

The complaint

Mr and Mrs S complain that Bank of Scotland plc trading as Halifax (Halifax) declined an application to port their existing mortgage to a new property. This meant they paid an early repayment charge (ERC). They want Halifax to refund the ERC.

What happened

Mr and Mrs S had a mortgage with Halifax. In December 2020, Mr and Mrs S transferred their mortgage to a fixed rate. They had just under six years remaining on their mortgage term, and the new fixed rate ran for the remaining term of the mortgage. There was an early repayment charge (ERC) if the mortgage was repaid before the mortgage expired.

In late 2022, Mr and Mrs S wanted to buy a new property. They spoke with a mortgage broker and were looking to transfer (port) their existing Halifax mortgage to the new property to avoid paying the ERC on their existing mortgage. They also wished to extend the term of the mortgage.

After applying for the mortgage via a mortgage broker, Mr and Mrs S complained to Halifax. They said their application to port their mortgage had been declined and they would incur an ERC if they repaid the mortgage. Halifax said that no application had been submitted by the broker and it hadn't declined it.

Following this, the broker submitted an application on their behalf. Halifax asked for further information about Mr and Mrs S' pension income as the mortgage term would take them beyond normal retirement age. This information wasn't provided, and Mr and Mrs S proceeded to purchase the new property without a mortgage and redeemed their Halifax mortgage. They were charged an ERC. They complained again. But Halifax said that the application by the broker hadn't been completed. So it said it hadn't declined their application.

Unhappy with this, Mr and Mrs S referred the complaint to our Service and an Investigator looked into it. Our Investigator didn't think the complaint should be upheld. He said that a full application was never submitted by Mr and Mrs S' broker. And the correct process was for an application to be submitted and if declined, appealed by the broker. As this wasn't done, he didn't think Halifax had done anything wrong and didn't uphold the complaint.

Mr and Mrs S didn't accept this. They said that Halifax had refused to port the mortgage and broke the mortgage agreement. They said they'd been assured by Halifax they could port their mortgage but weren't able to. Mr and Mrs S asked for the complaint to be considered by an Ombudsman. So, it's been passed to me to review and make a final decision.

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.

There's some dispute about what Mr and Mrs S were told by Halifax, and what their broker

was told. When there is dispute such as this, I have to base my decision on the balance of probabilities. That is, what I think most likely to have happened considering the information I do have.

When Mr and Mrs S first complained to Halifax, no application had been submitted to port their mortgage. Based on the information I've been provided, it seems to me that Mr and Mrs S' broker had told them that they wouldn't meet Halifax's lending criteria to port the mortgage. I suspect this was likely based on the broker's knowledge of Halifax's lending criteria and Mr and Mrs S' circumstances. But this doesn't mean an application had been, or would be, declined. There are a number of reasons where lenders can and do make exceptions to lending criteria.

Following this, the broker did submit an application. And Mr and Mrs S said they then spoke with Halifax and were told they could port their mortgage. And I've no reason to doubt this.

When applying to port a mortgage, lenders will check to ensure that the new mortgage is affordable, and they are required to do so. The new mortgage Mr and Mrs S wanted took them into retirement, so it was reasonable for Halifax to want to ensure that the mortgage remained affordable in the longer term. This would mean conducting various affordability checks. I've seen that Halifax did explain in response to the complaint that their process required a full mortgage application to be submitted and, if this was then declined, then there was a process for their broker to appeal this. And whilst an application was started, it was never completed by Mr and Mrs S and their broker.

I think it's likely that the broker assumed that the application would be declined, and because of this, never submitted a full application. Halifax has shown us that the application was started, but information about Mr and Mrs S' pension income was never provided. And the valuation for the new property was cancelled by the broker.

Again, I think this is likely because the broker was under the impression that the application wouldn't be successful. However, I'm satisfied that Halifax made Mr and Mrs S aware of the process they'd need to follow in submitting an application and then appealing it if necessary. They didn't do this, and as such, when their mortgage was redeemed, the ERC was charged as per the terms of the mortgage.

Mr and Mrs S were using a mortgage broker for their application. It was therefore the broker who was responsible for progressing it fully through Halifax's process. The broker would've had their own contacts at Halifax who could've assisted with this process. But I can't see that their broker ever submitted a full application. And without doing so, Halifax was never fairly given the chance to consider the application to port the mortgage.

Mr and Mrs S ultimately made the decision to redeem the mortgage and pay the ERC. And I can't see a reason to fairly require Halifax to refund it.

My final decision

Whilst I recognise Mr and Mrs S will be unhappy, my final decision is I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S and Mrs S to accept or reject my decision before 12 February 2024.

Rob Deadman
Ombudsman