

The complaint

Mr D complains that he received misleading information from Bank of Scotland plc (trading as Halifax) during his enquiries about porting his mortgage to a new property.

What happened

In 2020 Mr D took a mortgage with Halifax. He borrowed £136,800 on repayment terms over 25 years. He agreed to an initial fixed interest rate of 1.75% for five years until 31 December 2025. After which his mortgage would revert to Halifax's homeowner variable rate for the remainder of the term.

Mr D's mortgage offer set out that an early repayment charge (ERC) was applicable if he redeemed his mortgage within the fixed rate period. He'd be charged 5% of the balance in the first year, reducing by 1% each year thereafter until the end of the fixed term. Mr D's mortgage terms allowed him to move his mortgage to a new property – subject to application. This process is referred to as 'porting'.

In January 2023 Mr D called Halifax to discuss his mortgage and how it tied into his future plans. He said that he was thinking of selling his existing property and moving his mortgage to a new property. He intended to live in the new property for a few months and then consider going travelling for possibly around six months and letting the property out during that time.

The agent explained the porting process. She said it was not possible to port an existing residential mortgage to a buy-to-let. The agent explained the option of consent-to-let instead and how it worked. Based on what Mr D had told her, the agent thought that this option would be better suited to him because he was only intending to let his property out for a short time.

The agent went on to explain how the ERC worked. She said that it wasn't necessary for a sale and purchase to be simultaneous. As long as Mr D submitted an application for a mortgage on a new property within three months of redeeming the mortgage on his existing property, he should be able to port his product without paying an ERC – subject to application.

Mr D says that he took this to mean that in these circumstances, payment of an ERC would not be due on redemption of his current mortgage. Following on from this Mr D put his property on the market and accepted an offer from a cash buyer – thinking that he would have three months to reapply for a mortgage to allow him to port his current deal.

In August 2023, Mr D called Halifax again to discuss his mortgage. He said the sale on his property was going through but he hadn't yet found an onward purchase – so he wanted to discuss his options and find out more about how the ERC payment process worked.

During this call Halifax explained that the only way an ERC is not payable is if Mr D completes the sale and purchase on the same day. If not, there may be a refund depending on how much he borrows for the new property if he completes in time, but he would still need

to pay the ERC when the existing mortgage is closed.

Some examples of how a partial and full refund would apply were given. The agent explained that if Mr D borrowed the same amount on his new property, he'd receive a full refund of the ERC. However, for example, if he only borrowed half the amount on his new property, then he'd receive a 50% refund.

Mr D appears to have misunderstood what he was told. Based on how the conversation went, he thought that the ERC was only refundable if he borrowed additional funds, on top of what he currently owed. Despite asking for clarity on this, Mr D still left the call thinking that was the case.

This led Mr D to complain to Halifax about the information he'd been provided. He said he'd been misled about the porting process and the ERC payable – as such he'll now be around £3,000 out of pocket by having to pay the ERC on the sale of his property. Had he been given the right information he would have ensured a simultaneous sale and purchase to save him losing out on the ERC funds.

Halifax upheld the complaint and paid Mr D £300 compensation to acknowledge its mistake. It agreed that it could have given Mr D clearer information in January 2023 about how the ERC is payable during the porting process. In its response to the complaint, Halifax confirmed to Mr D that:

“because you are not completing both the sale and purchase on the same day, the payment will need to be made in full, but you could possibly get a partial refund dependant on how much you are borrowing for the new property.”

Mr D remained unhappy so he brought his complaint to the Financial Ombudsman Service. An investigator at our service looked into things and didn't recommend that Mr D's complaint be upheld. She agreed that Halifax could have provided clearer information but felt that it had done enough to put things right in the circumstances. Mr D remained unhappy and asked for an ombudsman's final decision.

Mr D says that he was given unclear information during several interactions with Halifax – this includes both calls that took place in January and August 2023. He says that during his second call to Halifax in August 2023 he was told that he'd need to take a new mortgage for double the amount he currently owed to obtain a full refund of the ERC. Mr D says that his plan was to downsize, and he had no intention to borrow additional funds. So, once he got this information from Halifax it influenced all his plans moving forward. He stopped looking for properties and proceeded with his travel plans instead – thinking that due to his circumstances he had no choice but to swallow the £3,000 for the ERC and move on.

Mr D says that Halifax had a chance to put things right in its response to his complaint, but it didn't do so. He thought that Halifax's response was inconsistent and vague. He said that it's only since bringing his complaint to our service and receiving the investigator's opinion in November 2023, that he fully understands how the porting process and ERC payment works. But it's now too late for him to change the plans he made in reliance on the information given to him by Halifax previously. Mr D redeemed his mortgage in October 2023, but he says he was not able to make an onward purchase within the three-month window, due to no fault of his own. In the circumstances he thinks Halifax should refund the ERC he paid on redemption of his mortgage, or at the very least increase its compensation award.

The investigator considered Mr D's points again but explained why her opinion remained the

same. Because an agreement wasn't reached, the case was then passed to me to decide. I issued a provisional decision and an extract of my provisional findings is below.

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In doing so I have considered the principles of the Consumer Duty. The Consumer Duty states that businesses must avoid causing foreseeable harm to retail customers. This means businesses must take reasonable steps to ensure the terms and conditions, marketing, sale and support of their products and services are designed in a way that avoids harm.

The Consumer Duty is in place to focus on what outcome businesses must work towards and not just necessarily what the rules say. The Consumer Duty is also in place to enable and support retail customers to pursue their financial objectives. This looks at the consumer's financial objectives in relation to a product or service. It applies throughout the customer journey and the lifecycle of the product or service.

Businesses must focus on putting customers in a better position to make decisions in line with their needs and objectives. And they also have an obligation to communicate in a way which is clear fair and not misleading, and which enables customers to make timely and effective decisions. Which means Halifax had an obligation to provide sufficient information to enable Mr D to make an informed and timely decision about whether to port his current mortgage and how the ERC terms apply.

The Consumer Duty only came into force on 31 July 2023 – so it only applies to Mr D's interactions with Halifax in August 2023, not to the earlier call in January 2023. But even at that earlier time Halifax had an obligation to communicate in a way that was clear fair and not misleading, and to treat Mr D fairly.

It's the case here that Mr D doesn't dispute that an ERC is chargeable in line with his mortgage terms. However, he says that he made several calls to Halifax to understand exactly how the porting process and ERC terms apply, to help inform his decision making around his plans. But he was given wrong information – which he relied on to his detriment.

Halifax accepts that it could've given Mr D clearer information at the time of his initial enquiries in January 2023. This part of the complaint has been upheld, so it's not necessary for me to comment on the content of this call further. So I'll focus on what happened in August 2023 – when Mr D was finalising his plans and seeking detailed information about his options.

Mr D says that he was further misled during the call that took place in August 2023. I've listened to the call and carefully considered all the reasons why Mr D feels that Halifax continued to give him incorrect information during that call too. In doing so, I'm not persuaded that Halifax treated him fairly, taking into account its obligations under Consumer Duty. I'll explain why.

During this call Mr D informed the agent that his property sale was going through but he'd not yet found an onward purchase. So, he wanted information on the porting process and how the ERC waiver worked in these circumstances.

Halifax did explain how the ERC was payable in a simultaneous sale and purchase compared to a non-simultaneous sale and purchase within the given three-month window period. The advisor went on to explain how the partial refund worked in practice – as this was relevant to Mr D's circumstances specifically.

An excerpt of the call is below:

Advisor: "for example if your current mortgage is £100,000 and your new mortgage is for £100,000, then you will get a full refund back"

"If your current mortgage is £100,000 and your new mortgage is £50,000 you would get 50% of the ERC back".

Mr D: "if I borrowed nothing further, that means none of it's waived?"

Advisor: "that's correct yes"

Mr D: "just depends on further borrowing on top, right?"

Advisor: "yes it depends on the new mortgage that you take out as to whether or not any money is returned or waived back to you"

It's clear from how the call went that Mr D misunderstood the information that was given to him. Mr D's questioning was driven by the fact that he thought the advisor was suggesting that he needed to borrow additional funds on top of his current mortgage to get part or all of the ERC back. This is supported by him asking the question "just depends on further borrowing on top, right?", and saying "if I borrowed nothing further, that means none of it's waived?".

The advisor says "yes" and goes on to explain that "it depends on the new mortgage that you take out as to whether or not any money is returned or waived back to you".

Having listened to the call I don't think it was unreasonable for Mr D to be confused in the circumstances. At the very least the information he was given was ambiguous and not clear. I think the confusion arose from the initial explanation that talked about both his current mortgage and his new mortgage – the adviser meant that one would replace the other, but Mr D understood that one would be added to the other.

Halifax has a responsibility to provide its customers with clear, fair and not-misleading information. Under the Consumer Duty, in a one-to-one interaction like this one, it is also required to test understanding. The onus is on Halifax to explain things properly to its customers and to check the customers understanding in situations like this where there is an apparent sense of confusion, particularly where customers will be making decisions based on the information they're given. That did not happen here, and Mr D was still unsure about the correct process and ERC terms once the call ended. I think it was clear from his responses to the adviser's initial explanation that he'd misunderstood, but instead of correcting his understanding and clarifying matters further, the adviser agreed that his misunderstanding was correct.

The fact that Mr D remained confused is supported by the fact that he raised a complaint that same day. In his complaint, Mr D made it clear to Halifax that he still didn't understand the porting process and the ERC terms relating to his mortgage contract. And Mr D implied that he still thought that any refund of the ERC is linked to further borrowing.

By this point Mr D was still figuring out his plans. He'd not yet completed on the sale of his property or redeemed his mortgage. So, this was an ample opportunity for Halifax to correct Mr D's misunderstanding before he took any further action. In the circumstances I don't think I can reasonably say that it did. I'll explain why.

Halifax's final response letter suggests that Mr D was given correct information during the

August 2023 call. But while the initial explanation was correct (though not understood by Mr D), the adviser went on to wrongly agree that he would need to take further borrowing to access a refund. Whilst the letter does set out the correct ERC terms, Halifax does not provide enough information to correct Mr D's misunderstanding – for example by clearly telling him that he does not need to borrow more than he currently owes to receive a full or partial refund of the ERC. Halifax ought to have clearly explained that to get a full refund of the ERC the borrowing needs only to be like for like. Any amount not transferred over to the new property will be subject to an ERC and that proportion not refundable. But Halifax's letter was lacking the necessary detail.

So, taking everything into account I can see why Mr D remained of the opinion that the ERC was only refundable if he borrowed additional funds. That's what he thought he was told during the August 2023 call – with the adviser confirming his understanding was correct. And in its response to his complaint, Halifax confirms that the information he received during that call was correct. As I've explained, Halifax failed to suitably correct Mr D's misunderstanding, and so that formed the basis of his complaint to our service.

For the reasons given, I think Halifax has communicated poorly with Mr D. It didn't communicate in a way that was clear, fair and not misleading, checking his understanding, to allow him to make a timely and effective decision about porting his mortgage. Taking into account the Consumer Duty principles, I don't think it treated him fairly. So, I've gone on to think about what it needs to do to put things right for Mr D in the circumstances.

As a resolution to his complaint, Mr D is seeking a refund of the ERC paid when he redeemed his mortgage in October 2023, or at the very least he thinks Halifax should increase its compensation award.

To decide what's a fair and reasonable award here, I've considered everything Mr D has said about how he's been impacted as a result, and how he should be fairly compensated in the circumstances. I've also thought about what he would have likely done differently in the circumstances had he been given clear, fair and not misleading information from Halifax during his enquiries and up until the point it responded to his complaint.

It's clear from listening to the calls Mr D made to Halifax dating back to January 2023 that his initial enquiries were entirely of a preliminary nature. He was trying to obtain suitable information about his mortgage before making any definite plans for a new purchase and/or any travel arrangements. It's also clear that Mr D's intention to port his mortgage was driven by his desire to avoid paying an ERC.

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.

Based on the information given to Mr D during his initial enquiries, it seems he was intending to sell his property soon and keen on the idea of finding a new property to live in within the three-month window to avoid paying an ERC. While his plans weren't concrete, it appears his intention was to live in the property for some time before applying for consent-to-let while he went travelling for around six months.

I'm persuaded that had he been given the right information about the porting process, Mr D would have applied for a new mortgage within the necessary timeframe to, at the very least, obtain a refund of the ERC payable in the circumstances of a non-simultaneous sale – if a simultaneous sale and purchase couldn't be achieved.

I'm also persuaded that following the call where the agent explained the difference between

a buy-to-let mortgage and a residential mortgage with consent-to-let – that Mr B would have opted for the latter. I say this because after the call he realised that this option was better suited to his plans to let out his property only temporarily. And because of the cost benefit of a lower interest rate (compared to a buy-to-let mortgage) and his ability to port his mortgage and not incur an ERC.

With that in mind, I'm persuaded that Mr D's plans in theory would have met Halifax's lending criteria for a porting application.

Because Mr D was not provided with clear, fair and not misleading information during his enquiries with Halifax, he lost the opportunity to make a timely and informed decision in line with his financial objectives. Therefore, I don't find that Halifax has taken reasonable steps to avoid foreseeable harm to Mr D – who, as a result, ended up incurring an ERC that he now has no way of obtaining a refund for. Had Halifax given him correct information and ensured he understood its requirements, I think it's more likely than not that he would have gone ahead with porting and been able to obtain a refund of the ERC.

Mr D says that following the discussions that took place in August 2023, he stopped searching for properties because he knew that he was not intending to increase his existing borrowing. He did not want to lose his cash buyer, so he thought his only option was to pay the ERC – and there was no way of him getting any sort of refund unless he borrowed more on top of his existing mortgage which just wasn't an option for him. He says this impacted his decision to cease searching for a new contracting job role and secure his travel plan instead.

I'm persuaded by Mr D's testimony. He's been transparent and consistent about his plans and intentions during his communication with Halifax and throughout his complaint from the start. I also agree that I can only reasonably say that Mr D was provided with the correct information about the ERC terms of his mortgage once our investigator issued her view in November 2023. The investigator made Mr D aware that he still had until 4 January 2024 to submit a new application to possibly obtain a refund of the ERC paid on redemption of his mortgage within the three-month window. But by this point I accept it was too late for all the reasons explained by Mr D.

Putting things right

To put things right in the circumstances, I think Halifax should refund the ERC paid by Mr D on redemption of his mortgage, plus 8% simple interest on the balance from the date of payment until the date of settlement. It's possible Mr D may have downsized, and so only been entitled to a partial refund. But it's not possible to know whether that would have been the case, and if so by how much the ERC refund would be reduced. But to account for the possibility that a full refund may mean Mr D is over-compensated I don't award further compensation for distress and inconvenience.

*** If Bank of Scotland plc (trading as Halifax) considers that it's required by HM Revenue & Customs (HMRC) to take off income tax from the interest, it should tell Mr D how much it's taken off. It should also give Mr D a certificate showing this if he asks for one, so he can reclaim the tax from HMRC, if appropriate.*

My provisional decision

My provisional decision is that I intend to uphold Mr D's complaint against Bank of Scotland plc (trading as Halifax)."

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.

Both parties have responded to say that they agree with the provisional decision and have nothing further to add. So I see no reason to depart from my provisional findings.

My final decision

To put things right in the circumstances, Halifax should refund the ERC paid by Mr D on redemption of his mortgage, plus 8% simple interest on the balance from the date of payment until the date of settlement.

** If Bank of Scotland plc (trading as Halifax) considers that it's required by HM Revenue & Customs (HMRC) to take off income tax from the interest, it should tell Mr D how much it's taken off. It should also give Mr D a certificate showing this if he asks for one, so he can reclaim the tax from HMRC, if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 27 May 2024.

Arazu Eid
Ombudsman