

The complaint

Miss H has complained about an early repayment charge (ERC) she incurred when she repaid her mortgage with Bank of Scotland plc trading as Halifax.

What happened

Miss H bought her property in May 2017 for £330,000, taking out a mortgage with Halifax to fund the purchase. She borrowed £155,000 on a repayment basis over a 23-year term, and the mortgage offer said the interest rate was fixed at 1.94% until 31 August 2022, with an ERC for that same period.

I understand that in June 2021 Miss H bought a new property, funded by way of a new mortgage also with Halifax. Miss H put the property this complaint relates to on the market and moved into the new property.

On 26 August 2022 Miss H sold this property for £412,500 and redeemed the mortgage. As this was before the end of the stated ERC period she paid an ERC of around £2,400. Miss H phoned Halifax about the ERC on 31 August 2022, and at that time it referred the matter for an appeal against the ERC that had been charged. When that appeal was declined this was raised as a formal complaint.

Halifax didn't uphold the complaint, saying the end date for the ERC was in the mortgage offer, and Miss H's solicitor had received various redemption statements all detailing the ERC. Unhappy with that Miss H referred the complaint to the Financial Ombudsman Service.

One of our Investigators looked at the complaint. She said because Halifax hadn't done anything wrong, she couldn't ask it to refund the fee. She said details of the ERC were set out in the original mortgage offer and the annual mortgage statements and were also explained in the redemption statements that were issued to Miss H's solicitor.

As Miss H didn't agree, the complaint has 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 recognise that Miss H feels very strongly about this, and I thank her for the frankness and detail of her submissions. She's clearly been through – and is still going through - some very difficult times, with some significant health challenges. I won't detail everything that she's told us here to protect her privacy, however I can assure Miss H that I've read and understood everything and taken it all into account.

The ERC wasn't a "penalty" as that has a distinct meaning in law; it's a contractual term that applies where there is a breach of contract. But when Miss H's mortgage was repaid, there was no breach of contract. That's because the contract allowed for the mortgage to be repaid if Miss H paid an ERC.

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 Miss H; certainly, the information about the ERC was set out in a manner that met the regulator's requirements. So I'm persuaded Miss H knew – or at least should have known – how much she'd have to pay if she repaid the mortgage on or before 31 August 2022.

In terms of the length of the fixed rate some lenders offer rates for a fixed period (for example, for 60 monthly payments) whereas others offer them until a set end date (for example, until 31 August 2022). Both are acceptable, and both would be considered to be a five-year fixed rate. The mortgage offer set out which this was, that is it was a fixed rate until a set end date of 31 August 2022, and that is the contract Miss H entered into. It may be, due to her recent health concerns, Miss H didn't recall that, but I can't hold Halifax liable for that as the contract was clearly and correctly described at the time she entered into it.

The information was also reiterated in each of the annual mortgage statements that were issued, the last of those (before redemption) being issued on 2 May 2022. That said, *"Early repayment charges are payable on this account until 31 Aug 2022"* and provided a monetary figure for the charge as at 30 April 2022.

That said, I need to decide what is fair and reasonable in the individual circumstances of the complaint. The rules we operate under say that in doing that I must take into account, amongst other things, the relevant rules and regulations. In this case that is the Financial Conduct Authority's Mortgages and Home Finance: Conduct of Business sourcebook (MCOB).

MCOB includes provisions about ERCs. In summary, they say that an ERC must be able to be expressed as a cash value, and must be a reasonable pre-estimate of the costs resulting from early termination of the mortgage. But a lender can choose how it calculates an ERC, and can calculate the same level of ERC across a group of mortgages of similar type, rather than for individual loans. Halifax is entitled to set an ERC based not on the actual cost to it of Miss H ending her own mortgage early, but on a reasonable pre-estimate of the costs of early termination of a group of mortgages of similar type.

Lenders generally raise money to offer preferential rates for their mortgage customers on the wholesale money markets. There's a cost to that, and it's generally fixed in advance. But the lender expects to receive a return to outweigh those costs. If a mortgage ends early, it doesn't get back all the returns it expected, and so doesn't make back the costs in raising the funds to offer that preferential rate.

I appreciate that Miss H was very near to the end of the tie-in period (repaying it just days before the end date) and that the amount of the ERC appears vastly out of proportion to that time remaining. But I'm afraid that isn't a factor in how the ERC is calculated, nor is the actual cost to Halifax of this individual mortgage being repaid at the exact time it was.

It's complex and onerous for lenders to calculate individual losses as and when individual customers decide to terminate their contracts early. And it isn't possible to estimate, for any given individual, when or if they might do so. So Halifax is allowed to project how many customers, on average, are likely to terminate early and, on average, at what point they're likely to do so, and to apportion that cost across the mortgages in the group. For some individual mortgages that will end up being an over-calculation, and for others it will be an under-calculation. But that's allowed; Halifax doesn't have to refund the difference, but equally it doesn't tell a consumer to pay the difference if it goes the other way.

Halifax issued various redemption statements to Miss H's conveyancer over a two-month period from 23 June to 25 August, and all of those confirmed there would be an ERC of around £2,400 if the mortgage was redeemed on or before 31 August 2022.

Miss H has said that her conveyancer sent her a spreadsheet-style statement showing the amount owed to Halifax, in the context of the other credits and debits associated with the sale, but that she was unaware that figure included an ERC. She's said she had no reason to ask the conveyancer about a potential ERC because she was nearly three months past the five-year anniversary of her taking out the mortgage.

But her conveyancer had received more than one redemption statement from Halifax and they all clearly stated Miss H would be charged an ERC of around £2,400 if she repaid the mortgage on or before 31 August 2022 so I would have expected her conveyancer to have queried that with her.

Unfortunately, much of what Miss H has said relates to assumptions she made, but because she didn't have any contact with Halifax it didn't have a chance to correct her. Had she made contact with Halifax at any point in the months before the mortgage was redeemed, I've no reason to believe Halifax wouldn't have corrected the misconception.

Halifax's only responsibility here, in the absence of any contact from Miss H directly, was to issue factually correct redemption statements to her solicitor, which it did.

I understand this was an honest mistake that Miss H made, and I understand why she feels she's been treated unfairly as there were only days left. She's said that the outcome she wants is within Halifax's discretionary power to provide as a gesture of goodwill, and by making this as a goodwill gesture it wouldn't be setting any precedents.

It isn't a matter of punishing Miss H as she has said, instead it is that I've no power to make an award against Halifax unless I first find that the loss was incurred due to something it did wrong.

We're an independent and impartial service and my role is to make an award if there has been wrongdoing. I can't order a business to make a gesture of goodwill, instead I have to consider the complaint and, as I've said, I can only order a business to do something if I am first satisfied that it has done something wrong, that is, if I'm satisfied it caused the loss.

Having considered everything I don't order Halifax to refund the ERC (either in full or in part) because:

- Halifax correctly set out the ERC end date in the mortgage offer and in each of the annual mortgage statements that were issued to Miss H.
- Halifax was entitled to charge Miss H the ERC set out in her mortgage contract when she repaid her mortgage early.
- There was no requirement for Halifax to only charge an amount worked out based on Miss H's individual mortgage and date of redemption, instead Halifax was allowed to charge an amount based on its pre-estimate of the costs of early termination of a group of mortgages of similar type.
- Miss H didn't speak to Halifax in the run up to redemption to check her assumption was right that she wouldn't incur an ERC, so Halifax didn't have the opportunity to give her the correct information.

- The correct information was set out in the redemption statements that were issued to Miss H's conveyancer.

Whilst I've a great deal of sympathy for Miss H's situation, there are no grounds for me to order Halifax to refund the ERC (either in full or in part).

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 15 September 2023.

Julia Meadows

Ombudsman