DRN-4209000

## The complaint

Mr and Mrs B complain about their mortgage with Bank of Scotland plc, trading as Halifax. They complain that:

- the mortgage was mis-sold because it was interest-only, on an inflated interest rate, and was unaffordable from the start;
- the mortgage interest rate has always been unfairly high;
- Halifax has failed to support them since the mortgage term ended.

## What happened

Mr and Mrs B took out their mortgage with Halifax in 2004. They borrowed around £80,000 over a term of 15 years, and the mortgage offer said the mortgage repayment type was "Investment Backed" – that is, Mr and Mrs B were to make payments of interest only and have an investment in place to repay the mortgage at the end of the term.

The mortgage was on a fixed interest rate of 5.89% until November 2009, followed by Halifax's standard variable rate (SVR).

The mortgage term ended in September 2019. Mr and Mrs B said they weren't in a position to repay the capital balance of around £65,000.

On 3 December 2020, Mr and Mrs B complained to Halifax. They said a specialist agency had told them they had been paying an excessive amount of interest on their mortgage, and they wanted an investigation and a refund.

Halifax said it hadn't overcharged Mr and Mrs B and didn't offer a refund. Mr and Mrs B referred their complaint to the Financial Ombudsman Service. They also complained about the sale of the mortgage, saying they had always found the payments unaffordable, and about how Halifax was treating them now the mortgage term had ended.

Halifax said the mortgage had been sold by an intermediary, or broker, but they were no longer trading, so Mr and Mrs B could contact the Financial Services Compensation Scheme about the sale. It didn't issue a final response about the term end complaint, but agreed that it could be included in our consideration of this case.

Our Investigator concluded that we can't consider Mr and Mrs B's complaint about the sale of their mortgage or about the interest rate they were charged before December 2014 (six years before they complained). The Investigator went on to consider the merits of the parts of the complaint he had found he could look into, and didn't recommend they be upheld.

Mr and Mrs B didn't accept the Investigator's conclusions. They said no broker was involved when they took out their mortgage in 2004, and they were sold a mortgage they couldn't afford. A firm of solicitors had told them in 2020 they had been overcharged interest, and they would like Halifax to reduce their mortgage balance in order to resolve matters.

I issued a decision confirming which parts of this complaint the Financial Ombudsman

Service can consider – that is, the interest applied from 3 December 2014 onwards (but bearing in mind earlier rate variations as part of all the circumstances of the complaint), and Halifax's treatment of Mr and Mrs B following the end of the mortgage term.

**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, while I realise Mr and Mrs B will be very disappointed, I'm not upholding this complaint.

*The interest rate*

Mr and Mrs B have said that Halifax has charged them too much interest because it has wrongly treated their mortgage as having been sold by a broker and inflated the interest rate as a result, and because a firm of solicitors (which is no longer trading) assured them they had been overcharged and should be entitled to a refund.

A mortgage intermediary or broker, where one is involved, acts for the prospective customer and not the lender. A broker would generally look to arrange the most favourable mortgage arrangement for their customer. However, as I've explained in a separate decision, I can't consider Mr and Mrs B's complaint about Halifax's decision to lend to them in 2004, because they left it too long to complain.

I can consider the interest rate Halifax applied to Mr and Mrs B's mortgage from 3 December 2014 onwards, while keeping in mind earlier rate variations.

Mr and Mrs B's mortgage was initially on a five-year fixed rate, until November 2009. Their mortgage offer said that after the initial fixed rate ended, unless Mr and Mrs B took another special rate, interest would be charged at Halifax's base rate. The relevant mortgage conditions said the base rate is variable and set out, at condition 7.10, the reasons for which Halifax could vary the rate. They said it could do so:

*(a) To reflect changes in the cost to us of raising the money we lend to our customers with mortgages.*
*(b) To reflect changes in rates of interest charged by other major lenders (including the terms on which mortgages are offered by them).*
*(c) To reflect: changes to the law or codes of practice, a decision or recommendation made by, or a requirement of, a court, ombudsman, regulator or similar body or an undertaking given to the Financial Services Authority.*
*(d) To reflect changes to the way we look after the mortgage account or mortgage accounts generally (including changes to the technology we use) because of:*
  - *the steps we have taken to modernise or improve our systems for managing those accounts; or*
  - *reasons outside our control.*

*(e) To reflect changes to the accounting period.*
*(f) Because:*
  - *we are going to take over, take control of or acquire the business of another bank or organisation offering similar services;*
  - *we are going to be taken over or our business is acquired by another bank or organisation offering similar services; or*
  - *any of these things has happened,*

  *and the change will make sure that our customers and the customers of the other bank or organisation are treated in a similar way if they are in similar categories.*

*(g) To reflect changes to the way the property is used or occupied.*
*(h) Because we must reduce the base rate under condition 7.17(b).*

Between the initial fixed interest rate on Mr and Mrs B's mortgage ending in 2009, and December 2020, when Mr and Mrs B made this complaint, Halifax's base rate or SVR varied between 3.5% and 4.24%.

I've looked carefully at Halifax's SVR – including historic changes, since the SVR applied to Mr and Mrs B's mortgage since December 2014 isn't the result only of decisions Halifax made during that period, but also the result of decisions it made earlier. In doing so, I've considered the information Halifax has provided to us about its reasons for varying its SVR in the way it did and the mortgage conditions above, alongside external reference rates such as Bank of England base rate, and wider economic conditions. I've also kept in mind relevant law, including the Unfair Terms in Consumer Contracts Regulations 1999.

Having done so, I don't consider that Halifax varied the interest rate it applied to Mr and Mrs B's mortgage unfairly. The SVR was varied for reasons allowed under the mortgage conditions, and where Halifax's SVR didn't vary in line with Bank of England base rate changes, Halifax has provided details of its funding costs and how those costs informed its decisions to vary its SVR.

I have also kept in mind that while Mr and Mrs B's mortgage was subject to the SVR, there were no early repayment charges, for example – so they could have re-mortgaged elsewhere or asked Halifax about any fixed or tracker rates it was offering without having to pay an early repayment charge. I also find nothing to indicate that Mr and Mrs B paid an inflated rate of interest because Halifax's records say they took out the mortgage through a broker, and Mr and Mrs B haven't said anything which leads me to conclude that they have been overcharged interest during the period I can consider. While they have explained that they struggled to keep up with the mortgage payments, there were no mortgage arrears during the period I can look at, and nothing to indicate that Halifax should reasonably have offered them a concessionary rate of interest, for example.

*Term end*

Mr and Mrs B's mortgage term ended in 2019. The latest figure I've seen for their mortgage balance is from July 2022, when they owed around £65,000. Mr and Mrs B have said they have no lump sum or investment to repay this balance. They have discussed their situation with Halifax a number of times since 2018 and provided details of their income and expenditure. Halifax's records show that it has explored a capital repayment or a retirement interest-only mortgage with Mr and Mrs B, but that neither of these would be affordable.

Mr and Mrs B have said they're considering their options, including selling the property – which they estimated in 2020 to be worth about £950,000 – and downsizing, or taking an equity release mortgage. But they have since said they would like to continue with their existing interest-only mortgage arrangement with Halifax.

Mr and Mrs B agreed when they took out the mortgage that they would repay it at the end of the term in 2019. Halifax didn't agree to lend them a lifetime mortgage, and it was entitled to expect Mr and Mrs B to repay their mortgage in 2019. That was its agreement with them, and it isn't obliged to extend the term now.

However, circumstances can and do change, and I consider that Halifax has approached Mr and Mrs B's requests for a term extension fairly. It has considered their situation, but has been unable to find a solution. It has also held off on taking any further action to recover the mortgage debt for a considerable period of time – giving Mr and Mrs B time to consider their options. I don’t find that Halifax has treated Mr and Mrs B unfairly or failed to support them.

Mr and Mrs B’s plan to repay the mortgage appears to be to sell the property. But it’s unclear when they plan to do so: they told Halifax in 2018 that they would look at selling in five years’ time, and in 2019 that they were looking at new-build properties which would be ready in 18-24 months. I can certainly see that the coronavirus pandemic may have derailed some of their plans. Nonetheless, in all the circumstances, I don’t consider that it would be reasonable for me to direct Halifax to wait indefinitely for repayment of the mortgage. Mr and Mrs B have substantial equity in their property and are not without options. I encourage them to look into taking independent financial advice if they haven’t already done so and are considering a lifetime mortgage in order to stay in their property, or to take steps to arrange for the property to be sold – and to keep Halifax informed of their progress.

**My final decision**

For these reasons, my final decision is that I don’t uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs B and Mr B to accept or reject my decision before 4 October 2023.

Janet Millington
**Ombudsman**