

complaint

Mr and Mrs J complain that Bank of Scotland plc (Halifax) mis-sold them a further advance on their mortgage of around £15,000 in 2009. They complain that they were unaware of the amount of the loan and that it was unsuitable for them to change unsecured lending into lending secured on their property in their circumstances.

background

Mr and Mrs J took out a mortgage with the Halifax in or around 1990 which was due to mature around 2015. In the first half of 2009, they took out an unsecured personal loan with the Halifax. In addition, Mr and Mrs J had outstanding debts on two credit cards which they were regularly paying off.

Mr and Mrs J say that they went to their local Halifax branch in October 2009 to query an arrears charge that had been applied to their account. They say that, during their conversation with a Halifax representative, it was suggested that they should consolidate their existing debts by taking out a loan secured on their home. This would be likely to reduce their monthly outgoings as the interest rate on the secured loan would be lower than the interest rates on the credit cards and unsecured loan.

It appears that Mr and Mrs J believed that this secured loan was only to cover the unsecured loan that they had taken out earlier in the year which they thought amounted to around £4,000. Halifax, however, paid an amount close to £15,000 into Mr and Mrs J's account in October 2009 and, shortly afterwards, three significant payments were made from that account, apparently to pay off the personal loan and to make payments to the two credit card accounts.

From October 2009, Mr and Mrs J's mortgage payments rose significantly as a result of the further advance. Mrs J was making payments monthly in cash to her local branch and payments were supplemented by the Department of Work and Pensions (DWP). It appears that the account started to go into arrears in late 2010 when Mrs J queried the additional amount she was paying on the mortgage and went back to paying a lower amount.

In 2012, Mr and Mrs J again went into their local Halifax branch to discuss arrears letters that they had been receiving. They say this was the first they knew of £15,000 being added to their mortgage in 2009. They were seriously concerned about the implications of having this scale of debt secured on their property as they are both in their late 70s in receipt of state pensions, benefits and a small private pension. They complained to the business as they said they didn't take out the additional £15,000 loan.

Halifax rejected their complaint saying that they had signed the application forms for the further advance in October 2009, the money had been paid into their account and had been used to pay off their existing debts. The case was considered by two adjudicators and ultimately it was not recommended to be upheld as Mr and Mrs J appeared to have received the funds from Halifax. Mr and Mrs J asked for their complaint to be reviewed by an ombudsman.

my provisional findings

I took a different view from the adjudicator on this complaint and issued a provisional decision. Having studied the documents provided by the Halifax and listened to Mr and Mrs J's explanation of their situation and their recollection of what happened in 2009, I was not persuaded that the advice given to them in their local branch which resulted in the disputed loan application was suitable to their circumstances.

I found that the paperwork relating to the loan application was contradictory and appeared mostly to have been provided after the application was made. The notes relating to the advice given were confused as to whether or not the sale was on an advised basis but, on the balance of probabilities, I found it likely that there had been an advised level of service. That being the case, I thought that the Halifax should have told Mr and Mrs J to get independent financial advice before converting unsecured debt to a loan secured on their home.

I was of the view that Mr and Mrs J were understandably very distressed about the consequences of having such a high level of debt secured on their home. They are elderly with a low income and Mr J was particularly worried that, if he were to pass away during the term of the loan, Mrs J would be unable to pay the loan and would therefore risk losing her home. I found, on the balance of probabilities, that the consequences of securing their debt on their property were not properly explained to Mr and Mrs J and that the suitability of this type of loan for them was not adequately assessed by Halifax.

Although the immediate result of taking out the secured loan was to lower their monthly outgoings, the long term consequences put their home at risk at a time in their lives when they would be unable to increase their income in the future if necessary to protect their home. In addition, Mr and Mrs J had the impression that any changes to their loan structure could be easily reversed. This was not the case because the product they were advised to take was a fixed rate mortgage over 5 years with the result that they would have to pay a significant early repayment charge (ERC) if they wanted to change products before 2014 and were tied into a fixed rate which has turned out to be significantly higher than Halifax's standard variable rate over the past four years.

In order to decide how best to put Mr and Mrs J back into the position that they would have been in, I asked Halifax to rework Mr and Mrs J's accounts as follows:

(A) calculate what the balance of the unsecured lending (loan and credit cards) would be today if Mr and Mrs J had continued to pay at the level they were paying off the debt in 2009.

(B) calculate what the balance of the secured lending would be if Mr and Mrs J had continued to pay their original mortgage amount at Halifax's standard variable rate from October 2009. This balance should remain on a secured basis.

In addition, I suggested that Halifax should not apply an ERC to Mr and Mrs J's account and should refund any fees that might have been applied to convert the unsecured lending to secured lending.

I asked Mr and Mrs J to obtain independent advice to be sure that they would not be disadvantaged by any proposed settlement.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. In particular, I have considered the calculations and settlement offer provided by Halifax and have listened to the concerns raised by Mr and Mrs J in response to my provisional decision.

Having carefully reconsidered all the submissions, I am persuaded that this complaint should be upheld for the reasons described in my provisional findings. Essentially, I find that Halifax mis-sold Mr and Mrs J additional lending that was not suitable for their circumstances and failed to fully explain the implications of debt consolidation. As a result, I find that Mr and Mrs J suffered a high level of distress.

redress

In response to my provisional decision, Halifax has proposed the following redress:

A mortgage

The mortgage account is to be reworked as if the additional lending had not been applied to the account (including removal of any fees) and the standard variable rate had applied throughout. This gives a balance of £2,139.45 as at 30 September 2013 with a remaining term of 1 year and 8 months. The account would operate on the standard variable rate, (currently 3.99%) with no early repayment charge if Mr and Mrs J decide to pay off the mortgage early or change the product. The monthly payment would be approximately £110.39 going forward although this would change if the standard variable rate changes.

B pre-existing unsecured debt

The reworking of the pre-existing unsecured part of the debt resulted in an offer that the bank would cover any underpayments and would consider that these debts had been paid in full. There would therefore be no outstanding unsecured debt.

C distress and Inconvenience

Halifax offered to pay Mr and Mrs J £500 in recognition of the levels of distress and inconvenience that they have suffered.

In my view, this offer of settlement is fair and reasonable and should put Mr and Mrs J as nearly as possible into the situation that they would have been in if Halifax hadn't sold them an unsuitable product. If they consider making any changes to their mortgage in the future, I would recommend that Mr and Mrs J should take independent advice before deciding what is best for them.

I recognise that this has been an extremely stressful time for Mr and Mrs J and would like to explain that our awards for distress and inconvenience are generally modest and therefore I believe that £500 reflects the seriousness of their distress and is reasonable in the circumstances. I hope that the settlement as a whole will allow them to put this situation behind them.

my final decision

It is my final decision that this complaint is upheld.

Bank of Scotland Plc should:

- rework Mr and Mrs J's mortgage account to leave a balance of £2,139.45 as at 30 September 2013 operating on the standard variable rate with a remaining term of 1 year and 8 months;
- write off any other pre-existing debt; and
- pay Mr and Mrs J £500 for the distress and inconvenience caused.

Susie Alegre
ombudsman