

The complaint

Mr S and Miss C complain that when they redeemed their mortgage with Bank of Scotland plc trading as Halifax, their Early Repayment Charge (“ERC”) was much more than they expected. They said Halifax told them this would be refunded, but then wouldn’t pay it back.

What happened

Mr S and Miss C were unhappy about being charged a large ERC when they redeemed their mortgage. They said they had to move to accommodate their growing family, and couldn’t wait until the ERC was no longer payable.

Mr S said he spoke to Halifax on the phone on 8 August about the ERC being refunded, and that person said yes, it would be refunded. Mr S said he relied on that, but it was wrong.

Mr S said he’d complained to Halifax, and it paid him £100 in compensation. But he said that was an insult, when he’d been charged over £4,000. Mr S said he’d been affected financially, and he was also very upset, he felt robbed. He wanted the full ERC to be repaid.

Halifax thought it had evidenced Mr S had agreed to the ERC, because it had shown him the original mortgage offer. But it said the call he had on 8 August should have explained this further to him. Halifax said it had paid Mr S £100, to make up for poor service he received, both in the phone call on 8 August, and on a later call when he tried to lodge a complaint.

But Halifax said Mr S did have an ERC on his mortgage, and this had been correctly charged. So Halifax wouldn’t pay this back. It said if Mr S had been wrongly advised when he took out this mortgage, he should talk to the broker who sold this mortgage to him.

Our investigator didn’t think this complaint should be upheld. He said the mortgage was sold to Mr S and Miss C by a broker, and if Mr S and Miss C felt that the mortgage had been mis-sold, then they should discuss that with the broker. He agreed that the call on 8 August could have been handled better. But he said he was satisfied that the documentation Halifax provided was clear, and did explain that an ERC was payable on this mortgage.

Our investigator said Halifax had compensated Mr S for the confusing information given on the call. He thought that was fair, and he wouldn’t ask Halifax to do any more.

Mr S didn’t agree. He said that Halifax’s agent said “yes” to his question about a refund. He said he should have been talking to someone with an adequate amount of training. Mr S felt £100 in compensation didn’t make up for the unnecessary stress this had caused.

Our investigator said although the agent did say “yes”, she didn’t say the ERC was definitely going to be refunded, under any circumstances. That was only if Halifax didn’t evidence that the ERC had been explained and Mr S had agreed to it. And Halifax then demonstrated that the ERC was clearly set out in the original mortgage paperwork. So our investigator said Halifax had provided evidence.

Because no agreement was reached, this case then 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.

Halifax has shown our service the original mortgage offer it made to Mr S and Miss C in 2018. That includes details of the ERC payable on this mortgage. This offer is what Mr S and Miss C agreed to, when they took out this mortgage. So Halifax does have evidence that they agreed to this charge. And I'm satisfied that Mr S and Miss C were properly notified of the ERC on their mortgage by Halifax, when they entered into this contract.

I understand, from the calls Mr S had with Halifax, that he accepts this offer did set out the ERC at the time that he took the offer out. But he says this ERC was never explained to him.

Mr S and Miss C say they were misled by the person who sold them the mortgage, because they were told the ERC would only be about £500. And Mr S takes the view that Halifax is responsible for proving that the ERC was properly and accurately explained to him, when he took the mortgage out.

I'm sorry to have to tell Mr S that I don't agree. Mr S and Miss C took out this mortgage through a broker. If Mr S and Miss C did receive conflicting or incorrect information from their broker, which didn't match what was set out on Halifax's mortgage offer documentation, then that isn't Halifax's responsibility. Our investigator has suggested that they may wish to discuss this with the broker.

Mr S told Halifax that he didn't know anything about the ERC, until he decided to sell the house. But Halifax has shown our service the annual mortgage statement which Mr S and Miss C were sent on 31 October 2021, almost a year before Mr S and Miss C sold their house. On the first page, the statement sets out that the mortgage is on a fixed rate, and that means there may be an ERC on their mortgage. The statement says, on the first page –

It's a good time for you to check your mortgage statement so you can remind yourself of any early repayment charges and when they end.

Then page 4 of this statement tells Mr S and Miss C how much the ERC was at the time the statement was issued, and when the ERC would end. So I'm also satisfied that Halifax had reminded Mr S and Miss C about this charge more recently.

I've listened to the call Mr S had with Halifax on 8 August 2022, where he asked for evidence that he'd agreed to the ERC. Mr S told us he considers he was misled, because the call handler said yes, his ERC would be refunded. I do think this was an unhelpful call, the call handler doesn't seem to have been clear throughout what Mr S was asking for. But I can hear at the end of the call, Mr S asked if the ERC would be refunded, possibly, if whatever Halifax sent out didn't show the ERC had been explained to him, and he'd signed for it.

Halifax has shown Mr S and Miss C the mortgage offer they took out. That offer document does show this mortgage had an ERC, which was still payable at the time when Mr S and Miss C redeemed this mortgage. And it was substantially more than the £500 Mr S said he was told it would be by his broker. Halifax says it thinks this provides the evidence that Mr S agreed to this ERC.

But Mr S said Halifax had told him he would get a refund. So Mr S thinks Halifax should pay this money back now.

Even though I think the call Mr S had with Halifax on 8 August was unhelpful, and may have led him to believe that he might get the ERC refunded, that doesn't mean that I would say Halifax had to refund this money now.

If Halifax made a mistake here, then I'd be seeking to put Mr S and Miss C back in the position they would have been in, if the mistake hadn't been made. And the only mistake Halifax made here, was in giving Mr S an unclear and inaccurate reassurance on the call on 8 August, that if Halifax couldn't provide the evidence Mr S wanted, he could get a refund of his ERC. Halifax didn't make a mistake in charging the ERC. It made a mistake in telling Mr S that he might get this money back.

So I think a fair and reasonable outcome to this complaint is to compensate Mr S and Miss C for the disappointment they experienced, when they realised Halifax wouldn't pay the ERC money back. And I don't think it would be fair and reasonable to ask Halifax to give back the full ERC, which was charged in line with the terms of their mortgage, to make up for that disappointment.

I understand Mr S and Miss C will be very disappointed by my decision, but I think that the payment of £100 that Halifax has made in this case, does make up for the error that it made on the phone on 8 August, just before they completed their sale and redeemed the mortgage, as well as for the initial failure to log their complaint. So I'm sorry to have to tell Mr S and Miss C that, for those reasons, I don't think Halifax has to do more in this case. And that means this complaint won't be upheld.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C and Mr S to accept or reject my decision before 30 August 2023.

Esther Absalom-Gough

Ombudsman