

The complaint

Mr S complains that Bank of Scotland plc trading as Halifax has incorrectly recorded the consent to lease (CTL) agreement on his mortgage and this has led to him being unfairly refused a better interest rate deal over the years.

What happened

In 2006 Mr S took a mortgage with Halifax to purchase a property to live in. Mr S says that Halifax is the only lender that accepts this style of construction as lending security.

In 2008 Mr S bought a second property. His intention was to live in the new property and rent his original property out. Mr S sought a new residential mortgage for the new property, and he applied for CTL on his existing property – as he wasn't able to remortgage elsewhere and take a buy to let mortgage due to the construction type of his property.

On 2 October 2024 Halifax wrote to Mr S to say that it has reason to believe that he may be letting the property out without its consent, in which case it would apply a 0.5% loading to his current interest rate from 1 December 2024 to account for this.

On 24 October 2024 Mr S complained to Halifax. He said that in 2008 he was granted indefinite CTL. He provided Halifax with a copy of a letter sent to him from his mortgage advisor on 12 August 2008 which read:

"I can confirm that we are happy to authorise your consent to lease application. Please inform me when you intend the lease to start so we can discuss the available rates and put the lease in place for you."

Halifax upheld the complaint. It accepted that Mr S had been renting out his property since 2008 on the understanding that he had indefinite CTL, and that recent communications requesting a new CTL application were inappropriate. Halifax applied the indefinite CTL marker and said this would allow Mr S to obtain a new product and he'd need to call to discuss his options. Halifax paid Mr S £100 compensation for the inconvenience caused.

Unhappy, Mr S came to our Service. He said that over the last 17 years he's been prevented from obtaining a better mortgage deal on the property that had CTL. He said he's asked for a new rate multiple times, but he was refused each time. He wants to be compensated for the amount he feels he's overpaid on interest during this period.

Halifax has not consented to our Service considering part of Mr S' complaint because it says that it's been brought too late – outside of the time limits set by the financial regulator.

An investigator looked into things and agreed that our Service could only consider Mr S' complaint about events that happened in the six-year period before he made his complaint. Having done so he didn't think Mr S' complaint should be upheld. The investigator said that looking at Halifax's contact notes there was no evidence of Mr S asking for a new interest rate over the years. That said, he recommended the parties work together now to arrange a new interest rate deal for Mr S moving forward.

Mr S didn't agree. In summary he said:

- He doesn't agree that part of his complaint is time-barred. He says that he has complained to Halifax in the past and he also has exceptional circumstances for why he didn't complain sooner.
- He tried multiple times to get a new rate – on the phone, in branch and online but he was told because of the CTL marker, he couldn't.
- Mr S feels we should obtain CCTV from the local branch to confirm the visits he made to discuss his mortgage, and we should attend his property in person to listen to the calls he is currently trying to make to obtain a new interest rate product.
- Despite being told by Halifax in its final response letter that he should make contact to arrange a new rate; he is still being refused. He says that he's been told because of the CTL marker he has to remain on the standard variable rate.
- He has recently received a letter from Halifax that reads: "*As you currently have indefinite consent to lease applied to your mortgage, in order to apply for a new rate, you will need to remove the indefinite consent to lease*". He says this contradicts what he's been told to date.

Our investigator asked Mr S to provide specific dates that he spoke to Halifax on the phone to request a new interest rate and the number he would have called from to help him enquire further and obtain call recordings. In the absence of Mr S providing this information, our investigator considered all of Mr S' points but explained why his opinion remained unchanged.

I issued a decision explaining that our Service could only consider Mr S' complaint about events that occurred since 24 October 2018. I then went on to issue a provisional decision answering this part of Mr S' complaint, in which I said:

"What I've provisionally 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.

Halifax wrote to Mr S in August 2008 to say that it was happy to authorise his CTL application. However, the letter said that Mr S needed to inform Halifax of his intended lease start date, so it could discuss the available rates and put the lease in place.

Halifax has provided its contact notes which shows no further contact from Mr S until 4 March 2022. As such the CTL agreement wasn't put in place. Halifax has shown that it was only following Mr S' complaint that the indefinite CTL marker was added for the first time on 22 November 2024.

This explains why Halifax wrote to Mr S twice in 2024 to say that it suspected he was renting the property without his consent – as there was no CTL marker in place, so as far as Halifax knew this was a residential mortgage, but Mr S was living elsewhere – which goes against the agreement terms.

Halifax accepted the letter provided by Mr S as evidence of the original agreement and that an indefinite CTL indicator marker should have been applied to his account. Halifax paid Mr S £100 compensation to acknowledge that the recent communications requesting a new CTL application were inappropriate.

Halifax's policy says that when an ordinary CTL agreement is in place it will charge an added rate of 0.5% on top of the customers' existing interest rate. Product transfers are not

available on accounts where CTL is present unless the customer is in an exception category. It appears that one of those exceptions is when 'indefinite' CTL is agreed.

Mr S says that he has tried to obtain a new interest rate multiple times through various channels over the years. As I explained in my previous decision, I can only consider the complaint about events that occurred after 24 October 2018. Since that date I can see only one record of Mr S calling Halifax to discuss the interest rate on his mortgage and that was on 4 March 2022. The next contact he made after this was to discuss the letter he received in 2024 about the CTL.

I've listened to the call that took place on 4 March 2022. Mr S called to discuss obtaining a new fixed rate on both his mortgages. He said he had CTL agreed on one of his properties and was paying a variable interest rate of 3.99%. He asked if he could obtain a new fixed rate, but he was told he couldn't, and his only option was to apply for a consumer buy to let which would likely give him a better rate. The Halifax agent did however go on to help Mr S with his enquiry about switching the mortgage on his other residential mortgage.

So having heard this call, I do accept that Mr S tried to obtain a new interest rate on this mortgage in question in 2022, but he was refused. It's not clear why. Halifax has confirmed that from 2008 to 2024 there was no CTL marker applied to Mr S' account. And there was no suspicion of him renting out the property without Halifax's consent until late 2024. This therefore means that there should have been nothing technically preventing Mr S from obtaining a new interest rate during that period.

But Mr S says that he also tried to apply online and in branch. Contact through these channels is less easy to verify. But like I've said I see no reason why he wasn't able to get a new rate. I think what happened on the call was just a misunderstanding. Mr S told the agent he had CTL in place (because that's what he thought) and that's why the agent said he couldn't get a fixed interest rate deal. Had the agent have checked, I expect he would have seen that there was no CTL marker in place which would have led to more questions being asked about this and perhaps the missing indefinite CTL marker issue would have been identified sooner in 2022. And then Mr S should have been able to obtain a new fixed interest rate.

In its 2024 final response letter Halifax said:

"I've made arrangements to add the indefinite CTL indicator onto your account. This makes the bank aware of your permissions to let out the property and will not require any further evidence from you unless informed otherwise...the decision to add the indefinite CTL indicator back on will now allow you to select a new product with us. Should you wish to do this, please contact us"

Mr S says that he's been trying to obtain a new interest rate since his complaint was resolved but he's not been able to. He has also been sent a letter dated 10 August 2025 that says:

"Thank you for your recent enquiry...as you currently have indefinite CTL applied to your mortgage, in order to apply for a new rate, you will need to remove the indefinite CTL."

These two statements are conflicting, and the latter goes against everything Halifax has said about how its indefinite CTL policy works.

So, to conclude I do find that Mr S has been unfairly refused a fixed interest rate deal on his mortgage since 4 March 2022, and Halifax needs to take steps to put things right.

Putting things right

To put things right Halifax should allow Mr S to switch his mortgage to a fixed interest rate. If it's the case that he would have obtained a better rate in March 2022, Halifax should re-work Mr S' mortgage account by applying the best rate available at the time in question – to date.

If applicable, to account for the overpayments made since 4 March 2022, due to a higher rate being applied, depending on Mr S' preference, Halifax should either:

- Apply the overpayments to his mortgage account to further reduce his balance, which will in turn reduce the amount of interest he pays on the new rate applied until the end of the current fixed term period; or
- Pay Mr S the overpayment amount back in cash, as well as a payment of 8% simple interest* calculated from the date of each overpayment to the date of settlement.

In response to my provisional decision, I request that Mr S tells me which option he prefers.

*Halifax may deduct income tax from the 8% interest element of my award, as required by HMRC. But it should tell Mr S what it has deducted so he can reclaim the tax if he's entitled to do so.

In addition, I think Halifax should pay Mr S compensation for the distress and inconvenience this matter has caused. Mr S' complaint was resolved in October 2024, but despite his efforts he's not been able to secure a new interest rate deal. This has been ongoing for over a year and has understandably caused him ongoing frustration. Overall, I consider an award of £300 to be reasonable and in line with this service's guidelines on such compensation¹. This should be paid in addition to the £100 compensation amount already awarded.

My provisional decision

My provisional decision is that I uphold Mr S' complaint and direct Bank of Scotland plc trading as Halifax to put things right as set out above”

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.

Both parties have responded to say that they accept my provisional decision. Halifax said:

“I have reviewed the provisional decision and can confirm we agree with the outcome. The available rates in March 2022 were:

- Two-year fixed rate @ 2.13% until 31/7/2024
- Five-year fixed rate @ 1.95% until 31/7/2027

Please note these would apply from 1 April 2022.

Alternatively, Mr S has the option of a two-year fixed rate @ 2.13% until 31/7/2024 followed by a two-year fixed rate @ 5.19% until 31/10/2026.

¹ <https://www.financial-ombudsman.org.uk/consumers/expect/compensation>

Please could you provide the following details:

- 1. The bank account details Mr S would like the additional compensation to be paid into.*
- 2. His preference on how any overpayments should be treated.*
- 3. The interest rate he would like us to apply when backdating.”*

Mr S has confirmed to our Service that he wants to accept the five-year fixed rate at 1.95% until 31 July 2027. He wants the overpayments to be credited to his mortgage account. He's asked that he receives information letting him know how much the overpayment credit is before it's made which I don't consider unreasonable.

Mr S has also asked that the extra £200 compensation award also be credited to his mortgage. If that's not possible, Halifax can pay the compensation award to him directly. Mr S' bank details have been shared with Halifax separately.

Putting things right

To put things right Halifax should rework Mr S' account by applying the five-year fixed rate at 1.95% until 31 July 2027, backdated to 1 April 2022. That's the earliest date a new rate could be applied following Mr S' enquiry on 4 March 2022.

To account for the overpayments made since 1 April 2022, due to a higher rate being applied, Halifax should:

- Apply the overpayments to Mr S' mortgage account to further reduce his balance, which will in turn reduce the amount of interest he pays on the new rate applied until the end of the current fixed term period on 31 July 2027.

Halifax should pay Mr S a further £200 compensation on top of the £100 it has already paid. Mr S has asked that this be credited to his mortgage balance. If not possible Halifax should pay the compensation to him directly.

My final decision

My final decision is that I uphold Mr S' complaint and direct Bank of Scotland plc trading as Halifax to out things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 2 January 2026.

Arazu Eid
Ombudsman