DRN-5258748

The complaint

Mr and Mrs C's complaint is about their mortgage account held with Bank of Scotland plc trading as Halifax. Mr and Mrs C are unhappy that, when their mortgage term was due to expire, Halifax refused to extend the term. Mr and Mrs C are also unhappy that their mortgage payments have increased because Halifax is applying its Standard Variable Rate (SVR), currently 8.24%.

To settle the complaint, Mr and Mrs C would like Halifax to offer them a term extension and reduce the mortgage interest rate.

What happened

In June 2007 Mr and Mrs C took out an interest-only mortgage with Halifax, on a non-advised basis. They borrowed £475,245 on an interest-only basis, over a term of 16 years. The mortgage offer states that Mr and Mrs C told Halifax they would be using an endowment policy to pay off the capital at the end of the mortgage term.

In September 2007, through their own independent financial adviser, Mr and Mrs C took out a further advance, borrowing £80,799 on an interest-only basis over a term of 16 years.

In January 2023 Mr C contacted Halifax to discuss what options were available for the mortgage. Mr C said the property was up for sale, and was told that Halifax could grant a grace period of up to six months if a sale was in progress. Mr C said that planning permission had been applied for to redevelop the property. The bank also explained that it would need to carry out a full affordability check based on income and expenditure (I&E) before being able to consider another mortgage.

In June 2023 Mr C told Halifax that he should know soon whether or not planning permission had been granted, and confirmed the property was on the market, as the repayment strategy was sale of the property, or a new mortgage. Again Mr C was told that the bank would need to assess I&E before being able to consider any application for a new mortgage.

The mortgage term expired on 30 September 2023, with an outstanding balance of just over £573,000. Halifax applied a six-month hold on the account because the property was on the market.

During a call with Mrs C in January 2024 Halifax explained that the interest rate to be applied would be SVR, at that point 8.74%. Mrs C was told that Halifax wasn't able to extend the mortgage term on an interest-only basis, or apply a new interest rate product to the mortgage. However, if I&E was provided, Halifax could review this and see if there was an alternative product it could offer.

Mr and Mrs C complained about the lack of support from Halifax, and about the interest rate. In its final response letter, Halifax said that if Mr and Mrs C wanted to go through an assessment of their I&E, the bank could consider a term extension on a repayment basis, and if this was agreed, a product switch onto a new interest rate product. However, Halifax confirmed that the mortgage was being correctly charged at its SVR, because the term had expired. Halifax urged Mr and Mrs C to keep in touch with its End of Term (EOT) term to discuss any available repayment options.

Dissatisfied with Halifax's response, Mr and Mrs C raised their complaint with our service. An Investigator looked at what had happened. She noted Mr and Mrs C had said that they believed the Mortgage Charter meant that Halifax was required to extend their mortgage term and decrease their payments. The Investigator explained that the Mortgage Charter wouldn't apply, because this was an expired interest-only mortgage. Therefore the repayments would stay the same whether or not the term was extended. The Investigator also noted that Mr C believed he'd been told by Halifax that he could extend the mortgage term by two years, but her review of the contemporaneous contact notes didn't support this.

In relation to the interest rate, the Investigator explained that any new interest rate product would come with an early repayment charge (ERC). Given that Mr and Mrs C were selling the property, it would be irresponsible for Halifax to apply a new interest rate product to which an ERC would apply. Overall, the Investigator thought Halifax had acted fairly.

Mr and Mrs C disagreed and asked for an Ombudsman to review the complaint. Mr C said that he'd been told by Halifax that, if a sale hadn't taken place within 12 months, they would be given a further 12 months before any recovery action would be considered. Mr C also said that Halifax had never mentioned that a different interest rate would apply, and his expectation was that during this time the interest rate would be the rate that he and Mrs C had already been paying under their previous interest rate product.

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.

First, I note that in its original final response, Halifax addressed an allegation that the mortgage and further advance had been mis-sold in 2007 on the basis that Mr and Mrs C hadn't been told they'd need a separate repayment vehicle. Halifax said that the sale of the main advance in 2007 was out of time, and that it hadn't sold the further advance and directed Mr and Mrs C to the broker which had arranged this for them.

Mr and Mrs C didn't raise these issues in their current complaint, but for the sake of completeness, I confirm that any complaint that the main advance was mis-sold by Halifax is out of time. The sale took place more than six years before the complaint was first raised with Halifax, and there is no later three-year time limit because Mr and Mrs C knew, or ought to have known, the mortgage was interest-only from the documentation provided at the point of sale and in the annual statements. There are no exceptional circumstances that would allow the time limit to be waived.

The further advance wasn't sold by Halifax, and so the bank was correct to refer Mr and Mrs C to their financial adviser if they wanted to complain about the advice they'd been given about the further advance.

In response to the Investigator's findings, Mr C also raised a new issue – that he'd been discussing a three-year term extension and a new interest rate product with Halifax, he'd been told that affordability criteria wouldn't need to be applied, but that no formal application had been made. When he enquired about making a new application, Mr C was told that a new application wasn't possible, and that it was *"ridiculous"* to suggest that affordability rules wouldn't apply. Mr C wanted our service to *"convince the Halifax to change their mind"*.

In relation to this new issue, Halifax said it would need time to investigate this issue. and that it would need to be raised as a separate complaint. I'm unable to consider new issues that have been raised during the course of an existing complaint, so if Mr and Mrs C are unhappy with the bank's response to this new issue, they can raise a separate complaint with us about it. But I won't be considering that matter here.

In relation to the issues that form part of this complaint, my findings are as follows:

Expiry of mortgage term: The contract Mr and Mrs C entered into with Halifax provided that they would repay the capital at the end of the 16-year term in September 2023. I can see that Mr and Mrs C have been marketing the property, both as a development opportunity to demolish it and build two new houses on the site, as a sale of the property as it stands, and a sale with planning permission to extend the property. Unfortunately, the property hasn't yet been sold.

Where an interest-only mortgage has expired, Halifax will generally allow a reasonable period of time for repayment, particularly where the property is being sold. I appreciate there have been difficulties for Mr and Mrs C in selling the property, and I do understand that they began the process at least a year before the mortgage term was due to expire. But Halifax isn't expected to continue to allow grace periods where the property remains unsold for a long period of time.

Mr C says that he was told by Halifax that a two-year term extension was agreed. However, there is nothing in the contemporaneous notes that supports this. As it is outside Halifax's policy, I'm not persuaded that the bank agreed to a two-year term extension, as this isn't something it's able to offer.

I've looked at whether Halifax should have done anything more. There are regulations in place that have flowed from the Mortgage Market Review (MMR) carried out by the Financial Conduct Authority (FCA) which took place after the financial crash in 2008. This has led to a series of major changes, effective since 2014, in the way residential mortgages are regulated. MMR regulations have brought about requirements for stricter lending assessments, aimed at protecting consumers and encouraging mortgage lenders to act more responsibly.

The FCA recognised though that existing borrowers who wanted to make changes to their mortgages might have difficulties with this if they had passed tests under the old rules but wouldn't under the new ones. So, it introduced certain rules to address this. The rules are contained in the Mortgages and Home Finance: Conduct of Business Sourcebook (MCOB).

MCOB says a lender doesn't have to carry out an affordability assessment if a borrower wants to vary or replace an existing mortgage and there is no additional borrowing (other than for product fees) and no change to the terms of the mortgage that is material to affordability

There are also transitional arrangements which say that a lender need not carry out an affordability assessment if:

- the borrower has an existing mortgage taken out before 26 April 2014, and is applying to vary that mortgage or replace it with a new one;
- the application wouldn't involve any additional borrowing except for essential repairs to the property, or to add product fees to the balance;

- there's been no further borrowing (with some exceptions) since 26 April 2014; and
- the proposed transaction is in the borrower's best interests.

So, under this rule, even where a change material to the affordability of the mortgage takes place, the lender can, *if it chooses*, waive an affordability assessment. If the lender decides to carry out an affordability assessment, it shouldn't use that as a reason to decline an application if allowing the application would otherwise be in the customer's best interests. But the lender can take the assessment into account as part of its consideration of best interests.

This means there are two routes that an application for an existing borrower can go down. If there's no change to the terms of the mortgage contract material to affordability, there's no obligation to carry out an affordability assessment at all. And if there is a change to the terms of the mortgage contract material to affordability, a lender could still decide to allow an application without an affordability assessment if doing so would otherwise be in the borrower's best interests.

A term extension where the existing term has already expired is a material change to the mortgage, and so it's reasonable for Halifax to want to carry out an affordability assessment, and to assess whether the application meets its general lending criteria, including the borrower's age, income and repayment strategy. And whilst the regulations provide that Halifax can, if it wishes, dispense with an affordability assessment, it isn't obliged to.

Therefore, although Mr and Mrs C might think Halifax acted unreasonably in not extending the mortgage term without the need for them to make a formal application, I'm not persuaded the bank has treated them unfairly. Halifax has granted several grace periods in order for the property to be sold, or for Mr and Mrs C to arrange a re-mortgage. Halifax also explained to Mr and Mrs C that, in order to consider an application for a term extension, the bank would need to carry out an affordability assessment. In the circumstances, I'm not persuaded Halifax was required to do anything further, so I'm not upholding this part of the complaint.

Interest rate: Mr and Mrs C are unhappy that their mortgage is being charged at SVR. The mortgage has been on this rate of interest for some time. I can see that the rate started to increase significantly from September 2022 onwards (which is when the then-Government's mini-budget resulted in market turbulence which affected interest rates), and that rate has continued to increase from there.

However, it wouldn't have been possible for Mr and Mrs C to take out a new fixed interest rate product once rates started to rise. That's because Halifax (in line with other lenders) has a minimum fixed-rate term of two years, and in September 2022 the mortgage had only a year left to run. Given this, Halifax couldn't have offered them a new product. In addition, fixed-rate products come with an ERC, and as Mr and Mrs C were intending to sell the property, they'd have been liable for an ERC on sale of the property if a fixed rate product had been applied to the mortgage.

I've noted what Mr and Mrs C have said about the Mortgage Charter. But I agree with the Investigator that in relation to an expired interest-only mortgage, the concessions in the Mortgage Charter for extending a mortgage term or reducing payments don't apply. Those provisions are intended to allow a short period of respite to customers on repayment mortgages who require temporary assistance. The Mortgage Charter places no obligation on Halifax either to extend the mortgage term or to offer Mr and Mrs C a new interest rate product.

In the circumstances, whilst I acknowledge that interest rate increases have impacted the mortgage repayments, I'm not persuaded Halifax is acting unfairly in applying SVR to the mortgage account. As a result, I'm not upholding this part of the complaint.

Conclusion

I know this isn't the outcome Mr and Mrs C were hoping for. But overall I'm unable to find Halifax has treated them unfairly, either in relation to the grace periods the bank has granted, or in applying interest at SVR.

As mentioned above, I'm not addressing in this complaint Mr and Mrs C's recent complaint about the bank declining their application for a term extension. But I must make it clear that if Mr and Mrs C bring a new complaint to our service about this, it will not prevent Halifax from pursuing repayment of the outstanding mortgage debt.

It might be helpful for Mr and Mrs C to speak to an independent financial adviser about their options. They can find details of advisers on the Financial Conduct Authority's website.

My final decision

My final decision is that I don't uphold this complaint.

This final decision concludes the Financial Ombudsman Service's review of this complaint. This means that we are unable to consider the complaint any further, nor enter into any discussion about it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs C to accept or reject my decision before 24 February 2025.

Jan O'Leary
Ombudsman