

## The complaint

Mr and Mrs K have complained about the service they received from Bank of Scotland plc, trading as Halifax, when they were looking to remortgage. They've said they weren't given clear information by Halifax which led to them believing they could remortgage on 28 February 2023, rather than 1 March 2023.

Originally, they said their new mortgage couldn't be delayed by that one day so they would incur an early repayment charge (ERC) of around £3,200 with Halifax, but they later confirmed their solicitor had been able to delay redeeming the Halifax mortgage until 1 March 2023 so no ERC was due. They've said Halifax should have mentioned that option to them as a solution, and they were stressed and had sleepless nights until it was resolved.

## What happened

In April 2018 Mr and Mrs K took out a fixed rate mortgage with Halifax. The mortgage offer explained the rate of 2.04% was fixed, and after 28 February 2023 it would move to the standard variable rate. It also explained that if the mortgage was repaid on or before 28 February 2023 an ERC would be applied, to a maximum of £12,110.75.

In March 2022 Mr K phoned Halifax. He wanted to know what the ERC would be if he came out of his mortgage early, what interest rates Halifax had at that time, and whether anything could be done as an incentive for him to remain with Halifax.

Mr K called Halifax again in August 2022. He asked how much the ERC was and what rates Halifax had available at that time. In this call he was told that he could apply for a new rate with Halifax three months before the end date, which Halifax confirmed meant Mr H could apply for a new Halifax rate from 1 December.

The final call was in September 2022. Mr K asked if he could apply for a new interest rate with Halifax six months before the existing rate expired, and was told it was a maximum of three months before. The current rates and the ERC amount were confirmed again, and the call ended with Mr K being told his mortgage would move to the standard variable rate on 1 March 2023, and he could arrange a new product with Halifax from 1 December 2022.

In January 2023 Mr K raised a complaint. He said he was told his rate would expire on 28 February 2023 and he wouldn't pay an ERC. He said he'd arranged to complete his remortgage to a new lender on 28 February and he couldn't change that without changing the rate. He wanted either the ERC waived, or for Halifax to match the rate of the other lender so he could stay with Halifax. Halifax didn't uphold the complaint. It said it hadn't given him any incorrect information, and recommended he spoke to his new provider to discuss what options they had available to extend the offer.

Unhappy with Halifax's response, Mr and Mrs K referred the complaint to the Financial Ombudsman Service where it was looked at by one of our Investigators. She said she didn't think Halifax had done anything wrong as the ERC was set out in the original mortgage offer, and Mr K wasn't given incorrect information in the calls.

Mr and Mrs K didn't agree and so it's been passed to me to decide.

### **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 listened to all the calls very carefully, and having done so I'm satisfied Halifax gave Mr K the correct information.

At the end of the September 2022 call Mr K was told:

*"The first day you will be in a standard variable rate will be the 1<sup>st</sup> of March, so your last day of your product is the 28<sup>th</sup> of February."*

Mr K was never told, in any of those calls, that he could repay this mortgage on 28 February without incurring the ERC.

The ERC was clearly set out in the mortgage contract that Mr and Mrs K entered into in 2018 and that explained there would be an ERC of:

- *"5.00% of the amount repaid on or before 28/02/2019*
- *4.00% of the amount repaid on or before 28/02/2020*
- *3.00% of the amount repaid on or before 28/02/2022*
- *1.50% of the amount repaid on or before 28/02/2023"*

The use of *"on or before"* is clear and unambiguous. It is fairly normal in the mortgage industry for preferential rates (and their accompanying ERCs) to run until the end of a month, with the first day the mortgage can be moved without incurring an ERC as the first day of the following month.

Mr and Mrs K have said a mortgage adviser for the new lender said they believed the remortgage could take place on 28 February, but that belief would have been based on what Mr and Mrs K told them. That belief wasn't based on the mortgage adviser taking part in the calls with Halifax (so they could hear exactly what was said) nor having reviewed the Halifax mortgage offer. Had the mortgage adviser for the new lender done either of those I would be surprised if they'd said the remortgage could complete on 28 February. In any event, I can't take what a mortgage adviser for another lender believes into account as I'm considering what Halifax did (and didn't) do and say.

Having considered everything I'm satisfied the terms of the ERC were set out in the mortgage offer in a way that should have been readily understandable to Mr and Mrs K; certainly, the information about the ERC was set out in a way that met the regulator's requirements. I'm also satisfied Halifax didn't give incorrect information in the calls with Mr K. So I'm persuaded Mr and Mrs K knew - or at least should have known - an ERC would be charged if they redeemed this mortgage on or before 28 February 2023.

Mr and Mrs K have said that their subsequent complaint is that Halifax didn't offer the simple solution to the problem. But it wasn't Halifax's responsibility to do so. All Halifax could discuss was its mortgage. It wasn't in a position to discuss Mr and Mrs K's new mortgage with them. That would have been a matter for Mr and Mrs K to discuss with the new mortgage lender, their solicitor and their mortgage broker (if they used one). In any event Halifax put in its response to the complaint in January 2023 *"It may be worth speaking to your new provider to discuss what option's they have available to extend your offer"* which

was the right starting point for this issue. Halifax wouldn't give advice on what to do if an offer with a different lender couldn't be extended.

Mr and Mrs K have told us about the mental toll and stress they endured, leading to sleepless nights. I'm sorry to hear that, it sounds like it was a very difficult time for them. However, as our Investigator explained, we can only make an award if a business has done something wrong. Here I'm satisfied the ERC was clearly set out in the mortgage paperwork, and Halifax gave Mr K correct information on the phone. As Halifax didn't do anything wrong, it follows that I'm unable to make any award for that mental toll.

### **My final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs K to accept or reject my decision before 7 September 2023.

Julia Meadows  
**Ombudsman**