

## **The complaint**

Mrs K has complained about her mortgage she holds with Bank of Scotland plc trading as Halifax. She says Halifax hasn't treated her fairly.

Mrs K is represented in bringing this complaint, but for ease I will just refer to Mrs K in this decision, although that should be taken to mean her representative acting on her behalf where appropriate.

## **What happened**

I won't set out the full background to this complaint as it is extensive and goes back many years, but I can confirm that I have read and understood everything that has been said and provided. I'll deal with the issues Mrs K has raised in the findings section below under broad headings, rather than listing them here.

In 2004 Mrs K and her late husband took out this mortgage with Halifax. They borrowed around £204,000 on a repayment basis over 25 years. The mortgage offer set out that the interest rate would track at 0.49% above Bank of England base rate ("base rate") until October 2006, after which it would move to the Standard Variable Rate ("SVR").

When that preferential rate ended in 2006 Mrs K applied for a new preferential rate which was 0.64% above base rate until February 2009, after which it would move to Halifax's SVR.

The mortgage went into arrears in 2008 and, due to the arrears on the account, legal action was taken at times. There have been various complaints raised over the years. This complaint I am considering was made following legal action taken by Halifax in 2022, with a hearing set for January 2023.

An Ombudsman colleague issued a decision about our jurisdiction in November 2024. In that he said:

"My decision is that the Financial Ombudsman Service can investigate:

- Whether Bank of Scotland plc trading as Halifax has charged Mrs K a fair rate of interest – but only since 20 January 2017.
- Whether Bank of Scotland plc trading as Halifax has treated Mrs K fairly as a consequence of her financial difficulty – but only since 19 March 2020, and excluding the instruction of a field agent and the safeguarding referral covered by the final responses issued in 2022."

He said the remainder of the complaint fell outside our jurisdiction.

Those complaint points were then looked at by an Investigator who didn't think the complaint should be upheld. It was then passed to a second Investigator who said they thought the outcome reached was fair

Mrs K didn't agree, and so it's been passed to me to decide.

### **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 trust Mrs K won't take it as a discourtesy that I've condensed this complaint in the way that I have. 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.

I've a great deal of sympathy for the position Mrs K is in. It's clear she's gone through – and is still going through - some very difficult times, and it can't have been easy to mentally revisit those times when bringing this complaint. I've not gone into any detail about that in this decision to protect Mrs K's privacy once the decision is published, but I've taken everything into account.

I am pleased to see that Halifax has recently put a new preferential rate in place, and extended the mortgage term, which will hopefully help to get the mortgage back on track. But I should emphasise the importance of the full payments reaching Halifax on time every month – each payment needs to *reach* the mortgage account by the due date, not just be *sent* by then. If there are any future issues, I would urge Mrs K to let Halifax know immediately, and an open conversation will need to be had between the parties.

### The interest rate between January 2017 and November 2024

I can only consider the interest rate between January 2017 and November 2024 (which was when my colleague issued his decision about our jurisdiction to consider this complaint).

The original mortgage interest rate tracked at 0.49% above base rate until October 2006, and when that preferential rate ended in 2006 the mortgage was transferred onto a new preferential rate which was 0.64% above base rate until February 2009, after which it moved to Halifax's SVR.

There's no obligation on a lender to offer another preferential rate following the expiry of one. 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.

From the date I am able to consider – 20 January 2017 – Mrs K's mortgage was in arrears, and 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 Mrs K's mortgage was in significant arrears, and Halifax had previously been granted a suspended possession order, I think the risk of the property being taken into possession was significant. And by giving Mrs K a new rate with an ERC would've been detrimental to her as she would've needed to pay the ERC if the property was taken into possession and sold.

In January 2017 the last payment that had been made to the mortgage had been in April 2016, and the next payment wasn't made until May 2017. And although some amounts were paid between August and December 2017 they were significantly less than the full monthly payments due, and the next instance a full contractual monthly payment was made was in January 2018. So the situation in January 2018 was that full payments had only been made

in April 2016, May 2017 and January 2018. Over the next few years the transaction history shows the following:

- 2018 - payments were made in six of the twelve months.
- 2019 - payments were made in eight of the twelve months.
- 2020 - payments were made in four of the twelve months.
- 2021 – no payments were made.
- 2022 - payments were made in two of the twelve months.

I'm satisfied, having considered that payment history and the conversations between the parties, that Halifax didn't act unfairly in not putting a preferential interest rate product in place in the period up to the end of 2022 as there was a very real risk of the property needing to be sold, thus incurring an ERC in that period.

In April 2023, Halifax changed its policy so that borrowers in arrears could take new rates. It introduced a process where customers in arrears can take a new interest rate if they can demonstrate affordability. Halifax would then agree to a waiver of any ERC should the account fall into arrears and the property is sold before the ERC period expires. For a customer to be eligible for this option, they need to demonstrate affordability of the mortgage over the remaining term via income and expenditure assessments.

At that time Mrs K had made full payments at the end of January and February 2023, and then at the start of April 2023. She went on to make two payments in May 2023, none in June and then two in July 2023.

The contact notes show that Mrs K's representative spoke to Halifax on 2 August 2023, and he was told that a new preferential interest rate product may be an option but, to check the eligibility for that, an affordability assessment would need to be completed, along with a discussion about Mrs K's circumstances. The possibility of a term extension and/or capitalisation of the arrears were also put forward, subject to the outcome of those discussions. It was agreed that Mrs K's representative would call back once he had spoken to a debt charity that he and Mrs K had been working with.

Mrs K's representative then spoke to Halifax again on 28 September 2023 and he said Mrs K was currently in hospital and she was likely to remain there for the next six weeks or so. Halifax ran through an affordability check with the representative, and the outcome of that was that Halifax could potentially extend the term by four years and nine months and look at a new preferential interest rate product. However, as he was only Mrs K's representative he didn't have the authority to make contractual changes to the mortgage and so nothing could be done until Mrs K was in a position to be able to discuss and agree to the changes herself.

As these were to be contractual changes to the mortgage account I don't think Halifax did anything wrong in saying it would need Mrs K to be able to agree to those, it couldn't allow her representative to make contractual changes on her behalf. That is entirely normal and what I would expect to see. If contractual changes were needed, and Mrs K was not in a position to make those changes, then a Power of Attorney needed to be put in place – something that Halifax discussed with Mrs K's representative. But without that Power of Attorney there was no-one that had the legal right to make changes on Mrs K's behalf.

Payments were made in August and September 2023, and then only token payments were made in November 2023, February 2024 and April 2024 with the next full payment not made until June 2024. In the meantime, there were notes to show that Mrs K still wasn't in a

position to agree to any contractual changes, with the last of those notes being made on 29 April 2024.

I can see Mrs K spoke to Halifax on 1 May 2024 to discuss a new preferential interest rate product, a digital acceptance link for a 4.99% fixed rate product was emailed to her that needed to be completed by 30 May 2024. A potential term extension and capitalisation of arrears was also discussed, with Mrs K told she would need to demonstrate affordability for that. The notes indicate she was signposted to an online budget tool for her to complete, and she was told that a review could be carried out once regular payments were made.

A complaint was raised at that time as Halifax was both saying that until it had evidence Mrs K had capacity to deal with the account then she couldn't give authority for her representative to act on her behalf, but also seemingly allowing her to make a contractual change to her mortgage (by taking a new preferential interest rate product). Halifax agreed that was contradictory and said it shouldn't have discussed changes to the account with her and said that it needed evidence from her consultant as to her capacity before it could make any changes and/or reinstate the authority for her representative to discuss the account. It said if Mrs K lacked capacity then a formal Power of Attorney was needed.

Halifax had understandable concerns about whether Mrs K had the capacity to agree to a change to her mortgage contract and so I don't think it did anything wrong in wanting that to be resolved before putting a new product in place. It initially said it shouldn't have gone as far as it did in May 2024 and it apologised for this. It did, however, offer to complete an application but it said it needed to speak to Mrs K to do so but had been unable to reach her. It provided a number Mrs K could call to complete the application.

As Halifax was unable to speak to Mrs K, the new preferential rate product wasn't put in place, and no further payments were made in 2024 after the one in June 2024.

Whilst I understand why Mrs K is frustrated, as she thinks she could have been paying a lower amount of interest earlier, for the reasons set out above, I don't think Halifax has treated her unfairly in not putting a new rate in place sooner than it did.

There's a provision in the rules of mortgage regulation which says that where a borrower is unable to move their mortgage to another lender, it might be unfair for their existing lender to treat them less favourably – for example, by offering less favourable interest rates – than it would treat other borrowers with similar characteristics.

However, even taking that into account I don't think I can safely find that Halifax treated Mrs K unfairly. The crucial part of the provision is that borrowers unable to move elsewhere shouldn't be treated less favourably than other borrowers with similar characteristics. In other words, if Halifax offered new interest rates to some existing borrowers with similar characteristics to Mrs K, but not to Mrs K, that might be unfair.

However, that's not what happened. Halifax didn't offer new interest rates to any existing borrowers in arrears before April 2023. And therefore, in not offering a new rate to Mrs K before then, it was not treating her less favourably than other similar customers. All other customers that were in arrears were in the same position. It follows that Mrs K was not treated unfairly in comparison to other similar customers of Halifax before April 2023. And since April 2023, in the first instance Mrs K was not in a position to speak to Halifax about a new rate, and then subsequently there were concerns about whether she had the capacity to agree to a change to her mortgage contract.

Having considered everything very carefully I don't uphold this part of the complaint.

### Has Mrs K been treated fairly since 19 March 2020 in respect of her financial difficulties

Under the relevant rules, Halifax is required to treat Mrs K fairly while her mortgage is in arrears. The rules say that lenders should consider, amongst other things, extending the term, changing the repayment type, deferring interest or payment or capitalising arrears. Not all of these would be appropriate in every case – and none will be appropriate in some cases – but they should be considered.

It is also clear from everything that Mrs K has said that she was a vulnerable customer, and that is a relevant factor to take into account – particularly as Halifax was aware of this.

At the start of January 2020, the arrears balance stood at around £106,300, increasing to £118,400 in 2021, £136,500 in 2022, £153,100 in January 2023, and £154,100 in January 2024.

The following payments were made between 2020 and 2024 (to the nearest pound) against contractual monthly payments starting at around £1,475, and increasing to around £2,145:

- February 2020    £1,487
- March 2020       £1,487
- April 2020       £1,487
- October 2020    £1,487
  
- January 2022    £1,850
- March 2022       £1,850
  
- January 2023    £2,602
- February 2023   £2,602
- April 2023       £2,602
- May 2023        £5,204
- July 2023        £5,204
- August 2023     £2,603
- September 2023 £2,602
- November 2023 £    32
  
- February 2024   £    26
- April 2024       £    26
- June 2024        £2,364

No payments were made in the other months.

If Halifax capitalised the arrears, it would mean that the arrears are added to the balance of the mortgage and the payments recalculated over the remaining term. That would result in significantly higher repayments for Mrs K. Given she was struggling to meet her existing contractual monthly repayments, I am not persuaded such an option would have been in her best interests.

Similarly, I'm not persuaded switching the mortgage to interest only on a permanent basis would have been in Mrs K's best interests as she had no way to repay the debt at the end of the term (other than selling her property, which she has been clear is not something she

wants to do), and a temporary switch to interest only would mean there would have been an increase in the monthly payment due once the account reverted to capital repayment.

Extending the term of the mortgage would have reduced the monthly payments but having looked at the repayment history on the account, even a longer term wouldn't have reduced the payments to a level where Mrs K had demonstrated (by the payments she had made over the years) that it would be affordable and sustainable. Even if the term was extended until Mrs K was 80 years old, she wasn't paying enough each year (based on her payment history up until November 2024) to repay the balance even if no interest was charged.

In terms of a payment holiday, this is typically used for short periods of financial difficulty to give the consumer some breathing space while their circumstances stabilise and improve. But it has the negative consequence of increasing the overall indebtedness of the consumer and therefore the monthly payment. This wasn't a short-term issue, and I'm satisfied ongoing payment holidays would not have helped the overall situation.

I've dealt with a contractual change to the interest rate in the section above, but the possibility of a non-contractual change is also one thing a business should consider as part of its forbearance when a customer is in financial difficulties to see if there is a reasonable reduction it could make which would make the mortgage affordable. But, as I've set out above, Mrs K wasn't even regularly paying enough to repay the balance if no interest was charged, so a reduction in the interest rate wouldn't have made this mortgage affordable and sustainable, based on her payment history.

Halifax has accepted that it could have done better at various times, such as in March 2020. It said it should have reviewed Mrs K's account in more detail before sending a letter about the arrears position and stating legal action would be started. It apologised for that and paid £150 compensation. Halifax had a regulatory responsibility to keep Mrs K informed about the arrears position of her account and at that time the arrears were over £100,000. I've considered everything that happened at that time and I think the apology and payment of compensation is a fair resolution to that part of the complaint.

Mrs K has complained about the court hearing that was arranged for January 2023. The latest breathing space hold had ended on 24 October 2022, and as the account status was worsening, Halifax decided to instruct its solicitor. The recent history of the account was that no payments had been made in 2021, and only two had been made in 2022 (in January and in March). Whilst Halifax was aware of Mrs K's vulnerability it also needed to keep in mind whether there was a risk the situation would spiral further. As I've already set out, Mrs K didn't show the affordability (based on that recent payment history) for a sustainable repayment plan and having considered everything very carefully I don't think Halifax acted prematurely in instructing its solicitor at that time.

A court hearing was set for 9 January 2023, but after receiving contact from Mrs K Halifax instructed its solicitor to ask that it was adjourned with liberty to restore to give Mrs K's representative time to provide the up-to-date information about her personal circumstances that Halifax had been asking for. I understand there was an issue with the court not being aware of Halifax's request for an adjournment with liberty to restore, but I can't hold Halifax liable for that and, in any event, no detriment was caused to Mrs K as matters were adjourned when it came to light.

I understand Mrs K's representative was unhappy that Halifax's solicitor asked for separate verification that he was authorised to deal with matters on behalf of Mrs K. Whilst the solicitor was instructed by Halifax and Halifax had informed them about Mrs K's representative, they would have their own checks they would need to complete before they

were able to deal with anyone other than the account holder. I can understand why it felt like that was an additional barrier, but I don't think Halifax did anything wrong.

Mrs K was also unhappy that in 2024 Halifax removed the authority for her representative to act on her behalf. I've considered everything that happened and I can see that Halifax was told by her representative that there were concerns raised by a health care professional that was working with Mrs K about whether she had capacity. Halifax had a duty to act on that information, and part of that would be to revoke any informal arrangements Mrs K had on her account (such as for her representative to act on her behalf) until such time it had evidence that she had capacity to confirm that arrangement should continue, or until a formal Power of Attorney was put in place. That is what I would have expected Halifax to do. I understand Mrs K didn't want a Power of Attorney to be put in place, but unfortunately without that Halifax is left in the position it can't speak to anyone if at any time Mrs K lacks capacity to deal with matters herself, as the lack of capacity would render an informal arrangement void. Halifax put the authority back in place once it had satisfied itself that Mrs K had capacity to make that decision.

I understand Mrs K finds receiving letters about her mortgage distressing, and I've a great deal of sympathy with that. Unfortunately, Halifax has a regulatory responsibility to send certain letters to its customers who are in arrears and so that isn't something that can be stopped entirely.

Having looked at the history of the account, and Mrs K's more recent payments, I'm satisfied there were no forbearance options available that would have made this mortgage affordable to Mrs K as for much of the time (that is, between 2020 and 2024) payments weren't being made. Halifax agreed various breathing space holds over the years and having considered everything I think that was the right course of action. I'm also satisfied that when Halifax did move things forward to litigation by instructing its solicitor, that act wasn't premature or unreasonable.

Repossession should be a last resort. Forbearance should be explored first. But the purpose of forbearance is to give breathing space so a borrower can get the mortgage back on track. Given all the history, and what it knew, it was reasonable for Halifax to conclude that was unlikely.

Halifax has admitted in its final response letters that it got some things wrong and it has apologised and paid compensation for those. I'm satisfied those payments of compensation are fair in all the circumstances of the individual complaint points they were paid for.

As I said previously, I am pleased to see that a preferential interest rate product is now in place, along with a term extension, which will hopefully help to get the mortgage back on track. But having considered this complaint very carefully, for all the reasons given, I don't think Halifax did anything wrong in not doing something similar before then.

It is clear Mrs K has been through some very difficult times, and I'd like to thank her for how open she has been with us about her health concerns and personal circumstances. I understand this decision will be a disappointment to Mrs K and I give her my best wishes for both now and the future. But in terms of the complaint that was brought to us, I can't uphold it however much Mrs K may want me to.

### **My final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 11 July 2025.

Julia Meadows

**Ombudsman**