

complaint

Mr and Mrs E complain that Bank of Scotland plc trading as Halifax told them they weren't eligible for a new mortgage product when that wasn't the case. Mr and Mrs E would like to be put back in the situation they were in when they applied for the new product.

background

Mr and Mrs E's mortgage was on a fixed interest rate product with Halifax which ended in October 2017. Their mortgage payments were set to increase from £1,846.72 to £2,107.69. They tried to fix a new rate online at £1,600 per month. But they couldn't do this online. When Mrs E rang Halifax, she was told that the problem was that the account was in arrears, although it was less than one month in arrears at that stage. Mr and Mrs E couldn't afford the increased payments. A Halifax adviser told Mr and Mrs E that the only option was to put the account on hold for three months.

Mr and Mrs E contacted Halifax in January and were told that under the bank's policy they could have got a fixed interest rate product where they were less than one month in arrears as was their position in October. So, Mr and Mrs E want the bank to put them in the position they would have been in October had they been given the right information.

Halifax responded to Mr and Mrs E's complaint on 16 January to say that if the account was less than one month in arrears it could have looked at a new product for them but it would have had to do an affordability assessment. It says that Mr and Mrs E's affordability was considered in a discussion with a Halifax adviser on 16 November. After an income and expenditure review Halifax determined that Mr and Mrs E's expenditure substantially exceeded their income and they wouldn't have met Halifax's affordability criteria for the new product. Halifax said that in view of a potential early repayment charge ("ERC") it wouldn't be acting responsibly by offering Mr and Mrs E a new fixed interest rate product.

Our adjudicator didn't recommend that this complaint should be upheld. He said that he had listened to the call of 16 November and that it was reasonable for Halifax to conclude from the information provided by Mrs E that the new mortgage was unaffordable, He felt that it was reasonable for Halifax to refuse the mortgage and to have offered to put the account on hold for a number of months. Mr and Mrs E disagree and have asked for a review.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In 2017, Mr and Mrs E's financial circumstances changed. Mrs E, the main earner in the household, was in a dispute with her company which meant that her income dramatically reduced, When she spoke to an adviser with Halifax in November, Mrs E mentioned that her earnings from the company had fallen from £3,500 after tax per month to £680 per month. She also mentioned that the legal dispute with the company had used up the family savings.

Mr and Mrs E hoped that they could get another fixed interest rate product beginning in November. Mr and Mrs E couldn't get this online. It seems that this was because there were

arrears on the account. But in fact Mr and Mrs E may have been able to apply for a product subject to an affordability assessment and this initial information was incorrect.

Shortly after this on 12 November, Mrs E had a long phone discussion with an adviser from Halifax about her arrears balance which involved a review of the family income and expenditure. I listened to the call. The review indicated that the family income was £1,887.20 per month and the expenditure was £5,203.41 per month. On those figures Mrs E and the adviser agreed that they couldn't make the mortgage payments for November and December. Although this wasn't an affordability assessment for a new mortgage, it seems clear that if one had been carried out that Mr and Mrs E on those figures Halifax would have refused the new mortgage product as unaffordable for Mr and Mrs E.

As the new mortgage product would have reduced their contractual monthly payments I can see why Mr and Mrs E would have wanted the transfer. But if they were unable to make the payments and the house was sold either by them or Halifax, they would have to pay an ERC. This could substantially reduce the equity in their house which would mean that they were worse off because of the new product. I felt that this was a real live issue for Mr and Mrs E. I noted that in the phone call in November, because of the circumstances they found themselves in, Mr and Mrs E were considering the sale of the house to release equity although they hoped that with the possibility of a new job for Mrs E that might not be necessary.

Clearly if that job didn't materialise and Mr and Mrs E couldn't afford the new mortgage, there was a distinct possibility that they might have to pay the ERC. So I consider that it was reasonable for Halifax in these circumstances to do an affordability assessment to see if they could afford the mortgage.

In the phone call in November 2017 Mrs E clearly hoped that her financial problems were short term and there is mention of a job coming up in the spring at £45,000 per year. Mrs E hoped to receive the contract for that job in the next couple of weeks. The adviser suggested that a solution to give Mr and Mrs E temporary breathing space was that Mr and Mrs E would miss their payments for November and December and that they would review with Halifax what payments could be made in January. I noted that the adviser pointed out that this would increase the arrears and have an effect on their credit file but was welcomed by Mrs E at the time.

I appreciate that Mr and Mrs E were in a very unfortunate situation at the end of last year. Whilst it seems that Halifax may have given them incorrect information about their eligibility to get a new fixed rate mortgage product, their financial situation at that time meant that they were unlikely to get one anyway. Mrs E had a phone call with a Halifax adviser in November which led to them missing their mortgage payments on an agreed basis. This had the effect of increasing the arrears. But the adviser made Mrs E aware of the implications in respect of increased arrears.

From listening to the call I believed that the adviser dealt with Mrs E sympathetically. Given the family's lack of income at that time and Mrs E's expectation of a new job contract in the next few months, the offer by Halifax not to require payments in November and December and to review the case in January seemed fair. I understand that Mrs E could have got some support from her family. This was mentioned in the phone call but if Mrs E felt that she could call on her family I consider that was a matter for Mrs E to pursue. For these reasons I do not uphold this complaint.

I note that Halifax has offered compensation of £50 in its letter of 16 January 2018. It says this was for not acknowledging Mrs E's request for a product transfer in the call in November 2017 and for not explaining why this wasn't possible following a review of the family's income and expenditure. When Mrs E contacted Halifax on that date it was to discuss an arrears balance not to ask for a product transfer so I find this offer somewhat confusing. I don't believe that the adviser did anything wrong during that call. But it's accepted that Mrs E got incorrect advice earlier. Although the evidence suggests that Mr and Mrs E wouldn't have got the mortgage product had they got the correct advice, it was poor service. For that reason I uphold the suggested payment to Mr and Mrs E of £50.

my final decision

My decision is that I do not uphold this complaint but approve the suggested payment by Bank of Scotland plc trading as Halifax to Mr and Mrs E of £50.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs E to accept or reject my decision before 6 January 2019.

Gerard McManus
ombudsman