

complaint

Mr and Mrs P complain that Bank of Scotland Plc (trading as Halifax) failed to process their product transfer application in time. As a result they missed out on a lower rate of interest and Halifax didn't extend the term of their mortgage.

background

Mr and Mrs P wanted to extend the term of their mortgage and secure a lower rate of interest to make their monthly payment more affordable. Their broker submitted a product transfer application to Halifax which it acknowledged in emails on 3 and 7 April 2014. It also asked the broker to submit a declaration of intent. The broker sent this by fax to Halifax on 10 April.

But by mistake the broker omitted one digit from Mr and Mrs P's roll number so Halifax was unable to scan the application onto its system. On 28 April Halifax noticed that the declaration of intent was outstanding. And on 30 April it called the broker. But by then the lower interest rate offer had been withdrawn and also the mortgage market review (MMR) had taken place. This meant that Halifax rejected Mr and Mrs P's application on grounds of affordability as the proposed term extension would have gone into retirement age.

In July 2014 Halifax apologised unreservedly for its 'serious oversight' and 'poor service' and offered to backdate the lower interest rate to 1 May 2014. It paid them £250 for their trouble and upset but it wouldn't agree to extend the mortgage term.

Mr and Mrs P say that Halifax hasn't treated them fairly. Had it processed their application in time Halifax would have accepted it.

An adjudicator considered Mr and Mrs P's complaint and contacted Halifax. Halifax said that having reviewed the complaint it blamed the broker for the administrative error. It declined to extend the term because of affordability but it maintained its offer to backdate the lower interest rate – subject to Mr and Mrs P sending in some outstanding forms. It also said that even a pre-MMR application to extend the term would have been subject to underwriting approval.

The adjudicator didn't uphold Mr and Mrs P's complaint and said that £250 for their trouble and upset was reasonable.

my first provisional findings

In my first provisional decision, I said:

I take a different view to the adjudicator and I'm considering upholding Mr and Mrs P's complaint.

I accept that the broker put the wrong roll number on the declaration of intent and on its fax cover sheet. But I think that Halifax's initial apology in July 2014 was correctly made. I think it should have spotted the broker's error and made contact with it much sooner.

The fax cover sheet gave the broker's address and phone number. And I think that Halifax could and should have raised a query with them. Especially given that Mr and Mrs P were already Halifax customers who were part way through a product switch application. The declaration of intent gave Mr and Mrs P's names in capital letters, their contact phone number and all but one digit of their roll number. I think that Halifax could even have made direct contact with Mr and Mrs P. But instead it did nothing. And by the time Halifax next looked at Mr and Mrs P's application it was too late.

I think that Halifax's omission denied Mr and Mrs P the opportunity to have their application considered under the existing lending criteria. I can't say that Mr and Mrs P's application would have been successful. But I do think it fair and reasonable that Halifax should at least consider it using the lending criteria in place at the time. I'm satisfied that it could have done this even when it did consider the application. The mortgage market review changes include transitional provisions allowing lenders to set aside the stricter affordability criteria when making changes to a mortgage that don't involve extra borrowing.

I think that Halifax could have got the correct information before MMR came in, had it contacted the broker. And it could have applied the transitional provisions to the application when it did eventually consider it – which would have had the same effect. But it did neither of those things.

I agree with the adjudicator that the £250 already paid by Halifax to Mr and Mrs P for their trouble and upset is reasonable.

responses to my first provisional decision

Neither party commented specifically on my provisional decision - that Halifax should consider Mr and Mrs P's application as if it had been received on 10 April 2014 using its lending criteria in place at that time.

However, at the point of issuing my first provisional decision Mr and Mrs P were in the process of re-mortgaging with another lender. But, they found that their existing mortgage with Halifax was on a fixed rate. And that they would have to pay an early repayment charge (ERC) if they wanted to re-mortgage elsewhere.

Mr and Mrs P raised a new complaint about the ERC. They said that they shouldn't have to pay it and that they should be on Halifax's standard variable rate (SVR).

Halifax disagreed. It said that it had written to Mr and Mrs P in July 2014 – its final response to their original complaint. Halifax had said that it would pay them £250 for their

trouble and upset plus a refund of £2,121.15 and a deprived of funds payment of £17.23. This was to cover the difference between the higher monthly payment at 3.99% and what they would have paid had the product transfer at 2.24% completed from May 2014 – this covered the period from May to July 2014. It also said that Mr and Mrs P could choose a new product with their broker and it would cover any difference in the interest rate for that fixed period.

Halifax said that Mr and Mrs P then chose a 2 year fixed rate at 2.49% which completed on 25 September 2014. But, on that day Mr and Mrs P's broker spoke with Halifax. This was because Mr and Mrs P had decided they didn't actually want to go ahead as they didn't agree the term. Mr and Mrs P say that they didn't sign any paperwork. And that their broker told Halifax they didn't want to take out the new product.

Halifax says it told the broker that it would have to complete the product transfer because there wasn't time to cancel it. But that Mr and Mrs P could then cancel it after it had been set-up. But the new product wasn't cancelled and with effect from October 2014 Mr and Mrs P have been benefitting from the lower monthly payment which reduced from £1,889.65 to £1,726.28.

Halifax says that it will 'undo' the product transfer and rework the account as if it had remained on 3.99% from 1 June 2014. However, in fairness Mr and Mrs P would have to repay the sums of £2121.15 and £17.23 as these were made on the assumption that the product transfer would go ahead. Also, they would need to cover the underfunding from October 2014 to date of £163.37 per month – this being the difference in payments between £1889.65 less £1726.28.

Mr and Mrs P say they were led to believe that they would remain on the SVR until their original complaint had been resolved. As a result of Halifax's error they missed out on a fixed rate deal of 2.35% with another lender which was due to start on 29 May 2015. Mr and Mrs P would like Halifax to match that offer by putting them on a rate of 2.35%.

I thought that Mr and Mrs P's new complaint arose from the outcome of their original complaint and both Halifax and Mr and Mrs P agreed with this. They have therefore asked that I consider the new complaint at the same time.

my second provisional findings

In my second provisional findings I said:

Mr and Mrs P changed their minds about the product transfer at a late stage in the process. I accept that this would have caused Halifax some administrative difficulties. And that it may not have been possible for Halifax to halt the process on 24 September 2014 when the broker called. The question is whether Mr and Mrs P should have done anything more after that call in order to 'cancel' the product transfer – especially when, as Halifax points out, from 1 October their monthly mortgage payment had reduced.

I think that the Mr and Mrs P were entitled to change their minds at any stage before the product transfer happened. On 24 September the broker told Halifax not to process the transfer until it had received confirmation from Mr and Mrs P. But the following day Halifax then notified the broker that the product transfer had gone through.

I have listened to the call recording from 25 September 2014. Halifax clearly stated that it would cancel the policy before the first payment went out. But that Mr and Mrs P could call for a refund if it did go through in error. Halifax then looked at the account and said what the new monthly payment would be – less than before, making the issue of a refund irrelevant. But Halifax didn't say that Mr and Mrs P had to do anything more to cancel the product transfer. And I think that would have been the clear understanding of the broker.

I think it unreasonable therefore now to expect that Mr and Mrs P should have done something more. And nor do I think that now Halifax can rely upon the reduced monthly payments as evidence of Mr and Mrs P's knowledge or tacit agreement. I can understand that Mr and Mrs P might have missed the change in their monthly payment - especially given that they were by then part way through making their substantive complaint about their mortgage term.

I've thought carefully about whether to tell Halifax to 'undo' the product transfer and rework the account. But I think this will be unnecessarily complicated and mean unwinding the previous settlement. Instead I think that a broad brush approach is fair and reasonable in the circumstances.

Mr and Mrs P tried to cancel the product transfer because they wanted to move. That didn't happen because Halifax didn't tell them they needed to do more than they had done. And now they have to pay an ERC to leave. I think the simplest and fairest solution is just to say that Mr and Mrs P wanted to cancel so Halifax shouldn't have tied them in - and it should let them go without fee.

Applying my provisional findings, Mr and Mrs P will have had the benefit of a lower fixed rate of interest from 1 October 2014. Halifax will have to consider their original application using the existing lending criteria in place at that time. And whatever happens, Mr and Mrs P will not have to pay an ERC. I think this outcome is fair and reasonable to both parties.

I'm thinking therefore of upholding Mr and Mrs P's subsidiary complaint as well; although not to direct redress in relation to the fixed rate from 29 May onwards.

the responses to my second provisional decision

Mr and Mrs P said they have nothing further to add.

Halifax agreed it will look at Mr and Mrs P's application as if it were made in April 2014 and using its pre-MMR policy. But it asked for clarification about what product it should offer and when it should start. Halifax also said that it won't charge Mr and Mrs P an ERC if their application is unsuccessful and they want to re-mortgage elsewhere.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I see no reason to depart from my provisional decision.

Halifax should act fairly towards Mr and Mrs P and to make sure that they are in no worse a position than they would have been had their application been considered by Halifax in April 2014. The application it should consider is the application Mr and Mrs P made in April 2014

– that is, to extend their term and for a product they selected at that time. But given the complexities over what has happened with the attempts at redress in the meantime, I think it would be simplest for the implementation of any new product – if offered – to start from when it is accepted by Mr and Mrs P. To do further backdating, factoring in differences between what Mr and Mrs P have paid and what they would have paid and any changes to the term, will further complicate matters and make it harder for them to see what they are accepting in practice.

my final decision

For the reasons I have given, I uphold Mr and Mrs P's complaints against Bank of Scotland Plc (trading as Halifax) and direct it to:

1. Consider Mr and Mrs P's application as if it had been received on 10 April 2014 using its lending criteria in place at that time.
2. Not apply an ERC should Mr and Mrs P redeem the mortgage within three months of Halifax's decision on the re-consideration.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs P to accept or reject my decision before 9 November 2015.

Alan Harris
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