

complaint

Mr and Mrs R complain that Bank of Scotland plc (trading as Halifax) mis-sold them a mortgage resulting in Mr and Mrs R being financially disadvantaged. In particular, they feel Halifax:

- acted in breach of The Mortgage Code that applied at the time, and
- failed in its responsibility to assess whether it was correct to sell a secured 20 year mortgage to someone aged 70 when the money was put towards paying off mainly unsecured credit card and personal loan debt.

background

Halifax didn't agree Mr and Mrs R's mortgage was mis-sold. It said that Mr and Mrs R were already retired when they took out the mortgage in 2003 and based on the total income figures they provided, the mortgage was affordable. Halifax said it didn't have an age limit for lending, providing it was satisfied that the lending would be affordable. And by taking out this mortgage and securing the debts on their property Mr and Mrs R would've reduced their overall monthly outgoings and made the debt more affordable than it otherwise would've been.

Halifax did however review past arrears management fees on Mr and Mrs R's mortgage account. These had been correctly applied at the time. But, in line with its new customer policy, Halifax paid £98.85 off Mr and Mrs R's mortgage balance.

Mr and Mrs R were unhappy with this response and asked us to look into their complaint.

Our adjudicator didn't recommend upholding the complaint on the basis that she felt Halifax had responded fairly and reasonably to all the issues raised. In summary, she said:

- we wouldn't reasonably expect Halifax to have kept all the paperwork from 2003
- where there's only limited evidence, as here where some of the mortgage paperwork isn't now available, we have to decide what we think is most likely
- Halifax's lending to Mr and Mrs R was well within its guidelines and arrears didn't start to build up on the mortgage until 2012 – so the mortgage appears to have been affordable as Mr and Mrs R kept up monthly repayments for a number of years
- there wasn't any paperwork to show what had been discussed about debt consolidation. But it looked as if Mr and Mrs R had been looking to reduce their monthly outgoings and this was achieved by the debt consolidation. So it was reasonable to conclude Mr and Mrs R had been aware of what was arranged and they understood the implications of taking out the mortgage to pay off some unsecured debt.

- The Mortgage Code doesn't say that Halifax wasn't allowed to lend to Mr and Mrs R because of their age. At the time Halifax didn't have an age limit for lending and it was prepared to lend providing it was satisfied the lending was affordable (as it proved to be for Mr and Mrs R at the outset and for the following nine years).

Looked at overall, our adjudicator didn't feel that Halifax had done anything wrong or acted in a way that wasn't fair and reasonable. In her opinion, Halifax sold Mr and Mrs R a mortgage that met their needs and circumstances at the time.

Mr and Mrs R disagree. In particular, they feel our adjudicator has put too much emphasis on the issue of affordability. They say this isn't directly relevant to the issue of mis-sale. And the main thrust of this complaint centres on the issue of their age at the time of sale. Mr and Mrs R believe Halifax couldn't have taken age properly into account in line with The Mortgage Code as it wouldn't have lent to them if it had.

So the complaint has been referred to me to decide how it should be settled.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I've taken into account everything Mr and Mrs R say in response to the adjudicator's assessment and looked at everything afresh before reaching an independent view. I agree with the adjudicator for the same reasons.

my final decision

For these reasons, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs R to accept or reject my decision before 6 June 2016.

Susan Webb
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