

## **The complaint**

Ms W complains that Bank of Scotland plc trading as Halifax:

- Has overcharged her interest on her mortgage since 2009 when it incorrectly refused to allow her to take out a new rate without her ex-partner's permission.
- Failed to honor a refund it promised in 2018 following its decision to partially uphold her complaint.
- Incorrectly used an overpayment in 2019 to reduce a fees and arrears balance.
- Failed to help her secure a new rate in the summer of 2019 which led to her mortgage reverting to its standard variable rate (SVR) for two months.

## **What happened**

Ms W took out an interest only mortgage with her then partner in 2003. Ms W's partner left the family home in 2007 and was declared bankrupt in 2009 but he was not removed from the mortgage at this time.

Following expiry of the interest rate product on her mortgage in 2009, Ms W says she asked Halifax for a new interest rate product but was told that she would not be able to take out a new rate without her ex-partner's permission, which he did not provide. As such, Ms W remained on Halifax's SVR, despite frequent requests for a new rate over the years that followed.

At this time, Ms W has said she was a single mother to three children, running her own business and the sole carer for her grandmother so she began to experience "extreme" financial difficulty. Considering this, she sold part of the land her house was situated on to raise funds and started the process of gaining Halifax's permission to separate an annex on the land from the main security so it could be sold. She also listed her house for sale as she was struggling to meet her mortgage payments while on the SVR.

In 2018, following another complaint from Ms W regarding the rate of interest she was being charged, Halifax admitted it had made a mistake and offered to take steps to remedy this. It offered to honour the best rate that would have been available in 2013 (a five-year fixed interest rate) and re-work Ms W's account as if this had been applied when she requested a new rate in 2013. It did not offer to re-work the account from 2009.

During discussions in the autumn of 2018, it transpired that applying such a rate to Ms W's account at that point would not help her circumstances as she wanted to take out a two-year fixed rate. This was honoured by Halifax and Ms W's account was re-worked as though the rate had been applied in 2017 and additional compensation was paid for further costs incurred through an attempted house sale and for the distress and inconvenience caused. But Halifax did not issue a refund for the period of 2013 to 2017.

In the summer of 2019, Ms W asked Halifax to help her facilitate a new fixed rate to tie in

with the sale of the annex (initially due to complete in June 2019). In response, Halifax notified Ms W that if she were to sell the annex and make a lump sum payment in June 2019, she would likely incur an early repayment charge (ERC) as her existing rate was set to run until 31 July 2019. It also said that rates change all the time, and that Ms W should look online to see what rates may be available to her. Unfortunately, due to the nature of Ms W's mortgage, she was unable to proceed online, and she had to go into branch.

Ms W's mortgage reverted to the SVR on 1 August 2019 and the sale of the annex completed at the end of the same month. Ms W made a capital repayment of £160,000 to her mortgage account in early September 2019. Halifax used the funds to clear two of Ms W's sub accounts before placing the remaining amount against her main mortgage.

Ms W raised another complaint with Halifax covering the issues I have summarised above. In response, Halifax said it had already commented on the overpayment of interest in previous final response letters so it would not be commenting further.

In respect of the allocation of the overpayment, it explained its rationale for why it had allocated the payment in the way that it had, but it did not uphold her complaint.

Halifax also highlighted that it had told Ms W how she could secure a new rate in 2019 and therefore it was not willing to refund the two months of additional interest Ms W incurred by reverting to the SVR for August and September 2019.

Dissatisfied with Halifax's response, Ms W referred her complaint to our Service.

After the complaint was referred to our Service, we asked Halifax why it had not honoured the refund from 2013 to 2017 and asked that it do so now as this was having an ongoing impact to Ms W. Halifax agreed and made an offer to re-work Ms W's mortgage account as if a fixed interest rate had been applied to her account in 2013 and 2015.

We put this offer to Ms W, but she declined to accept it. In summary she said:

- It is not fair that Halifax are offsetting underpayments and arrears that have accrued on the account up to 2024 when calculating how much interest she was due to pay on the account. Instead, she thinks the compensation and re-work to the account should be applied to the account as it was in 2019.
- If fixed rates had been applied in 2013, 2015 and 2017 as they ought to have been, then she may not have had to sell some of her land to raise funds for the annex separation and she would've been able to carry out maintenance on her property which may have led to it being easier to sell today. She also thinks the products may have continued to run to later in 2019 and therefore she would've avoided going onto the SVR in August and September 2019 or incurring any ERCs.

Following Ms W's decline of Halifax's offer, I issued a provisional decision on the complaint earlier this month. In summary I said:

- Not all elements of Ms W's complaint fall within the jurisdiction of this Service by virtue of them having been referred too late under the rules I must follow. Namely, Ms W's continued unhappiness that Halifax did not offer her a new interest rate product between 2009 and 2013. As such, I was unable to investigate or comment on this aspect of her complaint.
- I was satisfied the recent offer proposed by Halifax remedies the ongoing impact of Ms W being overcharged interest between 2013 and 2017.

- I could understand why Ms W would want the offer applied to her account as it was in 2019, but I set out the need to take into account the status of the mortgage as it currently stands and so I did not intend to direct Halifax to discount the arrears and underpayments that have accrued since 2019.
- I set out that Ms W had been caused unnecessary distress and inconvenience by having to chase for the refund since 2017. So, I recommended Halifax pay £1,500 to recognise the distress caused.
- I could understand why Ms W was concerned about the allocation of her capital overpayment. But, given this had not led to any financial loss to Ms W, I was not persuaded to uphold this point.
- I thought there was more Halifax could have done in 2019 when Ms W asked for help in securing a new interest rate. It did not consider Ms W's circumstances at the time, and it provided her with inaccurate information. While I thought it should pay Ms W £250 in compensation for the unnecessary distress and inconvenience caused by this, I did not think this was the only reason Ms W reverted to the SVR. As such, I did not direct Halifax to refund the interest she incurred in those months.

Halifax accepted my provisional decision in full.

Ms W responded to say:

- She wanted me to reconsider whether our Service had the power to consider the original offer in 2018 and whether this ought to have gone back further. She provided some evidence to support the difficult circumstances she and her family were experiencing at the time and asked if this would be sufficient to grant her more time.
- Access to our Service was denied in 2017 because the account was still in joint names.
- The continued negotiations with Halifax after its 2018 offer, including those surrounding the sale of the annex, mislead Ms W into believing that intervention with our Service was not needed because Halifax was now helping her. Ms W says she was not made aware of the rules and the impact of those timescales on her complaint until she spoke to one of our Investigators in 2024 and she did not know the extent of Halifax's deception and delays until she received a response to her data subject access request.
- It was a slow and painful process getting Halifax to agree to backdate the rate to 2017 following its offer in 2018. Ms W considers this to be very poor service and damaging considering the awareness of previous errors since 2009.
- Ms W maintains her request that the offer to re-work her account is up to 2019 and does not include the later arrears and underpayments.

As the deadline for responding has now passed, it is now appropriate for me to issue my final decision.

## **What I've decided – and why**

Ms W did not agree with my finding that this Service does not have the power to consider the fairness of Halifax's offer made in 2018, including whether this should have gone back to 2009. As Ms W continued to disagree with this Service's jurisdiction on this point, I have issued a separate decision setting out how our jurisdiction applies to Ms W's complaint. I will not touch on the points covered in that decision here. I will now turn to the merits of the parts of Ms W's complaint that have been brought in time.

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

There has been a significant amount of information provided on this complaint and I would like to reassure the parties I have read and considered all submissions in full. 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.

### *Halifax's recent offer to re-work Ms W's account*

I set out in my jurisdiction decision that I am unable to comment on whether the offer Halifax proposed in 2018 is fair or whether it should have gone back to 2009 as Ms W believes. But I can consider Ms W's continued complaint that Halifax did not issue the full refund associated with this offer in 2018 and as such, the balance on her mortgage has remained artificially inflated since then. This is an ongoing complaint so falls within my jurisdiction.

Following our intervention, Halifax has now agreed to issue a full refund spanning the period of 2013 – 2017 as originally set out in its letter in 2018. In summary, it said it would:

- Reduce the mortgage balance as it stood on 30 September 2024 by £23,080.65.
- Refund the remaining overpayments of £749.50.
- Make a payment of compensatory interest of £10,403.47.
- Update the mortgage account to show that there were no arrears on the account as of 30 September 2024.
- Update Ms W's credit file to show that she had been arrears free on her mortgage for the six years prior to 30 September 2023.

Ms W declined this offer for the reasons I have set out above. So, I need to consider whether Halifax's offer removes the ongoing impact of her mortgage balance being too high from 2013 onward.

In response to my provisional decision Ms W has maintained that it would be preferable for the account to be re-worked up to 2019 and to exclude any arrears and fees charged since, particularly those charged since February 2023. But as I set out in my provisional decision, it is not possible to ignore the status of the mortgage as it stands today or the arrears that have accrued on the account.

Awarding compensation is not an exact science and when trying to remedy matters that occurred many years ago, it is often the case that we need to take a step back and determine whether the proposed offer puts the consumer into the position they would've been in had the error not occurred, as far as is possible. In this case, that means taking a step back and determining whether this offer removes the ongoing impact of Ms W's mortgage balance being inflated from 2013 onwards – an impact that continues to this day. And I am satisfied it does.

Halifax has told us it has reworked the account as if the best available two-year fixed rate was taken out in both 2013 and 2015 ahead of the rate that was backdated to May 2017. And each overpayment Ms W made during this time by virtue of being on Halifax's SVR rather than the proposed fixed rate has been noted and then offset against the missed payments that accrued on the account between 2013 and 2024. It has also paid compensatory interest on the overpayments.

Taking all of this into account, including Ms W's most recent submissions, I am satisfied that the recent offer proposed by Halifax remedies the ongoing impact of Ms W being overcharged interest between 2013 and 2017 (it has already issued a refund of the period of 2017-2018).

I am aware Ms W is now being offered a new fixed rate on which the ERC can be waived if she is successful in selling her property. She has questioned the impact of accepting the above offer from Halifax on that new fixed rate. I am unable to comment on the new rate being offered to Ms W outside of this complaint. But I would note that the above offer is to remedy a historic error on her account and ought not to influence Ms W's ability to take out a new rate with Halifax at the present time.

I set out in my provisional decision that Ms W has been caused unnecessary distress and inconvenience by Halifax since 2018 regarding this offer. She has repeatedly had to set out her case that because it did not issue a refund for the period of 2013 to 2017, despite accepting it had made an error across this period, her mortgage balance was inaccurate.

Given Ms W's circumstances, the long-standing nature of this issue and the efforts Ms W has had to go to on this point, I set out my intention to award £1,500 to recognise the distress and inconvenience caused to Ms W by Halifax not refunding her in 2018 when it said it would.

Halifax agreed to my recommendation on this point and Ms W did not provide any substantive comments on this element of my provisional decision. As such, I remain of the same conclusion that Halifax should compensate Ms W for the distress and inconvenience caused.

#### *Allocation of the capital overpayment across Ms W's sub accounts*

One of Ms W's complaint points is that when she made an overpayment £160,000 in 2019, Halifax used the sum to redeem her two sub accounts before applying the rest of the funds to her main interest only mortgage account. She describes this as Halifax helping itself to her money and reducing the benefit of the overpayment she made. She also disputes the accuracy of the amounts in the sub accounts given Halifax's omission in not paying the full refund in 2018 and its refusal to extend the offer to 2009.

Halifax will factor the sub accounts into its re-work of Ms W's mortgage account in line with the offer I have set out above. As such, any deductions made from the overpayment which otherwise would not have been made will be factored into the calculations.

More broadly, whether Halifax put the total mortgage balance in one account or spread it across three sub accounts, the balance on Ms W's mortgage remains the same and she will still owe the same amount to Halifax. So, splitting the overpayment across three accounts rather than one does not mean Ms W's overpayment is reduced or that her mortgage balance does not reduce – it does but across all three accounts.

As the distribution of the overpayment has not led to a financial loss to Ms W and is provided for within the mortgage terms and conditions, I do not uphold this element of Ms W's

complaint.

### *Product transfer in 2019*

Ms W is unhappy that Halifax did not assist her in securing a new fixed interest rate in the summer of 2019 so she could avoid reverting to the SVR.

I set out in my provisional decision that I think there was more Halifax could have done to help Ms W. It was clear and is supported by contemporaneous emails that Ms W had asked Halifax to help her find a new rate. In response, Ms W was told rates change all the time and that it would be best for her to look online.

However, given the type of mortgage held by Ms W, it was not accurate to direct Ms W online. And while Halifax says it would've sent Ms W a letter notifying her that her rate was expiring and that she could speak to a mortgage advisor to arrange a new rate, it was clear Ms W was vulnerable, currently liaising with a direct contact at Halifax and had asked for help.

To provide correct information, Halifax should've responded to Ms W's emails on this point by directing her to one of its mortgage advisers or her nearest branch rather than telling her to go online. Had it done this, it is reasonable to assume Ms W would've gone into branch sooner than she did.

However, as set out in my provisional decision, I do not think this means Halifax needs to refund the extra interest Ms W incurred by virtue of being on the SVR in August and September 2019. I say this because Ms W's sale of the annex was postponed to the end of August and the overpayment was not sent to Halifax until early September. Had a new fixed rate been in place by this time, Ms W would likely have incurred a notable ERC. So, it's more likely Ms W would always have been charged interest at the SVR for these two months.

I did however set out my intention to direct Halifax to award Ms W £250 to recognise the distress and inconvenience caused by being given incorrect information at what was already a very stressful time.

Halifax agreed to my provisional recommendation on this point and Ms W did not provide any substantive comments to the contrary. As such, I see no reason to depart from this conclusion.

### **Putting things right**

Halifax should now take steps to update its offer to re-work Ms W's account and make payment – subject to Ms W's agreement.

It should also pay a total of £1,750 to recognise the distress and inconvenience caused to Ms W for the reasons detailed in this decision.

### **My final decision**

For the reasons set out above, I uphold this complaint and direct Bank of Scotland plc trading as Halifax to compensate Ms W as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms W to accept or reject my decision before 15 January 2025.

Lucy Wilson  
**Ombudsman**