

The complaint

Miss B and Mr S say that Bank of Scotland Plc trading as Halifax has treated them unfairly by refusing to allow them to switch to a new residential mortgage interest rate product because they have consent to let (CTL) on their mortgage.

To settle the complaint, Miss B and Mr S want Halifax to switch them onto a new interest rate product.

What happened

In 2018 Miss B and Mr S bought a property with a mortgage from Halifax, and with a Help to Buy (HTB) loan from the Government. In September 2020 they took out a new mortgage interest rate product, a fixed rate of 1.25% until 31 January 2023.

Mr S, who has dealt with the complaint throughout, has explained that, when the pandemic lockdowns began in March 2020, he and Miss B decided to move away, initially living with family but then in December 2020 renting a property in which to live. They tried to sell the flat, but weren't able to and so decided to rent out the property instead.

In April 2021 Halifax granted CTL, valid for a year. Another CTL application was received in May 2022, and again CTL was granted for another year. The confirmation from Halifax confirmed that Miss B and Mr S would not be able to switch to another residential interest rate product whilst CTL is in place, but would be able to do so once they have resumed occupation of the property.

In January 2023 Halifax confirmed to Miss B and Mr S that the mortgage interest rate product they'd taken out in 2020 was coming to an end, and that the mortgage would revert to Halifax's Homeowner Variable Rate (HVR). Miss B and Mr S complained, saying this would cause them financial hardship. They thought Halifax's HVR was too high and that it wasn't fair that they couldn't have a new interest rate product.

Halifax didn't uphold the complaint. In its final response letter Halifax explained that residential mortgage interest rate products are only available if Miss B and Mr S are living in the property. Halifax explained that its HVR is a variable rate, dependent on a number of factors, but that it doesn't always change in line with fluctuations in Bank of England Base Rate. Halifax said that funding mortgages is complex and so there are other factors to be taken into consideration when setting its HVR. Halifax also said that support was available for customers experiencing financial difficulties, and signposted Miss B and Mr S to its website.

Unhappy with the bank's response, Miss B and Mr S referred the complaint to our service. They explained that they've tried to sell the property, without success. The increase in the mortgage, along with the cost of the HTB loan, has put them in a vulnerable position and although they have increased the rent on the property, they still have expenses, such as ground rent, service charges and insurance to pay.

Miss B and Mr S say that their intention is to let the property over the medium term; they can't move back in because they now live elsewhere with other commitments and a bigger family. They are also unhappy that Halifax has said it will apply an additional 0.5% interest rate to the mortgage, because it has CTL. Miss B and Mr S say they aren't able to switch to a buy-to-let (BTL) mortgage because this would require a capital reduction of about £50,000 in order to bring the loan-to-value ratio (LTV) down to 75% or 80%.

An investigator looked at what had happened but didn't think Halifax had done anything wrong. Miss B and Mr S disagreed and asked for an ombudsman to review the complaint. Mr S has made some further submissions, which I summarise below:

- He has extensive experience and expertise in the credit risk function of a mortgage lender in the UK and has worked in the mortgage industry for over a decade. He trusts that his professional background and knowledge in this field will be duly acknowledged and respected.
- All available options have been exhausted and they are left with no viable solution.
- They are in a dire situation as mortgage prisoners and are aware of the bank's obligation to help them.
- This is costing them a net loss of £500 a month and Halifax's refusal to provide another rate is placing a financial burden on them.
- He urges the Financial Ombudsman Service to enforce Halifax's responsibility to offer them a fair market rate. He knows that we have the power to force a lender to do this.

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.

Having done so, I'm afraid I have disappointing news for Miss B and Mr S; I'm not upholding their complaint. These are my reasons.

Miss B and Mr S purchased this property with the mortgage from Halifax and a HTB loan, and with the intention of it being their home.

I will explain here that HTB is a government scheme to help first-time buyers purchase a property with just a 5% deposit. Eligible buyers could borrow 20% of the purchase price (in London 40%), interest-free for five years. The scheme closed to new applications in England on 31 October 2022.

Miss B and Mr S have a residential mortgage, which means that under the terms of that mortgage and the HTB loan they cannot let the property out. So technically, when Miss B and Mr S moved out of the property they had three options: to leave the property unoccupied, to sell it, or if they wanted to rent it out, take out a commercial mortgage that would allow them to do so and repay the residential mortgage and HTB loan.

However, Halifax will allow concessions to residential mortgage terms and give CTL. This allows a borrower to rent out their home for a period, but it is not meant to be a permanent arrangement.

Furthermore, it is only in exceptional and very limited circumstances that consent will be given by the HTB administrator to rent out a property with a HTB loan, and then only on a temporary basis. I don't know if Miss B and Mr S obtained CTL from their HTB administrator, but nothing turns on this in relation to this complaint. However, the existence of the HTB loan does affect the options available to Miss B and Mr S, as I will explain later in this decision.

Generally, if a borrower wants to rent out a property permanently, they would be expected to change their mortgage arrangements to reflect the change in the nature of the property, from residential to commercial. Commercial mortgages in general tend to be more expensive than residential ones to reflect the different risk they present to the lender. As such, many lenders increase the interest rate applicable to residential mortgages secured on properties that are being used for commercial purposes, which includes rental to tenants. There is nothing wrong with them doing this, as long as they apply the policy fairly to all of their customers in a similar position. The interest rates offered by a lender, including whether it offers special rates, are a matter for the lender's commercial judgement.

I do understand why, during lockdown, Miss B and Mr S wanted to move to be closer to their families, and although they'd tried to sell the flat, they weren't able to. However, rather than return to live in the property, Miss B and Mr S decided to move to a different town about 40 miles away from the mortgaged property and rent a house there. They've explained that their medium-term intention is to continue to rent out the mortgaged property, so presumably for the next few years.

It's within Halifax's discretion whether or not to grant CTL. It's intended to be a short-term measure for borrowers who, usually for work reasons, have had to move away from the property. It is a temporary concession to allow a borrow to rent out their main residence because circumstances warrant it. It is not intended to allow residential borrowers to move into becoming permanent landlords. Halifax also has discretion whether or not to renew CTL. In addition, if it appears that the borrowers are not likely to return to live at the property in the immediately foreseeable future (as is the case here) Halifax (in line with standard industry practice) is allowed to apply an interest rate premium, or ask the borrowers to re-mortgage onto a BTL mortgage.

Halifax is entitled to set its own lending criteria and policies. Decisions that Halifax makes in respect of what those criteria and policies are, whether it should lend and if so, on what terms are clearly discretionary matters for Halifax's own commercial judgement that I would not interfere with.

Halifax's policy is that it will not permit residential borrowers who are renting out their properties with CTL to have a new residential interest rate product. This is reasonable, in my opinion. In the circumstances of this particular case, although Miss B and Mr S might have intended to return to live in the property once lockdown was over, they changed their minds and instead moved to a rented property. Consequently, Miss B and Mr S have changed the nature of the mortgaged property from their main residence to a rental property (which is considered to be a commercial or investment enterprise), and they are not intending to return to live in it.

I'm satisfied that when Halifax granted CTL it explained that no new interest rate products would be available. I appreciate that Miss B and Mr S had expected to have sold the property before the expiry of their interest rate product, but that didn't happen, through no fault of theirs – but also not Halifax's fault either. Consequently, given Halifax's policy, it wasn't possible for the bank to offer a new interest rate product because the property was no longer Miss B and Mr S's main residence and so fell outside Halifax's lending criteria for new residential interest rate products.

The mortgage has now reverted to Halifax's HVR, which Mr S says is too high and that it's unfair of Halifax to charge this rate. So I've looked at whether or not the interest rate now applicable to the mortgage – HVR – is unfair or has been unfairly applied in this case.

Halifax has provided the Financial Ombudsman Service with detailed information about the way it sets and varies its interest rates. The information Halifax has given us is commercially sensitive, so can be treated as confidential. The information has been reviewed in line with Halifax's mortgage documentation, relevant law and regulations.

I've considered whether Halifax has acted fairly overall in applying HVR to this mortgage. Having done so, I'm satisfied Halifax has applied its HVR in line with the mortgage terms and conditions and that Halifax has exercised those terms fairly. This means that I'm satisfied Halifax has not overcharged interest on the mortgage since it reverted to HVR.

One of the considerations that I am required to take into account is relevant law, including the impact of the Unfair Terms in Consumer Contract Regulations to the relevant mortgage terms and conditions. The way the UTCCRs apply to the terms of this mortgage contract is ultimately a matter for the courts to determine. But they are a relevant consideration I must take into account when determining what is fair and reasonable in all of the circumstances of this case.

The crux of this is whether any of the terms, contrary to the requirements of good faith, cause a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer. As part of this, relevant considerations are:

- the extent to which the terms are sufficiently clear and transparent;
- the extent to which there were any barriers to Miss B and Mr S being unable to exit the contract.

At a general level, variable interest rate clauses such as those that apply to this mortgage have a legitimate purpose and are common in financial services consumer contracts, particularly those of long or indeterminate duration, such as mortgage agreements. A fair variation term can benefit both consumers and lenders, by providing flexibility and a wider choice to consumers and enabling firms to provide competitively priced products, knowing they can vary the interest rates they charge to reflect changes in circumstances, particularly in their own cost of funding. A reversionary rate also permits lenders to provide for future changes that justify increases in the rate, and a lender's own costs of funds are by nature difficult to foresee.

Overall I am not persuaded there is any basis to say that the application of HVR to this account has resulted in Miss B and Mr S being charged an unfairly high rate of interest on the mortgage since the fixed rate product came to an end. Nor does the evidence lead me to conclude that the interest rate applied is unfair for any other reason.

As I've explained above, because Miss B and Mr S are no longer living in the property, it's reasonable for this to be reflected in the interest rate applied to the account. Residential mortgage interest rate products are only available to borrowers who are living in the mortgaged property.

Furthermore, Miss B and Mr S are not being prevented by Halifax from terminating the mortgage contract. When considering whether there is a significant barrier to exit, it is important to note that there was no early repayment charge (ERC) applicable to this mortgage at the point it reverted to HVR. So Miss B and Mr S are free under the contract to re-mortgage to another lender without any ERC.

I do understand and appreciate that the existence of the HTB loan will impact on Miss B and Mr S's ability to arrange a new mortgage. Because they're renting out the property, Miss B and Mr S won't be able to arrange a new residential mortgage with another lender and keep the HTB loan because the property is tenanted.

They also wouldn't be eligible to "staircase" (i.e. pay off only part of) the HTB loan, because the property is no longer their main residence. Instead they will need either to remortgage the entire borrowing (including full repayment of the HTB loan) onto a BTL mortgage or sell the property and repay all the borrowing.

I acknowledge that this limits their options, but this does not bring Miss B and Mr S into the category of "mortgage prisoners". The FCA defines mortgage prisoners as borrowers who have mortgages in closed books with inactive firms and has identified 195,000 mortgage accounts where the borrowers could potentially benefit by moving to an active lender. Miss B and Mr S are not in this category, because Halifax is an active lender. They are not, therefore, mortgage prisoners.

Halifax is required to treat borrowers in financial difficulty sympathetically, and to give fair consideration to any payment proposals. If Miss B and Mr S are experiencing financial hardship, it might help them to speak to one of the free advisory services such as Citizens Advice, StepChange or Shelter. We can provide them with contact details for those organisations, if they'd like us to. Alternatively, Miss B and Mr S could speak to an Independent Financial Adviser to discuss the mortgage options that might be available to them.

Conclusion

I'm satisfied that Halifax is under no obligation to offer Miss B and Mr S a new residential mortgage interest rate product, because they are not eligible for one under Halifax's lending criteria. This is a policy Halifax is entitled to implement and I'm satisfied that it is not unfair or unreasonable in the circumstances of this case.

I'm also satisfied that Halifax's HVR is not unfair nor has it been unfairly applied to this mortgage account.

I know this isn't the outcome Miss B and Mr S were hoping for, and I know they are now in a difficult position. But in all the circumstances, I don't think Halifax has acted unreasonably. It was Miss B and Mr S's decision to move out of the property, and I entirely understand that they wanted more space for their family, in a better area. It's also not their fault that they've been unable to sell the flat. However, I'm not persuaded that Halifax has done anything wrong, or treated Miss B and Mr S any differently from other customers in the same situation.

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 discussion about it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B and Mr S to accept or reject my decision before 31 January 2024.

Jan O'Leary
Ombudsman