreed to set out that the mortgage would revert to the SVR upon expiry of the initial fixed rate. And he explained that Mr S wasn't entitled to take a new fixed rate under Halifax's criteria until February 2024.

Mr S didn't accept this. He said that as the SPO in 2022 allowed him to spread arrears over the remaining term, he should've been considered up to date with his payments. And he said he was told that he needed to stay on the SVR for 12 months before applying for a new rate.

Our Investigator considered these points, but still didn't think the complaint should be upheld. Mr S asked for his complaint to be reviewed by an Ombudsman. So, it's been passed to me to consider and make 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.

Although I've read and considered the whole file, I'll keep my comments to what I think is relevant. If I don't comment on any specific point, it's not because I've not considered it but because I don't think I need to comment on it in order to reach the right outcome.

First, I've reviewed the mortgage offer provided to Mr S in 2017. In the section that explains the fixed rate of interest, it says Mr S will pay:

*...an initial fixed rate until 30/06/2022 followed by a lender variable rate.*

*Halifax can change a lender variable rate at any time, after giving you notice that they are going to do so. Further information about when a lender variable rate can change can be found in the Mortgage Conditions booklet which is issued with the offer letter.*

Based on this, I'm satisfied that Halifax was entitled to revert Mr S' mortgage rate to the SVR when his initial fixed rate expired. This is very typical of mortgages once an initial rate expires.

There's no obligation for a lender to offer another rate following expiry of an initial rate. However, the majority of lenders, including Halifax, do. However, this is often dependent on the conduct of the account, including whether payments are up to date or not.

At the time Mr S' initial fixed rate ended his account was significantly in arrears. Halifax had a policy that meant that borrowers in arrears weren't eligible for new rates. This was a policy it was entitled to have in place.

Taking a new rate would typically mean that a borrower would be committed to the mortgage for a number of years unless they paid an early repayment charge (ERC). Given that Mr S' account was in arrears, and an SPO was in place, I think the risk of the property being taken into possession was significant. And by giving Mr S a new rate with an ERC would've been detrimental to Mr S as he would've needed to pay the ERC if the property was taken into possession and sold.

In April 2023, Halifax changed its policy so that borrowers in arrears could take new rates. However, as Mr S was still at risk of eviction; with active legal action ongoing, Halifax wouldn't allow Mr S to take a new rate. For the reasons I've previously set out, I'm satisfied this was a decision Halifax was entitled to make. And given that evictions were scheduled on a number of occasions (although they were ultimately cancelled) I don't think committing Mr S to a new rate with a significant ERC would've been in his best interests at that time.

Once Mr S had paid all that was owing under the SPO, he was able to take a new rate, and did so. Whilst I understand why Mr S is frustrated, as he thinks he could've been paying a lower amount of interest earlier, for the reasons set out above, I don't think Halifax has treated him unfairly in not offering him a new rate.

Mr S has said that he was told on a number of occasions that he would need to pay the SVR for 12 months before taking a new rate. I don't know if he was or not, but I don't think this makes a difference to the overall outcome of this complaint. I say this as, I can't see that Mr S was in a position to be able to take a new rate sooner than he did. So, even if he was incorrectly told this, he would've still been in the same position of being in arrears, or at risk of eviction, meaning he wouldn't have been eligible for a new rate under Halifax's policies.

I am aware that Halifax has since started legal action again because of Mr S' level of arrears. I can't consider that within this complaint, as it occurred after Mr S referred this matter to us. So, if Mr S wishes to complaint about that, he will need to first raise this with Halifax as a new complaint.

**My final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 13 February 2025.

Rob Deadman  
**Ombudsman**