DRN-4213643

The complaint

Mr K's complaint is about a mortgage he has with Bank of Scotland plc trading as Halifax. Mr K says that Halifax should offer him a term extension on the mortgage.

What happened

I will summarise the complaint in less detail than it's been presented. There are several reasons for this. First of all, the history of the matter is set out in detail in correspondence, so there is no need for me to repeat the details here. I will instead concentrate on giving the reasons for my decision. In addition, our decisions are published, so it's important I don't include any information that might lead to Mr K being identified. So for these reasons, I will keep my summary of what happened quite brief.

This is one of a number of complaints Mr K has made about this mortgage account. The mortgage was originally taken out in 2001, with a further advance in 2008. It is on a part-repayment basis (approximately £33,500) and part-interest-only basis (approximately £470,000), over four sub-accounts. Two of the sub-accounts (one repayment, one interest-only) reach their end date in June 2026 and the other two reach the end of their terms in October 2027.

In April 2021 Mr K switched the mortgage to a new interest rate product. It is now on a fixed rate of interest at 1.32% until 31 July 2024. An early repayment charge (ERC) applies if the mortgage is repaid, in whole or in part, before that date.

In February 2022 Mr K spoke to Halifax about the mortgage. The bank's notes recorded that at the time of the product switch in 2021 Mr K had wanted to extend the term to have more time to repay and possibly switch the whole mortgage to repayment, but would keep some on interest-only if necessary. Mr K didn't want to have to sell the property at the end of the current term.

The bank said that it did not consider this would be affordable for Mr K. Halifax explained that rental income from lodgers wasn't an acceptable form of income. Halifax also wasn't able to take into consideration savings or pensions income which Mr K was not yet in receipt of. Mr K was on benefits, which the bank was able to treat as acceptable income, but there was no repayment vehicle for the interest-only part of the mortgage. A switch to capital repayment wasn't affordable, given Mr K's limited income. As a result, Halifax wasn't able to make any changes to the mortgage term, or the repayment type. Halifax explained that overpayments were allowed, if Mr K was able to make these, although anything over 10% of the annual balance would incur an ERC until 31 July 2024.

Mr K complained that he wasn't able to extend the mortgage term. Halifax didn't uphold the complaint, so it was brought to our service. An investigator looked at what had happened but didn't think the bank had acted unfairly.

Mr K asked for an ombudsman to review the complaint. Although Mr K requested further time to prepare his arguments and was granted an extension of time, that deadline passed several weeks ago.

What I've decided – and why

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

As I said at the outset, I've kept my summary of what happened quite brief. I note that Mr K has complained about other matters during the course of this complaint. Some of these have already been investigated by our service, and some have not yet been raised with the bank.

Therefore I am not looking at Mr K's complaints about the arrangement of the further advance and switching part of the mortgage to interest-only carried out through his own independent financial adviser in 2008. Mr K previously raised a complaint with us against Halifax about those matters. We issued our findings on it in August 2021, following which Mr K agreed the case could be closed.

Nor am I looking at Mr K's complaints about legal fees attached to his account, which he has only recently raised in this current complaint. I am aware that Mr K had an ombudsman's final decision about legal fees on his account on 8 November 2022. If there are any new issues that have arisen since then in relation to legal fees, Mr K will need to raise them separately with Halifax, as it's not possible to add new issues to an existing complaint.

I am also not considering Mr K's complaint that, when he and his sister applied to Halifax for a new mortgage, the bank would only agree to lend about £160,000 – this would need to be a new complaint brought by Mr K and his sister.

In relation to the issue I am looking at in this complaint – which is that Mr K says Halifax should have offered him a term extension when he took out the product switch in 2021 – I don't think the bank has treated him unfairly, for the reasons given below.

There are regulations in place that have flowed from the FCA's Mortgage Market Review (MMR) which took place after the financial crash in 2008. This has led to a series of major changes, effective since 2014, in the way residential mortgages are regulated. MMR regulations have brought about requirements for stricter lending assessments, aimed at protecting consumers and encouraging mortgage lenders to act more responsibly.

The FCA recognised though that existing borrowers who wanted to make changes to their mortgages might have difficulties with this if they had passed tests under the old rules but wouldn't under the new ones. So, it introduced certain rules to address this. The rules are contained in the Mortgages and Home Finance: Conduct of Business Sourcebook (MCOB).

MCOB says a lender doesn't have to carry out an affordability assessment if a borrower wants to vary or replace an existing mortgage and there is no additional borrowing (other than for product fees) and no change to the terms of the mortgage that is material to affordability.

There are also transitional arrangements which say that a lender need not carry out an affordability assessment if:

- the borrower has an existing mortgage taken out before 26 April 2014, and is applying to vary that mortgage or replace it with a new one;
- the application wouldn't involve any additional borrowing except for essential repairs to the property, or to add product fees to the balance;
- there's been no further borrowing (with some exceptions) since 26 April 2014; and

– the proposed transaction is in the borrower's best interests.

So, under this rule, even where a change material to the affordability of the mortgage takes place, the lender can, *if it chooses*, waive an affordability assessment. If the lender decides to carry out an affordability assessment, it shouldn't use that as a reason to decline an application if allowing the application would otherwise be in the customer's best interests. But the lender can take the assessment into account as part of its consideration of best interests.

This means there are two routes that an application for an existing borrower can go down. If there's no change to the terms of the mortgage contract material to affordability, there's no obligation to carry out an affordability assessment at all. And if there is a change to the terms of the mortgage contract material to affordability, a lender could still decide to allow an application without an affordability assessment if doing so would otherwise be in the borrower's best interests.

A mortgage term extension is a change to the mortgage that is material to affordability. At the time of the product switch in 2021 Mr K was 53 years of age. I am sorry to note that Mr K has been in ill health for some time, and unable to work. In addition, I understand he took care of his late mother during her final years. Mr K has been on benefits for some time, and although he's said he hopes to return to work, he hasn't done so yet. I have no doubt that the past few years have been very stressful for Mr K.

However, given Mr K's financial position, I'm satisfied that switching the mortgage (or any part of it that isn't already capital repayment) onto a capital repayment basis wouldn't be affordable. Although Mr K has income from lodgers, this isn't an acceptable form of income to meet Halifax's criteria.

Mr K wants the mortgage term extended for another five years from the current end date of 2027, so until 2033. Mr K isn't due to receive his State Pension until the following year.

Whilst a term extension would result in the monthly repayments reducing for the capital repayment part of the mortgage (as they would be spread over a longer period), there would be additional interest payable both on the capital repayment element and on the interest-only sub-accounts over a longer term.

With no repayment vehicle for the interest-only part of the mortgage, and with no clear indication of how Mr K would be able to fund the mortgage repayments beyond 2027 if the term was extended, I'm not persuaded that it was unreasonable for Halifax to decline to extend the term in 2021, as this would not have been in Mr K's best interests. I'm satisfied Halifax was entitled to take affordability into consideration, given that the only income Mr K was receiving that Halifax could take into account was state benefits.

It's Halifax's policy to review its interest-only mortgages with borrowers two years before the end of the term – so in this case, in 2025. Mr K will also have the opportunity to review his mortgage when his current product expires in July 2024. It may well be that Mr K's circumstances might have changed by then, which could influence Halifax's decision on whether or not to extend the term. There is nothing to prevent Mr K from applying for a term extension at a later date, and Halifax will be required to consider any request in accordance with its regulatory obligations and lending criteria.

However, in relation to the decision to decline a term extension in 2021, after considering everything Mr K and Halifax have said, I'm unable to find Halifax did anything wrong.

I know this isn’t the outcome Mr K was hoping for. I can tell from what he’s told us how important this complaint is to him. As I said above, Halifax has not shut the door on a term extension – and in 2025 Mr K can apply for one if by then he thinks it’s unlikely he’ll be able to pay off the mortgage in 2027, although there is no guarantee that any future term extension would be granted. It would depend on the bank’s lending criteria and Halifax’s regulatory obligations at the time of the application, which might be different from those in place in 2021.

My final decision

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

This final decision concludes the Financial Ombudsman Service’s review of this complaint. This means that we are unable to consider the complaint any further, nor enter into any correspondence about the merits of it.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr K to accept or reject my decision before 30 August 2023.

Jan O'Leary
Ombudsman