

The complaint

Mr and Mrs T complain that when they redeemed their mortgage with Bank of Scotland plc trading as Halifax, they were charged an Early Repayment Charge ("ERC"). They said they shouldn't have been charged, as they'd made all the payments due in the fixed rate period.

What happened

in October 2022 Mr and Mrs T were coming to the end of a fixed rate deal on their mortgage with Halifax. They had already made all the payments due under this fixed rate deal, each one on the first of each month. They got letters from Halifax saying they would start to be charged a higher rate of interest on 1 November. They wanted to pay the mortgage off before they started to be charged Halifax's standard variable rate ("SVR").

Mr and Mrs T paid off their outstanding mortgage on 23 October 2022. But they told us they were then charged an ERC of £360.54. They didn't think that was right, they wanted to know how they could be charged an ERC even after they'd made all the payments.

Halifax didn't think it had done anything wrong. It said the mortgage deal offer documents set out for Mr and Mrs T that an ERC would be payable if the mortgage was redeemed on or before 31 October 2022. And there was a reminder of this on each of their annual statements. Mr and Mrs T had redeemed their mortgage on 24 October 2022, so they were then still within the ERC period.

Halifax said Mrs T had told it she was wrongly advised about whether an ERC would apply, on a call on 13 October. But Halifax said it had listened to this call, and it had given correct advice about the ERC. It said Mrs T was told clearly then that she could pay off this mortgage on 1 November 2022, and not incur an ERC. But if she redeemed the mortgage before this, an ERC would still be payable.

Halifax said because Mr and Mrs T were still within their ERC period, the amount they'd paid wasn't enough to clear the mortgage in full. And Halifax said it wouldn't remove the charge over Mr and Mrs T's property until the ERC was paid off.

Our investigator didn't think this complaint should be upheld. He said Mr and Mrs T's original loan documentation properly notified them that an ERC would be payable if the mortgage was redeemed early.

Our investigator explained that an ERC is charged to cover the costs a lender incurs when someone comes out of fixed rate lending early. It has to be a reasonable pre-estimate of the costs of early repayment. But it doesn't have to be done on an individual basis, it can be calculated across a group of mortgages of the same type.

Our investigator said, although Mr and Mrs T thought the ERC wouldn't be due because they'd paid all the payments due under the fixed term deal, the offer did say the ERC applied until 31 October. And our investigator said he'd listened to the call on 13 October, and the agent clearly explained an ERC would be payable if they repaid the mortgage on or before

31 October 2022. The agent then double-checked this with a manager, and confirmed that the ERC would be payable if they repaid before 1 November.

Our investigator said Halifax didn't make a mistake in charging the ERC, and it wouldn't be fair to ask Halifax to waive this.

Mrs T replied on behalf of herself and Mr T. She didn't agree. She said they'd already paid everything they owed, and she said this issue was affecting her mental health. Mrs T wanted this complaint to be considered by an ombudsman, so it came to me for 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.

I've reached the same overall conclusion on this complaint as our investigator.

Like our investigator, I'm satisfied that Mr and Mrs T were properly notified of the ERC on their mortgage offer documentation. And I can see that they were reminded of this, each time their statements were issued. So I think that the charge Halifax applied, when Mr and Mrs T redeemed their mortgage on 24 October 2022, was charged in line with the agreement Mr and Mrs T had reached with Halifax for this fixed interest rate period.

Mrs T said she'd been misadvised on the phone about when an ERC would be charged. I can hear on the call she had on 13 October, that she said she'd previously been given different advice, telling her she could pay the mortgage off before 31 October, and wouldn't be charged an ERC. Mrs T made a complaint about this previous advice on that call, and this was settled with a small payment of compensation.

If Mrs T was given incorrect advice previously about how to pay off this mortgage without incurring an ERC, then it appears this advice was corrected, before it adversely affected Mr and Mrs T. I don't think Halifax has to do more to resolve that issue now.

I can also hear on this call that the agent explained when the ERC on Mr and Mrs T's mortgage would end. He checked this twice, the second time with a manager, and was both clear and consistent in the advice he was giving Mrs T. He apologised for any previous errors, but said that Mr and Mrs T were tied in to their current deal until the end of 31 October. So any repayment before 1 November would incur an ERC.

Mrs T said she thought she should now be able to repay, because she'd already paid all the instalments due under this fixed rate deal. But the agent was clear this wasn't the case.

The agent also took the time to explain to Mrs T how she could repay the mortgage on 1 November. And he said she wouldn't be charged the SVR if she repaid on that date. Mrs T was concerned about getting through to Halifax, and whether she would then be able to make a lump sum payment over the phone. The agent confirmed that she could use Halifax's automated line to repay the outstanding amount on her mortgage on 1 November.

I do think Halifax had clearly explained to Mrs T the implications of repaying this mortgage before 1 November. And it appears that the actions of Halifax since have been consistent both with the original offer it made to Mr and Mrs T, and the most recent advice it gave them on how to repay their mortgage. I'm sorry to have to tell Mr and Mrs T that I don't think it would be fair and reasonable to ask Halifax to waive this payment now.

I know that Mr and Mrs T will be disappointed, but I don't think that this complaint should be upheld.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T and Mrs T to accept or reject my decision before 11 September 2023.

Esther Absalom-Gough
Ombudsman