DRN-4932375

The complaint

Mr G's complaint arises out of his mortgage account held with Bank of Scotland PLC trading as Halifax.

Mr G is unhappy that, when Halifax carried out an annual review of his mortgage repayments in March 2024, the bank said it would reduce his contractual monthly payment (CMP). Mr G wants Halifax to increase his monthly payment back to what it was.

What happened

Mr G has a capital repayment mortgage taken out with Halifax in 2016, borrowing £92,300 over a 25-year term. The mortgage terms and conditions allowed Mr G to make overpayments of up to 10% of the account balance as at 1 January each year without incurring an early repayment charge (ERC). Mr G made overpayments, and by 2020, when he took out a product transfer, the capital balance was just under £40,000.

The mortgage had been on two sub-accounts. One was on a fixed rate which had expired on 31 October 2023. The other was on a five-year fixed rate taken out in 2020, expiring on 31 July 2025.

When Mr G took out the five-year fixed rate in 2020, the total CMP for both sub-accounts was £201.44. In November 2023, after the fixed rate on one sub-account expired, Mr G paid off the balance on that sub-account in full – about £10,500. This left a balance on the other sub-account of approximately £12,500. This resulted in a recalculation of the CMP to £82 in December 2023.

On 31 December 2023 Halifax wrote to Mr G explaining that it would recalculate the CMP on an annual basis to meet the contractual term end date. Mr G says he didn't receive that letter. In March 2024 Halifax wrote to Mr G to explain that the CMP would be reduced to £73 per month, in order to ensure that the remaining mortgage balance would be repaid over the remainder of the mortgage term.

Mr G complained. He wanted his CMP to remain at £201 per month, in line with the product he took out in 2020. Halifax explained that it had taken the decision to recalculate CMPs in line with the Financial Conduct Authority's principle to treat customers fairly and to not cause detriment. Halifax also explained that the mortgage terms and conditions allowed it to recalculate the annual repayment.

Halifax said that it would, as a temporary measure, allow Mr G to make payments at the original level of £201. However, any overpayments would incur an ERC, because he'd already reached the overpayment level for 2024. Halifax said that if Mr G wanted to maintain his payments at that level, this would need an appointment with an adviser so Mr G could apply for a term reduction.

Mr G thought this was unfair, as he was on a fixed rate and thought his repayment should be what he'd agreed to pay in 2020 - £201 per month. Dissatisfied with Halifax's response, Mr G raised a complaint with our service.

An Investigator looked at what had happened, but didn't think Halifax had done anything wrong. He explained that the mortgage terms and conditions allowed for the recalculation of the CMP. He thought Halifax's explanation of why it had done this was reasonable, given that the bank was required to ensure that the mortgage was repaid by the end of the original term.

The Investigator also didn't think it was unfair for Halifax to say that any additional overpayments in 2024 would incur an ERC. He noted that in January and February 2024 Mr G had made overpayments of more than 10% of the outstanding balance. Therefore any additional overpayments would incur an ERC. The Investigator didn't think it would be fair for Mr G to be allowed to make overpayments above the 10% limit without incurring an ERC.

The Investigator also thought it was reasonable for Halifax to consider a term reduction on an advised basis, as this would be a material change to the mortgage that could impact on affordability.

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

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 won't set out all the various terms and conditions which apply here. I'm satisfied Mr G would have received the mortgage booklet with the terms and conditions, which includes Halifax's entitlement to recalculate the CMP.

I'm satisfied the terms and conditions explain that overpayments will not result in a reduction of the mortgage term, but that any reduced balance will be used to recalculate the CMP. Halifax's terms say *"Any recalculation of your new monthly payment will include the overpayments. This means that if you only pay the new monthly payment, your loan will be repaid over your existing mortgage term."*.

The terms and conditions state that the CMP would be recalculated following any of the following trigger events:

- a mortgage review or product transfer at the expiry of an existing product;
- a further advance application;
- a future annual instalment review;
- the annual recalculation to ensure customers' CMPs remain on track, including customers with a fixed interest rate;
- a base rate change, for customers on a variable interest rate.

The "*Information about your mortgage"* booklet also says that Mr G could make annual overpayments of up to 10% of the mortgage balance each year as a concession without incurring an ERC, but that Halifax may recalculate the CMP based on the current balance and the remaining mortgage term. Therefore if overpayments had been made, the CMP would go down. This is supported by the mortgage conditions.

Mr G is on a fixed rate, so I can understand why he was surprised when he was told his CMP would reduce, particularly as Mr G says he didn't receive the letter from Halifax sent on 31 December 2023. I can see from Halifax's records that this was sent, and it doesn't appear to have been returned to Halifax as undelivered.

Halifax has said that it introduced the recalculation to comply with the Consumer Duty, a set of rules that were brought into effect by the Financial Conduct Authority in July 2023. The recalculation means Mr G would not be paying more than he needed to repay the mortgage over his chosen mortgage term.

I consider that to be reasonable, because there is the potential for harm to be caused to consumers whose payments are higher than they need to be. This is how Halifax has chosen to interpret the Consumer Duty rules. But there is also a requirement under the Consumer Duty to enable and support customers to meet their financial objectives.

Mr G has said that his objective is to pay the amount that was agreed when he took out the fixed rate product in 2020. His understanding was that the CMP would stay the same, and he could make overpayments of up to 10% per year.

Notwithstanding this, I consider Mr G's objective has to be balanced against the terms and conditions of the account, which allow Halifax to recalculate payments in the way it has, and only allow an overpayment of up to 10% of the mortgage balance each year. The mortgage is at a fixed rate of interest, not a fixed payment. Furthermore, if Mr G was to maintain the original CMP *and* make overpayments, he will exceed his overpayment allowance, and could incur an ERC on any overpayments over 10% of the account balance.

Indeed, in 2024 Mr G has already made overpayments of £1,300 against an account balance of about £12,500 and so any further overpayments will be subject to an ERC, as provided for in the terms and conditions. I don't think it would be fair or reasonable to expect Halifax to allow Mr G to make overpayments above the annual 10% allowance and not incur an ERC. This would be treating him differently – and better – to other customers in the same position, which I don't consider to be fair.

In the circumstances, I am satisfied Halifax's offer to reinstate the £201 CMP until the next annual recalculation (or any earlier trigger event) is a fair way to settle the complaint. I think that this balances Halifax's rights under the mortgage and its genuine aim to protect consumers against Mr G's objectives to reduce his capital balance.

Halifax has explained that in order to carry on with the higher CMP after the next annual review, it will be necessary for Mr G to speak to a mortgage adviser. I appreciate he might not want to do this, but making overpayments will have an impact on the mortgage balance, and in turn the potential for an ERC to become payable where overpayments are made that exceed the annual 10% allowance.

If Mr G continued to make the £201 CMP, even if the monthly repayment had been recalculated, he would be at risk of incurring an ERC due to exceeding the annual 10% overpayment limit, particularly as the capital balance is so low. A recalculation of the mortgage term would thus be required to reduce the term to meet Mr G's objective of wanting to continue with a monthly repayment of £201.

I don't think it's unreasonable for Halifax to require Mr G to take advice on this. It would be irresponsible for Halifax to reduce the term to meet the higher CMP Mr G wants to make without considering if it is affordable for him, and to ensure he does not inadvertently incur ERCs by making overpayments above the annual capital allowance.

Overall, I don’t think Halifax has acted unfairly in reducing the CMP as it did. I also think Halifax has taken reasonable steps to resolve the complaint, by allowing a temporary concession of payments of £201 per month. Given that Mr G has already exceeded his overpayment allowance for 2024, Halifax is entitled to charge an ERC on any further overpayments. I also think it’s reasonable for Halifax to ask Mr G to take advice if he wants to reduce the mortgage term.

In the circumstances, I’m unable to find Halifax has done anything wrong.

My final decision

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

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr G to accept or reject my decision before 20 December 2024.

Jan O'Leary
Ombudsman