

complaint

This complaint is about Mr and Mrs H's mortgage with Bank of Scotland plc trading as Halifax. They complain that a further advance taken out in 2007 for debt consolidation was mis-sold. They also complain that on releasing the 2007 further advance, Halifax wrongly extended the repayment terms of their existing further advances.

background

Mr and Mrs H have had a mortgage with Halifax since 2000. Between 2001 and 2005, they took out three further advances. In November 2007, Mr and Mrs H took out another further advance; for £47,000 repayable over 15 years. It's this advance that is at the heart of the complaint.

First, Mr and Mrs H say they didn't realise that when Halifax set the repayment term at 15 years from 2007 (thus setting an end date in 2022), it reset the end date of the existing further advances to 2022 as well. Secondly, they say the further advance shouldn't have been sold to them, as the debts they were consolidating were already in a debt management plan (DMP), and were no longer attracting interest.

Halifax admitted extending the end dates of the existing further advances without telling Mr and Mrs H. It says a limitation of its computer systems at the time meant all further advances on the same account had to have the same end date. Unfortunately, no one told Mr and Mrs H this.

Halifax recalculated the further advance account to reflect how it would have behaved if the original end dates had been preserved on the earlier further advances. It ended the recalculation in 2012 when Mr and Mrs H knowingly reset the end date of all the further advances to 2020. But it denies having advised Mr and Mrs H on the decision to consolidate the debt into the mortgage, and says they never told it about the DMP.

When the case came to us, we initially told Mr and Mrs H we wouldn't be able to look into the complaint. The event that caused the complaint had happened more than six years earlier, and Mr and Mrs H had first known about it in 2010. That meant that the complaint was "time-barred" under our rules.

We'd only be able to look at it either if Halifax agreed to let us, or if we decided the delay had been caused by exceptional circumstances. In fact, Halifax *did* consent to us looking at it, and issued a fresh final response covering both elements of the complaint.

The case came to us some time ago, and has been looked at by different adjudicators. As evidence has come in, we've come to differing conclusions on how the complaint should be resolved. The most recent assessment was issued by the current adjudicator, in February 2016. In essence he concluded that the 2007 further advance wasn't mis-sold (a change from his initial view) and that Halifax had provided fair compensation for wrongly extending the end dates of the 2001, 2002 and 2005 further advances.

Mr and Mrs H have asked that both elements of the complaint be looked at again by an ombudsman.

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 don't doubt that Mr and Mrs H are unhappy we've reached conflicting conclusions about what the outcome of their complaint should be. It's appropriate that when a party provides evidence we've not previously seen that the case-handler should review the case in its entirety. If that evidence changes the opinion we've formed up to now, then we have to say so. Nonetheless, I'm sorry that Mr and Mrs H's case has taken so long to get to where it is.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to consider it but because I don't think I need to comment on it in order to reach what I think is the right outcome. I'll deal first with whether the 2007 further advance was mis-sold.

There are conflicting points of view about whether this was an advised sale or not. Mr and Mrs H thought they'd been advised to consolidate their DMP debts, but the point of sale documents all say they weren't. I actually don't think the complaint turns on that.

I say that because under the regulations in force at the time of the sale, Halifax was conducting a regulated activity and was required to pay due regard to the interests of its customers and treat them fairly. Selling an unsuitable further advance would be in breach of Halifax's duty to treat Mr and Mrs H fairly, as it would be conducting a regulated activity without regard to their interests.

Consolidating a collection of unsecured consumer debts onto a mortgage is commonplace. Typically, it allows the consumer to repay their debts on a more affordable basis. This can be particularly beneficial for someone whose income and expenditure are under pressure.

The counter to this is that the total cost of repaying the debt over its life time may be greater, but that of itself wouldn't necessarily make a consolidation further advance unsuitable. It's about weighing up the advantages and disadvantages for each consumer, and is dependent on their individual circumstances.

The critical circumstance in Mr and Mrs H's case is that the debt they were consolidating had already been made part of the DMP. That means they weren't paying any more interest on it. Provided they could afford the monthly payment to the DMP, consolidating it into a further advance on their mortgage wasn't in their interests.

So it seems to me that this part of the complaint doesn't turn on whether Halifax advised them to consolidate, but on whether Halifax most likely knew the existing debt was being managed. I've thought very hard about this, and based on the available evidence, I'm not satisfied I can safely say it did. I know this is disappointing for Mr and Mrs H, but I don't think there's a strong enough argument to support a conclusion that the further advance was mis-sold.

What's not in dispute, however, is that when it set up the 2007 further advance with a 2022 end date, Halifax reset the end dates of the 2001, 2002 and 2005 further advances to match it. Prior to that, all three had been due to end much sooner.

The reason, as Halifax has admitted, was a limitation of its computer system. The effect was to slow down the rate of repayment of the three original further advances. This is called mortgage underfunding, and it means the affected balances accrued more interest than they should. What I've got to decide is whether Halifax has done enough to put this right.

The remedy for underfunding involves the lender reducing the loan balance to where it would be at the time of the complaint if the underfunding hadn't occurred. We might expect the lender to do this fully or partly, depending on the circumstances. We generally tell the lender to ignore the "savings" the consumers have made through paying less than they should, chiefly because they're usually unaware of the situation.

What Halifax has done in Mr and Mrs H's case is reduce the further advance balances to undo fully the effect of the underfunding. But instead of running up the present time, its recalculation stops at April 2012. Halifax says this is because in that month, Mr and Mrs H executed fresh instructions to set the end date for all of the further advances to March 2020. Since that date, the accounts have been running correctly, and in line with Mr and Mrs H's wishes. I think that's fair.

The effect of the recalculation, which was carried out in October 2015, was to reduce the aggregate outstanding balance from almost £67,500 to just under £56,000. The balance has fallen further since, as Mr and Mrs H continue to make their monthly repayments. Halifax has also paid Mr and Mrs H a refund (with interest) of overpayments of nearly £10,000, and compensation of £1,000. Mr and Mrs H aren't convinced the recalculation and refund are right.

I appreciate Mr and Mrs H's reticence – especially when their confidence in Halifax's calculations is understandably diminished. However, when we recommend consumers accept a settlement offer intended to place them in the position they would be in if the original error had not occurred, we do so on the basis that they agree to that underlying principle, and the resulting redress flows from it.

I have looked at the calculation of redress that Halifax has used in this case, and the explanation it has given on how it is made up. They appear to me to be consistent with the principle I have set out above, but I have not checked whether the resulting mortgage balances following implementation are correct. That's not a service we provide.

However, I would expect Halifax, on implementing the offer, to have provided a revised statement of the mortgage up to the date of settlement. The revised statement should reflect both the application of the redress *and* the actual conduct of the mortgage account since the original error was identified. If it hasn't already done that, it must do so as part of the settlement of the complaint.

If they wish, Mr and Mrs H could have the revised statement independently checked, but this would have to be at their own expense. We'd only then ask Halifax to reimburse them those costs if the calculation was revealed to be wrong. I appreciate Mr and Mrs H may be reluctant to take what they might regard as something of a leap of faith. But ultimately, I'm satisfied that Halifax has made a fair and reasonable offer to resolve their complaint.

Mr and Mrs H don't have to accept my final decision, and in the event they don't, then neither they nor Halifax will be bound by it. Subject to any time limits a court might impose,

their right to take legal action against Halifax won't have been prejudiced by our consideration of the complaint.

my final decision

For the reasons set out above, I think Bank of Scotland plc trading as Halifax has provided a fair remedy for its mis-handling of Mr and Mrs H's further advances. That means my final decision is that I don't uphold this complaint.

But if it hasn't already done so, Halifax must provide a revised statement of the further advance accounts showing the effect of the recalculation up to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs H to accept or reject my decision before 7 April 2016.

Jeff Parrington
ombudsman