DRN-5499508

The complaint

Mr C complains that Bank of Scotland plc trading as Halifax didn't offer him a reduced interest rate on his mortgage.

What happened

Mr C has a mortgage with Halifax. Unfortunately he's been in arrears for some years. He's had various discussions with Halifax about his situation. In June 2023, Halifax told Mr C that it now considered offering new fixed interest rates to borrowers in arrears. In October 2023, following an income and expenditure assessment, Halifax offered Mr C a new rate which he accepted.

Mr C then complained that Halifax should have offered him a new lower interest rate much earlier than it had done. He said his interest rate had increased from 1.79% to 3.59% in 2020, when his old fixed rate had ended. And since then the standard variable rate (SVR) had increased from 3.59% to 8.74% over the years, but was then reduced to 5.28% with effect from 1 November 2023. He said that he had asked for new interest rates many times over the years but had been refused because of the arrears – yet the increased rate was the cause of the arrears. This made it harder for him to deal with the arrears and caused him significant stress. He wanted Halifax to offer a backdated rate and compensate him for the additional interest he had paid.

Halifax said it had only changed its policy to allow customers in arrears access to a new interest rate in June 2023. Once Mr C applied for a new rate after that date, it was agreed and put in place. It said it had offered to capitalise the arrears in 2021, after which Mr C could have applied for a new interest rate, but Mr C decided not to pursue this.

Our investigator didn't recommend upholding the complaint, so Mr C asked for it to be reviewed by an ombudsman. I took a different view, so I set out my thoughts for the parties to provide further comment on.

My provisional decision

I said:

> "Mr C's previous fixed rate ended on 30 April 2020. By that point the mortgage was in arrears, Mr C having missed payments in January and February. He then took a coronavirus payment deferral, which meant that missed payments from March 2020 were not treated as arrears. But the mortgage remained two months in arrears because of the missed payments in January and February.
>
> When a fixed rate expires, there is no obligation on a lender to offer a new rate. The terms of Mr C's rate switch offer from 2017 make clear that at the end of the fixed rate in 2020 his mortgage would revert to the SVR. But because Halifax chooses to make new rates available to its customers, I would expect it to treat customers fairly in deciding whether to offer them.

It's up to a customer to apply for a new fixed rate. I've not seen any evidence in Halifax's notes that Mr C asked Halifax about a new interest rate before 2023.

However, there is a record of a call on 1 April 2021. Halifax said in its final response to Mr C's complaint that it had offered to capitalise the arrears, which would have allowed Mr C to apply for a new interest rate, but Mr C didn't follow up on that.

However, that's not what the notes actually say. There are two call notes – one from the adviser Mr C spoke to, and a second from another staff member the adviser spoke to.

In her conversation with Mr C, the adviser discussed his current situation, including the arrears, and a proposal to repay them, as well as other options open to him. She asked Mr C about his income and expenditure and he said he needed more time to collate that information, and that he was in discussions with other creditors and a debt adviser.

She then records:

> "After call, I investigated option of capitalisation for Mr further with Toolkit team. At time of call I'm unable to answer criteria (paid with rep plan within 6 months). Toolkit confirmed eligibility and confirmed that when I&E [income and expenditure assessment] can be completed if the arrears will not be cleared in 6 months he could apply for this option. Please consider this option when Mr calls back."

The other staff member she spoke to also noted this conversation:

> "Colleague was calling to see if customer qualifies for caps, colleague advised she had a conversation with cust[omer] but Mr not able to do I&E as he's going to [debt adviser] to see about creditors, colleague is holding account until EOM [the end of the month], advised colleague cust[omer] meets the criteria at the moment … colleague asked if she should speak to customer to let him know he qualifies, advised as she had initial call that's up to her but advised it may be best to wait until he's spoke to [debt adviser] as we will need to do I&E anyway".

Having considered this evidence, I'm satisfied that what Halifax said in its final response isn't correct. I don't think it did discuss capitalisation and a new interest rate with Mr C but he failed to follow that up. I think the notes are clear that the adviser didn't discuss this with Mr C – she found out after the call that he would be eligible for capitalisation but chose not to call him back to advise him that there was another option open to him she hadn't previously mentioned. Instead, she decided to wait until Mr C called back, which it seems he didn't do.

On balance, I don't think this was fair. Mr C had called to discuss his situation and the options open to him. There was an option which the adviser failed to discuss, later found out that she should have done, and then decided not to correct what she had said.

I think it's likely that if Halifax had explained that the arrears could be capitalised, and that Mr C would then be able to apply for a new interest rate to lower his monthly payments, he would have taken that option up. Mr C then had almost 30 years left on his mortgage term, so the capitalisation of two months' arrears would have had a very limited effect on the monthly payments – whereas a new interest rate could have reduced them substantially. I'm satisfied that Halifax ought fairly to have discussed this with Mr C, and had it done so he would have agreed to capitalise the arrears and taken a new interest rate.

To put things right, therefore, Halifax should rework Mr C's mortgage so that it is as if this had happened. It should backdate capitalisation of the arrears as they were at that time to 1 May 2021, and the start of a new interest rate to 1 June 2021 – allowing time for Mr C to apply for a rate once the arrears had been capitalised. Because Mr C ended up taking a new interest rate in 2023, Halifax should apply the best available two year fixed rate from 1 June 2021 running up to the rate Mr C actually took in 2023. I don't agree with Mr C that a new interest rate should be backdated to 2015. Mr C was on a fixed rate between then and April 2020 in any case. From April 2020 to April 2021, there's no evidence of Mr C applying for a new fixed rate, and – unlike in April 2021, no point at which Mr C was in contact with Halifax at which it ought fairly to have considered one.

This will result in Mr C having overpaid between 2021 and 2023. Halifax should calculate the amount Mr C overpaid in that period, adding simple annual interest of 8% running from the date of each overpayment to the date of refund. It may deduct income tax from the 8% interest element of my award, as required by HMRC, but should tell Mr C what it has deducted so he can reclaim the tax if he's entitled to do so. This will produce a total refund due to Mr C.

Since taking out his new interest rate in 2023, Mr C has missed further payments. Halifax should use the refund as a lump sum payment to reduce the current arrears balance. If this is enough to clear the arrears balance altogether, Halifax should pay any remaining refund to Mr C. But if there are still arrears remaining, Halifax should tell Mr C the revised arrears balance – and Mr C will then need to engage with Halifax to try and agree a way forward in respect of the remaining arrears. In that situation, no payment will be made to Mr C direct."

Mr C and Halifax both accepted my provisional 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.

I've also considered my provisional decision. I note that both parties accepted it, and I still think it's a fair way to put matters right in this case.

My final decision

My final decision is that I uphold this complaint and direct Bank of Scotland plc trading as Halifax to:

- Re-work Mr C's mortgage, capitalising the then arrears with effect from 1 May 2021, and then applying the best available two year fixed rate, running from 1 June 2021 to the point Mr C took a fixed rate in 2023.

- Calculate the cumulative amount Mr C overpaid as a result during that period, adding simple annual interest of 8% running from the date of each overpayment to the date of calculation. Income tax may be deducted from the 8% interest element, but if so Halifax should give Mr C a tax deduction certificate so he can reclaim the tax from HMRC if he is entitled to do so. If the 2021 fixed rate includes a product fee, Halifax may deduct the product fee from the refund.

- Use the total produced by the above calculation to repay the arrears which have arisen since 2023. Halifax should also make any consequential adjustments to Mr C’s credit file to reflect the revised arrears position.

- Once the above has been done:

  - If the mortgage is no longer in arrears, Halifax should pay any remaining refund to Mr C.

  - But if the refund is not enough to clear the arrears in full, no refund will be paid to Mr C. In this situation, Halifax should write to Mr C setting out the revised arrears balance and seek to engage with Mr C to agree an appropriate way forward to deal with the remaining arrears.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr C to accept or reject my decision before 28 May 2025.

Simon Pugh
Ombudsman