Financial Ombudsman Service

complaint

Mr and Mrs D have complained that further advances on their mortgage with Bank of Scotland plc (trading as Halifax) were unsuitable and that Halifax should not have agreed to this borrowing. To put things right they want Halifax to write off the mortgage.

background

In 2003 Mr and Mrs D took out a mortgage with Halifax, borrowing £45,000 on a capital repayment basis over a term of 15 years. Over the years various further advances have been taken out, all for debt consolidation

June 2005	£35,000 over a term of 13 years
November 2006	£14,299 over a term of 18 years 7 months
February 2009	£29,849 over a term of 16 years 4 months
February 2011	£ 8,099 over a term of 14 years 4 months

In August 2016 Mr and Mrs D borrowed a further £30,000 and rearranged the mortgage onto a five-year fixed rate. £30,000 was over a ten-year term with the remaining £77,050 over a term of ten years. The initial monthly payment until 31 October 2021 is £1,192.37.

In October 2018 Mr and Mrs D complained to Halifax about the length of the mortgage term. They said they'd never agreed to the term being extended. They also queried why they'd have remortgaged with Halifax in 2003 when they already had an endowment mortgage with another lender taken out in 1992.

Halifax explained that the term extension had been done at the time of the further advance in November 2006 when the whole term was set to 18 years 7 months and that this had been documented in the annual statements ever since. Halifax issued a final response letter saying that it thought Mr and Mrs D had left it too late to complain.

In March 2019 Mr and Mrs D complained to the Financial Ombudsman Service. In addition to their concerns about the length of the mortgage term, Mr and Mrs D said they thought the lending on the further advances had been unsuitable.

Halifax didn't consent to us looking at the complaint, saying it had been brought outside the time limits set out in our rules. An ombudsman looked at the time limits and decided that we could consider the issue of suitability of the lending for debt consolidation in relation to the further advances taken out after November 2006.

An investigator looked at the suitability of the borrowing from November 2006 onwards. He noted that, other than the 2016 borrowing, these were all on a non-advised basis. The investigator was satisfied that the further advances met Halifax's lending criteria at the time. As they were for debt consolidation, no additional borrowing was taken out, simply a rearrangement of existing debt. The investigator was satisfied there was nothing untoward in Halifax's approval of those further advances.

In relation to the 2016 further advance, this was on an advised basis (as regulations had changed and required advice to be given). The investigator looked at the checks Halifax had done and was satisfied that these showed the borrowing to be affordable. He was also satisfied that it was appropriate to arrange the bulk of the mortgage over an 8-year term in 2016 to coincide with Mr and Mrs D's retirement ages. The remaining £30,000 was over a ten-year term, which, on a repayment basis, would leave a small balance for them to repay once the main mortgage had been paid off.

Mr and Mrs D didn't agree with the investigator's findings and asked for an ombudsman to review the complaint. They've said they had credit card debts and took out personal loans to pay these off, which they then added onto the mortgage. They never paid much attention to bank statements or mortgage statements, but think they've borrowed about £100,000 over the years in unsecured and secured debt. Mr and Mrs D

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 reviewed the available documentation relating to the further advances from November 2006 onwards. This shows that, in addition to their existing mortgage, Mr and Mrs D had unsecured debts totalling around £17,000.

The notes from 2006 show that Halifax discussed with Mr and Mrs D the implications of adding unsecured debt to the mortgage. By borrowing an additional amount and extending the mortgage term, Mr and Mrs D were in a position to pay off most of their unsecured debt, but with only about a £100 increase in their monthly mortgage repayment during the initial tracker rate period. Given the level of their unsecured debt at the time, I don't think this was unsuitable.

By February 2009 Mr and Mrs D were looking for an additional further advance. Again this was a non-advised sale, with Mr and Mrs D choosing a product from Halifax's available range. I'm also satisfied Halifax explained the implications of consolidating unsecured debt onto the mortgage.

Although it was just over two years since Mr and Mrs D had remortgaged to pay off other debts, Halifax's records show that since they'd paid off their unsecured debts in November 2006, Mr and Mrs D had incurred additional unsecured debts of almost £30,000, with monthly repayments of around £640. Their mortgage repayment was £570 per month, so they were paying a total of £1,210 per month. The remortgage reduced Mr and Mrs D's monthly repayments to £772.06 and provided them with £29,500 to pay off their unsecured debts. Having reviewed this application, I don't think it was unsuitable. Mr and Mrs D's debt was not increased, but was arranged into a form which was affordable.

In February 2011 Mr and Mrs D borrowed a further £8,000 to pay off a store card debt in Mrs D's name. This had a monthly repayment of £170. At this point the monthly mortgage repayment was £777. Adding the debt to the mortgage increased the monthly payment to £842. I'm satisfied suitable warnings were given about adding unsecured debt to the mortgage, and Mr and Mrs D proceeded on a non-advised basis. After reviewing the application, I don't think the lending was unsuitable. I didn't increase Mr and Mrs D's overall debt exposure.

The application in 2016 was on a fully-advised basis, as required by regulations which had, by that point, come into effect.

Mr and Mrs D wanted to borrow an additional £30,000. The application shows that, since the 2011 further advance, Mr and Mrs D had incurred further unsecured debts totalling around

£30,000 (including £8,500 on the same store card that had been repaid from the 2011 further advance).

I'm satisfied that the advice to consolidate was suitable, given Mr and Mrs D's level of unsecured debt and the cost of repaying that debt. The initial monthly payment (until 31 October 2021) is £1,192, which is within the budget of £1,210 which Mr and Mrs D told Halifax would be affordable for them.

Overall, I'm not persuaded the further advances were unsuitable or mis-sold to Mr and Mrs D. They met lending and affordability criteria and were within an appropriate loan-to-value ratio. None of the further advances increased Mr and Mrs D's existing debt as those debts already existing at the point where Mr and Mrs D wanted to consolidate them.

I appreciate this isn't the outcome Mr and Mrs D were hoping for. But I think it's important to remember that Halifax's role as a bank is to administer Mr and Mrs D's accounts, not manage their spending for them. It's unfortunate that each time Mr and Mrs D have paid off their unsecured debts from the further advances, they've gone into debt again, not just with Halifax but with other businesses. But Halifax isn't expected to police its customers' spending – and indeed it would be considered intrusive and inappropriate if Halifax was to try to do so. Given this, I can't hold the bank responsible for the unsecured debts Mr and Mrs D have taken on.

In all the circumstances, after considering everything Mr and Mrs D and Halifax have said, I don't think the bank has done anything wrong. If Mr and Mrs D are finding it difficult to manage their spending, they might find it helpful to contact one of the free debt advisory agencies, such as StepChange, Citizens Advice or Shelter. We can provide contact details for those agencies if Mr and Mrs D would like us to.

my final decision

My decision is that I don't uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs D to accept or reject my decision before 14 November 2020.

Jan O'Leary
Ombudsman