

complaint

Mr C complains about the service he has received from Bank of Scotland plc (trading as Halifax) and the interest rate on his mortgage.

background

Mr and Mrs C had a mortgage with Halifax. By 2011 the mortgage was in substantial arrears and various payment arrangements were agreed. Sadly Mrs C passed away in early 2014.

Mr C wrote to Halifax saying that he intended to repay the arrears by selling the property. He said in the meantime he would continue with the existing payment arrangement. He heard nothing back from Halifax at that time and the payment he made each month was accepted. In July 2014 Halifax contacted Mr C asking him for paperwork about his wife's death. It also said that the account would be passed to the legal department unless he cleared the arrears. In September 2014 Halifax confirmed that Mr C's offer of payments below the contractual monthly amount wasn't acceptable. It informed him in November 2014 that the minimum it would agree to being paid was £2,016.33.

Amongst other things Mr C complained to Halifax that he had kept it informed of all of his circumstances. He said he tried to resolve the situation as quickly as possible. He says he has been victimised, as there has been a long running dispute between him, his wife and the bank and he has been overcharged. Mr C says his payments have increased dramatically without explanation.

Halifax agreed that it didn't always respond to Mr C's letters. It also found that it had wrongly charged Mr C multiple arrears fees totalling £466.15. It has refunded these. It sent Mr C £60 for the distress and inconvenience this caused him. It also accepted that it had acted insensitively towards Mr C in relation to asking more than once for his wife's death certificate. It offered compensation for this of £210.

Mr C wasn't happy with Halifax's response to his complaint. He complained to us. The adjudicator recommended that Mr C's complaint should not be upheld. She decided that the bank had fairly compensated Mr C for the distress and inconvenience he had been caused. Mr C didn't accept this.

A colleague, who is no longer with this service, considered Mr C's complaint. He issued a provisional decision explaining his findings on the complaint. I have detailed his findings below.

insensitive requests

It was highlighted that Halifax had asked Mr C on more than one occasion for his wife's death certificate. It did so in an insensitive way and despite already having a copy of the certificate. My colleague considered that Mr C was understandably upset by this.

Halifax had accepted this was insensitive. It offered Mr C compensation for this. My colleague found that the amount of compensation Halifax offered was reasonable in the circumstances.

payment increases

My colleague detailed the reasons for the increases in Mr C's payments and his thoughts on those matters as follows:

- In 2010 a payment holiday was taken. This meant that the balance of the mortgage had to be paid over a shorter term – that remaining after the payment holiday period. In addition, interest continued to accrue on the balance.

Mr C was unhappy that the balance as well as the monthly payments increased as he believed it was double recovery. My colleague didn't agree. He explained that unless the monthly payments were increased over the term to cover the payment holiday, it wouldn't be paid for. He was satisfied that Halifax was correct in its approach.

- Mr C's mortgage was on a Bank of England tracker product until January 2012. At the end of that period the mortgage reverted to the Halifax standard variable rate (SVR). This had the effect of increasing the interest rate Mr C was paying. My colleague was satisfied that the reason for the payment being higher than suggested in the key facts document was because the mortgage balance was higher. This was due to the payment holiday and payments being missed or less than the contractual minimum.
- In April 2012 the Halifax SVR increased from 3.5% to 3.99%. Mr C pointed out that there was no change in Bank of England base rate at this time. Mr C thought because of this Halifax acted unfairly.

It was explained that it would only be fair of Halifax to change the SVR if it had a genuine reason, which was in line with its terms and conditions. These say Halifax can vary its SVR *'to reflect changes in the cost to us of raising the money we lend to our customers with mortgages of residential property'*.

My colleague confirmed that Halifax had given us information about its financial position. This had allowed us to assess if the increase was fair. The information it provided was sent in confidence because it said the material is commercially sensitive. It was explained that our rules permit us to receive evidence from either party in confidence.

Halifax showed that changes to its funding rates and long-term borrowing costs warranted an increase in its SVR. The amount of the change – an increase of 0.49% – was made after the bank had demonstrated a clear rationale and valid reason to the FCA. After careful consideration, we were satisfied there was a need for the bank to increase the SVR. Also that it had a valid reason to do so that was in line with the reason specified in the contract.

My colleague considered that Halifax was entitled to increase Mr C's payments for these reasons. He also found it was reasonable for it to do so.

Mr C pointed out that the monthly payments after the discount ended were higher than in his mortgage illustration. The illustration says *"74 payments at a variable rate, **currently** [emphasis added] 3.500%"*. My colleague confirmed that Halifax was entitled to increase the SVR. In addition, he explained that Mr C was paying interest on a higher amount than the mortgage illustration was based on because of the payment holiday and arrears.

Mr C said that even if the SVR increase was correct, the payments were not accurate. Based on the evidence my colleague had available to him, he found that the payments were right.

In response to the adjudicator's view Mr C had said that he believed that having paid a fee for the tracker product, he believed that he would benefit from a lower rate for the rest of the mortgage term. This related to *'this product is non-refundable to give you a lower interest rate during the product rate period'*. It was explained that the 'product rate period' was the period the tracker product was applied to the mortgage. It had expired in 2012. After that the interest reverted to the SVR.

Overall, my colleague found that the interest rates applied to Mr C's account were correct.

overcharging

Halifax had found that there were arrears charges that had been applied more than once. These were refunded.

However, having reviewed the charges, it was noted there had been charges applied when there were payment arrangements in place. An example was the charging between January 2013 and September 2014. This was a time where Halifax had, by not rejecting Mr C's offer to continue to make a reduced payment, effectively agreed to it. My colleague considered that Halifax shouldn't have been applying arrears charges during any period where an arrangement was in place and the payments were being made.

responses to the provisional decision

Halifax looked at charges it had added to Mr C's account between January 2013 and September 2014. It confirmed that it had applied two charges during this time. These were on 8 March 2013 and 17 October 2013. It explained that they were charged because Mr C failed to make any payment in February, May, June, July, August and September 2013. As such, it didn't believe that it was due to refund any further fees.

Mr C didn't accept the provisional decision. He believes that there are aspects of the complaint that have been misunderstood or are incorrect. In relation to the compensation, Mr C still thinks that he was being victimised. He doesn't feel that the amount offered is enough.

Mr C doesn't agree with the findings about the January 2013 payment arrangement. He said that he hadn't had a letter from Halifax saying that the payment arrangement was no longer in place. As the letters from Halifax didn't tell him this and it kept accepting the money he paid it, he considers that the arrangement continued beyond Halifax's e-mail in September 2014 and is still in place.

Mr C went on to explain why he believes that the amount of the monthly payments and the outstanding balances of the loan are wrong. Mr C pointed out that my colleague had detailed the product that expired in 2012 incorrectly – it was a discounted rate rather than a tracker. He also reiterated that he considered that the fee he paid for the interest rate product that ended in 2012 means that he has a guaranteed interest rate for the remainder of the loan term. This rate being 3.5%, which is what the SVR was at the time the product was arranged.

Mr C has also said that he doesn't believe that Halifax can charge interest on top of interest. His monthly payments shouldn't have increased as they have because the only amount added to the loan and is to be paid across the remaining term is the payment holiday

amount. Any arrears are added to the balance at the end and shouldn't affect his monthly payments.

Mr C doesn't agree that it was acceptable for the SVR to have been increased. He doesn't think that it should be for existing customers to pay for changes to Halifax's business funding rates and its long term borrowing costs. This is because he had already taken out his mortgage and entered into a contract with it.

my findings

I have considered all the available evidence and arguments from the outset, to decide what's fair and reasonable in the circumstances of this complaint. This includes the comments made after the provisional decision.

Mr C has said that he considers that the payment arrangement from January 2013 remains in place because Halifax hasn't written to him to tell him it's not. Also, the fact that it is still accepting payments, supports this. I can't agree. Whilst Halifax told Mr C that it wouldn't formally agree to him continuing to make reduced payments to his mortgage in an e-mail rather than a letter, this is sufficient notification. This means that each month he makes the reduced payment he goes further into arrears and is in breach of the mortgage agreement with Halifax.

Whilst Halifax has accepted the payments he has made, it wouldn't have been appropriate for it to have rejected them. If it had rejected the payments it would have placed Mr C in a worse position. However, the fact that it accepted the payments doesn't mean that it had agreed that this is all he had to pay. As there is no payment arrangement in place and Mr C is not paying the full mortgage payment due, Halifax is entitled to pursue possession if it feels it is the right course of action.

Mr C has said that the mortgage statements say that arrears are added to the end balance. Due to this, he doesn't seem to think that he should be making any payments toward the arrears or that interest should be being charged on them. This isn't the case. Interest will be charged on the total amount of the loan outstanding, whether that is the original advance, arrears or previously accumulated but unpaid interest. This will be added each month and if the amount Mr C pays toward the mortgage isn't enough to cover the interest, whatever is left unpaid will also attract interest the following month and thereafter. Although the statements may show the amount of the outstanding original balance separately to the balance of what he hasn't paid, all of it is owing, will attract interest and needs to be paid before the end of the term.

I would like to apologise for the mistake in the provisional decision where my colleague documented the wrong interest rate product being linked to Mr C's mortgage until 2012. However, having reviewed the offer letter, he has quoted from the correct one, so it appears to be a simple admin error. Given that the product itself wasn't what was being considered, but rather what interest rate should have been charged after it ended, I don't believe the error had any effect on the outcome that was reached.

Mr C has said that he thinks that the offer for the interest rate product means that he should have been charged 3.5% from 2012 until the end of the mortgage term. This isn't the case. As the extract above says; Mr C was due to pay SVR from the time that the product ended. SVR is by its very nature variable and what rate it would be set at couldn't be guaranteed.

Like my colleague before me, I have seen nothing that indicates that Halifax has incorrectly calculated the monthly payments or the outstanding balances on Mr C's account. Whilst I don't think that he will accept that this is the case, I think this is likely due to a misunderstanding about how the account works.

Halifax has reviewed the charges applied during the period that my colleague used as an example of when a payment arrangement was in place. However, this wasn't the only period that he considered that Halifax should check – it was all periods where a payment arrangement had been in place. Halifax should do so now and confirm its findings to Mr C. That said, I agree with Halifax that as Mr C didn't make some of the payments under the payment arrangement during the period it reviewed, it wasn't unreasonable of it to have applied the charges.

Mr C has said that he doesn't think that the amount of compensation he has been offered is enough. I accept that Halifax's service around Mrs C's death fell below that which Mr C could reasonably have expected. However, I am satisfied that the sum already offered is appropriate to compensate him.

my final decision

My decision is that I uphold this complaint in part. Bank of Scotland plc trading as Halifax should complete a review of all charges applied to the loan during times when there was an agreed or implicit payment arrangement in place. If any of the charges were applied when the arrangement was being maintained by Mr C, the charges should be reversed.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr C to accept or reject my decision before 5 February 2016.

Derry Baxter
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