DRN-4598072

The complaint

Mr and Mrs H's complaint is that Bank of Scotland PLC trading as Halifax has refused to extend the term of their residential mortgage up to when they reach the age of 70 (so by about 19-21 years). Mr and Mrs H say this is unfair because they run their business from the property. Mr and Mrs H say that if they cannot run their business from home, they will have to cancel events and will lose income. Therefore Mr and Mrs H say that Halifax must help them by extending the mortgage term.

What happened

I do not need to set out the full background to the complaint. This is because the history of the matter is set out in the correspondence between the parties and our service, so there is no need for me to repeat the details here. In addition, our decisions are published, so it's important I don't include any information that might lead to Mr and Mrs H being identified. So for these reasons, I will instead concentrate on giving a brief summary of the complaint, followed by the reasons for my decision. If I don't mention something, it won't be because I've ignored it; rather, it'll be because I didn't think it was material to the outcome of the complaint.

Briefly, in 2010, after taking advice from their own independent financial adviser (IFA), Mr and Mrs H took out a mortgage with Halifax. They borrowed about £196,000 on an interest-only basis over a term of fifteen years. The mortgage offer states that Mr and Mrs H had an ISA to repay the capital balance at the end of the term.

Over the years the underlying interest rate product on the mortgage has changed, but the term has not. In 2012, Mr and Mrs H told Halifax that their intended repayment vehicle had changed. The mortgage was now to be repaid by them making capital overpayments and by a sale of the property at the end of the term in 2025.

I note there is also a second charge capital repayment mortgage on the property, from a different lender, on which about £113,000 is outstanding, and a monthly repayment of about £800 per month.

The last interest rate product in place came to an end in October 2023. At that point, because there was less than two years left to run on the mortgage, no new interest rate product was available, as Halifax's minimum term is two years for a new interest rate product. The mortgage has therefore reverted to Standard Variable Rate (SVR), and the mortgage payments have increased.

I won't go into all the details of Mr and Mrs H's circumstances, but suffice it to say that things have not gone smoothly for them for a number of years. Mr H was made redundant several times, and their finances have been strained as a result. In May 2019 Mr and Mrs H started their own business, offering a bespoke service in customers' homes, but for which all preparation and storage is carried out at the mortgaged property. Mr and Mrs H made Halifax aware of this in 2022.

On 4 July 2023 Mr and Mrs H requested a mortgage term extension until their retirement age. Mrs H said she had no plans to retire before the age of 70. At the time Mr H was 51 and Mrs H 49, so the requested term extension was about 19-21 years. Halifax noted that there was no suitable repayment vehicle for an interest-only mortgage, as the ISA was no longer available.

Halifax took details of income, which showed that in 2022 their total income was about £9,400. As a result, Halifax wasn't able to extend the mortgage term, given there was no affordability or repayment vehicle. Even the lowest two-year fixed rate available at that time was 5.89%, which would give a monthly repayment of around £960 per month. On the income disclosed, this wasn't affordable. Mr and Mrs H said they would struggle to pay the mortgage if it went onto SVR in November 2023.

Mr and Mrs H explained that Mrs H was expecting an inheritance, which was currently held in trust, but Halifax couldn't consider this as a repayment vehicle. Mr and Mrs H were advised to speak to an IFA.

Mr and Mrs H complained that Halifax hadn't treated them fairly. They said that Halifax had told them several years earlier that they'd be entitled to a term extension, yet when they asked in 2023, this was turned down.

In its final response letters, Halifax explained that in July 2020 it had completed an affordability review which showed an income deficit. It wasn't possible at that time to switch the mortgage to capital repayment. Halifax said it had told Mr and Mrs H to speak to the bank again if their circumstances changed.

Halifax also noted that in March 2022 Mr and Mrs H had spoken to the End of Term team to discuss repayment options, and Mr and Mrs H confirmed they were still struggling financially. Halifax said during that call that it could review the situation in a year's time to see if there had been any changes, but if the term was to be extended, this would be dependent on meeting the bank's criteria.

Halifax said that no guarantee or promise had been made, nor any confirmation that the term could be extended.

In its internal notes, Halifax noted that Mr and Mrs H were operating their business from the property, which was also a breach of the mortgage conditions.

Mr and Mrs H referred their complaint to our service. An Investigator looked at what had happened, but didn't think the complaint should be upheld. She was satisfied Halifax had given fair consideration to Mr and Mrs H's proposals but found them unaffordable and unsustainable. The Investigator was satisfied this decision was reasonable in all the circumstances, taking into account the regulations Halifax was required to apply to the mortgage.

Mr and Mrs H disagreed with the Investigator's findings and asked for an Ombudsman to review the complaint.

In summary, they've reiterated all the points they've previously made about why they believe Halifax has acted unfairly. Mr and Mrs H have explained that they are keeping up with the mortgage repayments and so although on paper they might not meet affordability, in practice they are able to, with family help. They also say that the loan-to-value ratio (LTV) on the property is low, and so there is little risk to Halifax in agreeing the term extension.

Mr and Mrs H said that, with the mortgage term so close to its end, they will now need to look at putting the property on the market, but expect it would take about six months to sell it. However, as the market is currently poor, they would not be able to realise the amount of equity they'd need to buy somewhere suitable.

They said that Mrs H's interest in the trust is approximately £224,000, and wondered if this would be *"accepted as a method to borrow against and provide a vehicle for repayment"*. They also said that Mr H, whose parents are 75 and 81, is an only child and so he is due to inherit about £1 million on their deaths. Furthermore, Mr H's parents have recently downsized, and have more than the outstanding amount of the mortgage in savings, and want to help them. Mr and Mrs H wonder if Mr H's parents could be guarantors for the mortgage.

Mr and Mrs H want the Financial Ombudsman Service to work with them and help them find a solution from the options they've given us.

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 will explain first that the Financial Ombudsman Service is independent of both consumers and the businesses they are complaining about. This means that we don't act for consumers, nor do we take instructions either from consumers or businesses, or allow either party to direct the course of our investigations; were we to do so, it would compromise our independence and impartiality. It's up to us to determine what evidence we need in order to investigate a complaint. So although I've noted the proposals which Mr and Mrs H would like us to put to Halifax, it's not my role to or act as a representative for either party, or as a go-between for Mr and Mrs H.

The crux of this complaint is that Mr and Mrs H say that Halifax has been unreasonable in refusing their request for a term extension on their interest-only mortgage.

There are regulations in place that have flowed from the Mortgage Market Review (MMR) carried out by the Financial Conduct Authority (FCA) 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.

A term extension is a variation to the mortgage, and it is material to affordability, as it is committing the borrower to payments over a much longer term than the original contract provides for. As a result, Halifax is, I find, entitled to consider whether or not this is affordable.

So, under this rule, even where a change material to the affordability of the mortgage takes place, Halifax can, *if it chooses*, waive an affordability assessment. If Halifax 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 Halifax can take the assessment into account as part of its consideration of best interests.

This means there are two routes that an application can go down. If there's no change to the terms of the mortgage contract material to affordability, there's no obligation for Halifax to carry out an affordability assessment at all. And if there is a change to the terms of the mortgage contract material to affordability (as there is here), Halifax could still decide to allow an extension without an affordability assessment if doing so would otherwise be in the Mr and Mrs H's best interests.

This involves an exercise of discretion on Halifax's part. The rule doesn't say that it *must* not apply the new requirements – it says that it *need* not do so.

I've looked at what Mr and Mrs H have said about their circumstances. To preserve their anonymity, I won't go into details here. When the mortgage was taken out in 2012 Mr and Mrs H's financial situation was different. But they've been through difficult times – which they've readily admitted to Halifax – and their income and employment status has changed considerably since 2012. I'm satisfied, therefore, that it was reasonable for Halifax to look at their circumstances as they were in July 2023, knowing that things had changed since 2012.

There is no doubt that Mr and Mrs H don't meet income criteria for the mortgage – and they have readily admitted this. Mr and Mrs H have told us they are getting help from family members to pay the mortgage. But that can't be counted as 'income'. Overall, I think it would be outside Halifax's regulatory obligations in relation to responsible lending to extend the mortgage term where the long-term sustainability of Mr and Mrs H's earned income is uncertain and they are reliant on help from family who aren't parties to the mortgage.

As far as a repayment vehicle is concerned, potential inheritance is not considered a viable repayment strategy. That's because there is no guarantee of an inheritance, due to a number of factors that might affect the amount of any potential inheritance, for example, future nursing home fees, tax liabilities, unsecured debt, or (a not uncommon scenario) parents taking out a lifetime equity release mortgage without telling their children. As a result, Halifax (in common with the majority of lenders) will not consider potential inheritance to be a viable repayment strategy for an interest-only mortgage.

I'm therefore satisfied that, given the lack of affordability and repayment vehicle, it wasn't unreasonable for Halifax to decline the request for a term extension. Halifax *could* have allowed a term extension without taking these things into account if it considered it to be in Mr and Mrs H's best interests. But I am not persuaded that the bank's decision to decline the application was an unfair exercise of the bank's discretion, in all the circumstances of this case.

I know this isn't the outcome Mr and Mrs H were hoping for, but after careful consideration, I don't think Halifax has done anything wrong.

I've noted the alternative proposals Mr and Mrs H have told us about. These include borrowing against the security of Mrs H's trust, or Mr H's parents becoming guarantors for the mortgage. Halifax doesn't offer guarantor mortgages (although some lenders do), and lending Mr and Mrs H money against Mrs H's interest in a trust isn't something that falls within the scope of mortgage lending.

Mr and Mrs H told us in response to the Investigator's findings that they will now have to think about selling the property before the mortgage reaches the end of its term in February 2025. It is sensible for Mr and Mrs H to think about this so far ahead, although I note from what they've also told us that this would have to be a last resort. Mr and Mrs H have also said that Mr H's parents have a considerable amount of savings which they might be willing to use to help them out.

Therefore I think it would be helpful for Mr and Mrs H (and probably Mr H's parents) to speak to an IFA about all these options. This is particularly important, given that Mr and Mrs H are carrying out commercial activity at the property, which is likely to affect the type of mortgage available to them, and that there may be potential tax implications if any money is gifted to Mr and Mrs H by Mr H's parents.

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 Mr and Mrs H to accept or reject my decision before 11 March 2024.

Jan O'Leary
Ombudsman