

The complaint

This complaint's about a Halifax-branded mortgage Ms R holds with Bank of Scotland plc (BOS). Ms R is unhappy that BOS removed a fixed rate product from the account when the joint borrower objected. She says BOS told her that couldn't happen.

What happened

The broad circumstances of this complaint are known to Ms R and BOS. I'm also aware that the investigator issued a detailed response to the complaint, a copy of which has been sent to all parties, and so I don't need to repeat the details here.

Our decisions are published, and it's important that I don't include any information that might result in Ms R being identified. Instead I'll give a brief summary of the main points, and then focus on giving the reasons for my decision. If I don't mention something, it won't be because I've ignored it. It'll be because I didn't think it was material to the outcome of the complaint.

The mortgage is held jointly with Ms R's husband, from whom she is separated and going through divorce proceedings. Since their separation, Ms R has lived in the mortgaged property, and paid the monthly mortgage payments on her own. In September 2022, with variable interest rates rising, Ms R asked BOS whether she could have a lower rate that fixed her payments at a known level.

BOS agreed to provide a fixed rate deal using its "single signature" policy, which came into force in December 2022. However, Ms R's estranged husband then objected to the fixed rate deal being put in place. BOS wrote to Ms R to say it was withdrawing the product and reverting the mortgage to standard variable rate with effect from 1 March 2023.

Ms R complained, saying BOS had assured her even if her estranged husband objected, it would not cancel the fixed rate. BOS rejected the complaint, and when it came here, the investigator who looked into wasn't persuaded to recommend it be upheld. Ms R has asked for the case to be reviewed by an ombudsman.

What I've decided – and why

I'll start with some general observations. We're not the regulator of financial businesses, and we don't "police" their internal processes or how they operate generally. That's the job of the Financial Conduct Authority (FCA). We deal with individual disputes between businesses and their customers. In doing that, we don't replicate the work of the courts.

We're impartial, and we don't take either side's instructions on how we investigate a complaint. We conduct our investigations and reach our conclusions without interference from anyone else. But in doing so, we have to work within the rules of the ombudsman service, and the remit those rules give us.

I've considered all the available evidence and arguments to decide what's fair and

reasonable in the circumstances of this complaint.

That has included listening to recordings of Ms R's phone conversations with BOS during September and October 2022 that led to the fixed rate being agreed. Having done, I've reached the following conclusions.

At no time during the phone conversations I've listened to, or in any of the emails exchanges I've been provided with, did BOS say or imply that it would not withdraw the fixed rate in the event Ms R's estranged husband objected to it. In the event Ms R has inferred that, I'm not persuaded it was as a result of anything BOS said or wrote. BOS, in my view, made it more than amply clear that the fixed rate could be withdrawn if Ms R's estranged husband were to object to it.

During the appeal process that followed Ms R's estranged husband objecting, BOS gave reasonable consideration to both parties' points of view, as it was required to do. I note that during the phone conversation which led to the fixed rate being put in place, Ms R had answered "no" when asked if there had been any court order in the matrimonial proceedings up to that point. However, during the appeal process, BOS was provided with evidence of an interim court order from 2021 which, subject to finalisation of the divorce itself, was likely to require the mortgaged property be sold.

Given the fixed rate – a five-year deal – came with an early repayment charge (the primary reason for Ms R's estranged husband's objection) I'm satisfied the appeal process reached a fair decision that the fixed rate should be withdrawn. I also think it likely, based on the business' contemporaneous notes of the appeal, that if had been made aware of the terms of the interim order when speaking to Ms R in the autumn of 2022, BOS would, in all probability, not have invoked the single signature provision to facilitate the fixed rate in the first place.

If that had been the case, Ms R would not have received any benefit at all from the fixed rate product; as it was, she did receive it for three months, because BOS didn't back-date the cancellation.

I don't find that there was another type of mortgage product that BOS could have provided that might have "survived" an objection from Ms R's estranged husband. Because of the interim court order requiring the sale of the mortgaged property once the divorce was finalised, the sticking point was always going to be the early repayment charge that is a standard feature of almost all fixed rate mortgage products.

The only other type of interest rate product that might have produced a lower rate would have been a tracker product. Tracker products don't generally come with an early repayment charge, but equally they don't provide the monthly cost stability Ms R was seeking.

I said at the outset that I wouldn't be commenting on every single point, and I haven't. I have, as I said I would, confined myself to those matters that I consider have a material effect on the outcome. I can see from her submissions how important this is to Ms R. That's a natural reaction, and entirely understandable when you're as close to a situation as she is here.

But I have a different remit. I have to be objective, and impartial, and sometimes that means stepping back from the fine detail, taking an overview and deciding what is fair, reasonable and pragmatic in all the overall circumstances of the case. It also means that I'm not required to provide answers to every specific question that comes up if I don't consider doing so will affect the overall outcome.

My final decision

My final decision is that I don't uphold this complaint.

My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further consideration or discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms R to accept or reject my decision before 28 November 2023.

Jeff Parrington

Ombudsman