

The complaint

Mr and Mrs M have complained about their mortgage they hold with Bank of Scotland plc trading as Halifax. They've said that when they made some overpayments in 2017, they wanted to have their remaining mortgage held entirely on a repayment basis so it would be repaid in full at the end of the term. Instead around £20,000 remained on an interest only basis and they've no way to repay that sum when the term ends.

What happened

Mr and Mrs M had a mortgage with Halifax. The annual mortgage statement issued in July 2017 contained the following details about the sub-accounts:

Sub-account	Product	Repayment / Interest only	End of year balance	Monthly payment due at year end
1	Variable rate 3.74%	Repayment	£10,055.64	£97.86
2	Variable rate 3.74%	Repayment	£81,866.53	£794.89
3	Variable rate 3.74%	Repayment	£7,680.41	£74.75
4	Fixed rate 6.29% until 31 August 2018	Repayment	£27,992.45	£280.79
5	Fixed rate 6.29% until 31 August 2018	Interest only	£20,958.39	£104.68
99	Variable rate 3.74%	Repayment	£102.37	£1.03

The mortgage was in arrears. The transaction history shows that on 30 January 2017 the arrears stood at around £10,300, and at that time Mr and Mrs M were making additional payments of around £150 a month to bring the arrears balance down.

In July and August 2017 Mr and Mrs M made payments of £8,000, against their contractual monthly payment of around £1,350. They made no payment in September, and then in October they paid £3,000. Those payments were split across their sub-accounts on a pro-rata basis and were enough to take the mortgage out of arrears.

At the end of November 2017 they paid £70,000 across two transactions and it is those transactions which are the subject of this complaint. Halifax used the sum to fully repay sub-accounts 1 and 3 and the rest was used to reduce the balance of sub-account 2, with no other changes made. Whereas Mr and Mrs M say they wanted their mortgage to be on a full repayment basis so either sub-account 5 should have been redeemed, or if other sub-accounts were redeemed then sub-account 5 should have been switched to a repayment basis.

The annual mortgage statement issued in July 2018 contained the following details about the sub-accounts:

Sub-account	Product	Repayment / Interest only	End of year balance	Monthly payment due at year end
1			£0	
2	Variable rate 3.99%	Repayment	£16,441.70	£173.87
3			£0	
4	Fixed rate 6.29% until 31 August 2018	Repayment	£24,066.39	£280.79
5	Fixed rate 6.29% until 31 August 2018	Interest only	£20,176.02	£104.68
99	Variable rate 3.99%	Repayment	£86.42	£0.90

Mr and Mrs M contacted Halifax in November 2022 and were told that if they maintained their monthly payment then the balance would be repaid at the end of the term as the mortgage was on a full repayment basis.

Mr and Mrs M then contacted Halifax again in December 2022 as they'd received a letter which said they'd have around £20,000 outstanding at the end of the term. The call handler raised a complaint, which Halifax responded to at the end of January 2023. In its response Halifax apologised for the misinformation that had been given in November 2022 and paid £80 compensation for that, but it didn't uphold the rest of the complaint.

The complaint was referred to our service where it was looked at by one of our Investigators. He said the notes from the time indicate Mr and Mrs M said they wanted to reduce their monthly payment, and there was no mention of repaying a specific sub-account or having a full repayment mortgage. He didn't uphold the complaint.

Mr and Mrs M didn't agree and so the case was passed to me to decide.

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.

I don't doubt that this is very important for Mr and Mrs M but although I've read and considered the whole file I'll keep my comments to what I think is relevant. If I don't comment on any specific point it's not because I've not considered it but because I don't think I need to comment on it in order to reach the right outcome.

This service is impartial between, and independent from, consumers and businesses. What this means is that we don't represent either party, and I don't act under either's instructions or take directions on how a complaint will be looked at or what questions should be asked or answered. Where the available evidence is incomplete, contradictory or missing, our rules require me to reach my conclusions on the basis of what I consider is most likely to have happened on the balance of probabilities.

This hasn't been an easy case to decide because whilst Mr and Mrs M's testimony – in itself – is evidence (and I've treated it as such) I have to consider it against the other evidence and keep in mind any anomalies, however small.

Mr and Mrs M say that in 2017 they wanted a full repayment mortgage and were assured by Halifax that would be the case once the lump sum payments were made. Unfortunately, due to the passage of time those calls are no longer available. What we have got is the contemporaneous call notes and paperwork that was issued both at the time and later.

I understand Mr and Mrs M feel Halifax is withholding the 2017 calls and/or transcripts of them but there's nothing to substantiate those claims. It isn't at all unusual for call recordings to not be available after such a long time. Halifax isn't able to provide call recordings it doesn't hold, and it also can't provide transcripts of the calls as to provide a transcript it would need to be able to listen to the call. Whilst it is unfortunate we don't have the calls to listen to, that is often the nature of complaints made many years after the event in question and isn't indicative of any wrong doing or withholding of evidence.

The contact notes show Mr M called on 29 November 2017, with the note saying:

*"Mr has called as he's looking to pay a lumpsum **to reduce the monthly payment**". [my emphasis]*

The next note says a £60,000 debit card payment had been made and was to be used to repay sub-accounts 1 and 3, with the remainder to reduce the balance of sub-account 2. The other £10,000 was paid on 30 November and also went to sub-account 2.

We have no way of knowing for sure what was discussed about those lump sum payments, but the contact notes are a contemporaneous record and therefore carry some weight.

In addition, Halifax sent mortgage statements to Mr and Mrs M every year. Each of these, from July 2018 onwards, showed sub-account 5 remained outstanding on an interest only basis with around £20,000 owing. Additionally, each annual statement had a section about repayment type that said how much was held on an interest only basis and explained what that meant. Halifax also issued a letter in December 2020 which set out that around £20,250 was held on an interest only basis and that Mr and Mrs M needed to plan how they were going to repay that.

I've seen copies of mortgage statements and other letters Halifax has sent Mr and Mrs M since 2017. All these letters were correctly addressed to them and I have no doubt that they were sent in the post. If Mr and Mrs M would like to receive their mortgage statements electronically then that is something they would need to raise with Halifax. It is quite possible that isn't an option that is available, and even if it is an option it certainly isn't something I would expect Halifax to offer if it isn't expressly requested.

Mr and Mrs M say they live out in the country and in the past have not always received letters in the post. Mail does – very occasionally – go astray in the post. But that's a rare occurrence. There's no record of any post being returned to Halifax as undelivered. On balance, I think it's very unlikely that none of Halifax's mortgage statements or December 2020 letter, arrived.

In any event, it seems likely that Mr and Mrs M received at least one of the documents that showed around £20,000 was still held on an interest only basis because in our complaint form Mr M said:

"In November 2021 my wife asked if we had anything outstanding on the mortgage after

the repayment period. She was sure something had come in the post.”

I've seen copies of the annual statements and December 2020 letter Halifax sent, and for the reasons I've given above I'm satisfied that it's more likely than not that these were sent and that at least one would have been delivered to Mr and Mrs M. Any one of those documents in isolation would have shown Mr and Mrs M that around £20,000 of their mortgage was still held on an interest only basis.

Mr and Mrs M have said Halifax didn't offer them advice about whether making the lump sum payments in this way was the right thing for them; that is whether it was in their best interests. They've asked why there was no duty of care by Halifax to ensure what they requested was the best option for them, saying *“we were investing £60,000”*. But they weren't investing £60,000, they were simply repaying £60,000 that they owed. That's a very different thing. There's no requirement for a lender to offer unsolicited financial advice to a consumer that's chosen to make a lump sum payment to their mortgage, and in my experience most lenders wouldn't offer unsolicited advice in those circumstances.

In their responses to our Investigator Mr and Mrs M said:

- *“At the time of arranging the repayment we were given a monthly repayment figure of £560.24 against a figure of approximately £61,000. This figure was given to me immediately on the phone. Would it not be simple to calculate now if this figure was based on the total repayment figure or just the one sub section of our mortgage?”* And;
- *“Regarding my last correspondence I mentioned that at the time of arranging the repayment we were given a monthly repayment figure of £560.24 against a figure of approximately £61,000. This figure was given to me immediately on the phone. It would be simple to calculate now if this figure was based on the total repayment figure or just the one sub section of our mortgage? Can you confirm if this was done?”*

Whilst I don't doubt those recollections have been given in good faith, I don't think it is likely Halifax would, or even could, have given such a precise figure before the lump sum payments were fully processed and allocated to the various sub-accounts (which was done in the background in the days after the payments were made). That's because the new monthly payments would be dependent on a lot of factors and generally the person taking the call wouldn't have access to the complex information and calculators that would be needed to reach that precise figure.

Instead, it is more likely Mr and Mrs M were told something like the new monthly payment would be around an amount, for example around £550 or around £600. And that ties in with the original submissions Mr and Mrs M made on our complaint form:

“After paying in capital of £60,000, we would have a remaining balance of approximate £61,000 we were given a repayment figure. At the time this was approximately £600 per month.”

The figure £560.24 was in letters sent on 6 December and 15 December, which was after the payments had been processed and allocated to fully repay sub-accounts 1 and 3, and to reduce the balance owed in sub-account 2, leaving around £20,000 owing on an interest-only basis in sub-account 5. Had the lump sum payments been made and the mortgage balance been held on a fully repayment basis, on a rough calculation the monthly payment would have been around £130 higher, so the monthly payment would have been around £690 rather than around £560.

Whilst a higher payment was quoted for December, that's because the final £10,000 wasn't

taken into account in time to adjust sub-account 2's contractual monthly payment due for that month. That's not to say Mr and Mrs M incurred extra interest as that's not the case. The £10,000 was backdated so for interest purposes it was taken into account when the payment was made, but in terms of adjusting the monthly payment due in December it was too late so Mr and Mrs M should have paid around £100 more that month, albeit that higher payment would have come off the mortgage balance.

I understand Mr and Mrs M have placed a great deal of weight on the calls in November and December 2022, but I agree with our Investigator that they aren't relevant to the outcome of this complaint about what happened in 2017. Halifax has admitted it's call handler made a mistake in the November call and it has paid £80 compensation for that. And with regards to the December call it doesn't alter the outcome of this complaint whether or not that call handler thought Halifax had made a mistake in 2017, even if they did speak to someone else before offering that opinion. It was just an opinion and the Financial Ombudsman Service isn't bound by an opinion of someone at the business, whether that opinion is offered in a phone call by a call handler, or expressed by a complaint handler in a final response letter. If that call handler had said that they didn't think Halifax had done anything wrong then I don't think Mr and Mrs M would want, or expect, our service to simply rely on that opinion.

Finally, Mr and Mrs M have said:

"It should also be noted that when I spoke to [the call handler] on December 2022 I did point out that on my internet banking statement online I have a monthly balance of the remaining mortgage figure. There is no information to tell the customer there is any other outstanding balance on the Mortgage."

But there is no other outstanding balance on the mortgage as the interest only amount is included in the remaining mortgage figure. As time goes on the remaining mortgage figure will reduce, and then at the end of the term a figure will remain of around £20,000 (unless any overpayments or underpayments are made in that time). Unless the internet banking specifically says that there will be no balance outstanding at the end of the term then that isn't misleading.

Having reviewed everything very carefully I can find no basis on which I should order Halifax to make any changes to Mr and Mrs M's mortgage, such as writing off some or all of the interest only balance. There's nothing to support that an agreement was reached that the mortgage would be on a full repayment basis after the lump sum payments were made. Instead the evidence points towards the fact Mr and Mrs M wanted to reduce their monthly payments, thus left the interest only portion alone and instead reduced the repayment parts.

I agree that Halifax gave incorrect information when Mr and Mrs M called in November 2022, and I think it's reasonable for Halifax to pay some compensation for the confusion and inconvenience this caused. But – since that misinformation was corrected by the letter that was issued in December 2022 – I don't think it ultimately caused them any loss. For this issue I agree the £80 already paid by Halifax is fair compensation.

Halifax has said that Mr and Mrs M should discuss matters with its specialist end of term team so a way forward can be found to repay the interest only part of the mortgage. I would suggest that they do that as soon as possible, either directly or with the help of someone trained to give them debt advice - such as StepChange or Citizens Advice. Mr and Mrs M will need to have an open and honest conversation about their circumstances and worries for both now and the future. They'll need to work together and that means Mr and Mrs M will need to be frank about their situation. And Halifax will need to listen to what they have to say and, fairly and sympathetically, see if there's a way to work with them to agree a way forward.

I understand this decision will be a disappointment to Mr and Mrs M and I give them my best wishes for both now and the future. But in terms of the complaint that was brought to us, I'm satisfied Halifax has already done enough to resolve it.

My final decision

I don't uphold this complaint in the sense I'm satisfied the payment already made by Bank of Scotland plc trading as Halifax is fair and reasonable.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs M to accept or reject my decision before 8 February 2024.

Julia Meadows

Ombudsman