DRN-4138566

Financial Ombudsman Service

The complaint

Mr and Mrs F complain about the service they received from Bank of Scotland plc (trading as Halifax) when enquiring about making changes to their mortgage. They say as a result, they were unable to make an informed choice about their options and they seek compensation as a resolution.

What happened

Mr and Mrs F have a residential mortgage with Halifax. Their most recent mortgage offer from 2018 shows a balance of around £200,000 with a remaining term of 14 years and one month. The mortgage was largely on interest only terms with a noted repayment vehicle of stocks and shares to the value of £40,000.

Mr and Mrs F had agreed to a fixed interest rate of 2.69% for five years (until 31 October 2023). After which their account would revert to Halifax' Homeowner Variable Rate. The offer explained that if the mortgage was redeemed early, an early repayment charge (ERC) would apply on a staggered basis – starting with 5% of the amount repaid in the first year, reducing by 1% each year thereafter until the end date of the product.

Concerned about the cost-of-living and rising interest rates, Mr and Mrs F contacted Halifax in July 2022 to enquire about their options. They say the communication from Halifax staff was poor, the staff were unhelpful, unknowledgeable, disinterested, rude and unwilling to help.

Mr and Mrs F say they raised their concerns with Halifax in June 2022, but their complaint wasn't properly logged, and it wasn't until 21 September 2022 that they received a final response to the complaint.

Halifax said the first record it had of a complaint being logged was on 5 September 2022. It considered Mr and Mrs F's complaint and didn't think it should be upheld. In summary it said Mr and Mrs F were given clear and not-misleading information in response to their enquiries. Specifically, the ERC applicable if redeeming their current mortgage early and the process and criteria for a term extension. Mr and Mrs F were offered an appointment to go ahead with an application for a term-extension, but they chose not to. Halifax said that the complaint they've raised about obtaining a new Equity Release mortgage would need to be raised separately as the complaint is about a different subsidiary of the Lloyds Banking Group.

Mr and Mrs F got in touch with us. They told our service that they've since re-mortgaged with a different lender. They incurred an ERC with Halifax and feel disappointed that due to the lack of proactiveness from Halifax to help them, they've potentially lost out on the ability to remain with Halifax and re-mortgage onto a lower 10-year fixed rate deal without paying an ERC. They are seeking compensation for any losses incurred.

Our Investigator didn't recommend that their complaint be upheld. When considering everything, he felt Halifax had acted in accordance with its process and he didn't think it got things wrong. Mr and Mrs F didn't accept that conclusion. They still felt they had been treated unfairly by Halifax, so they asked for an Ombudsman to make a final decision on their case.

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 appreciate Mr and Mrs F feel very strongly about their case. I can assure them that whilst I have carefully considered all the submissions made, I won't address each and every point that has been raised. I'll focus on the matters that I consider most relevant to how I've reached a fair outcome – in keeping with the informal nature of our service.

Unlike a court, we don't rely on the parties involved to prove their case. I have the power to carry out my own investigation, focusing on what I think is relevant in reaching my decision on what's fair and reasonable for both parties concerned.

Having done all that, I don't think this complaint should be upheld. I realise this will be disappointing for Mr and Mrs F. But I hope the reasons I have set out below will help them to understand why I have come to this conclusion.

I'll start by summarising the contact that took place between Mr and Mrs F and Halifax. Our investigator has already set out the background of events in detail and he's also provided copies of the available call recordings to Mr and Mrs F – but for completeness I've set out my own findings below.

Contact made and the information provided

Mr and Mrs F initially made enquiries with Halifax on 7 July 2022 – both online and by phone.

Mrs F submitted the following online enquiry *"we are on an interest only mortgage looking at options when interest rate comes to end and retirement interest only mortgage".* Halifax called Mrs F back in response to her enquiry. Halifax said it wasn't possible to switch their current mortgage to a 10-year fixed rate deal because that would take them past the current term of their mortgage. And lending past the age of 70 on interest only goes against their lending criteria.

Mrs F also called Halifax that day to make similar general enquiries about possibly switching their current deal early. Halifax provided the details of the current rates. Mrs F was surprised to be told that they'd still incur an ERC for switching to a new deal with Halifax. She says that the call handler didn't seem sure on this point, but I'm satisfied that he was, and the ERC implications were properly explained. During this call Mrs F also enquired about a retirement interest only mortgage. The advisor referred her to Scottish Widows. Mrs F said she's already spoken to them about Equity Release, but they weren't eligible due to their property containing a septic tank.

Following these initial enquiries Mr and Mrs F shopped around. They sought some advice from an independent broker and explored other options through different lenders.

Mr F called Halifax back on 13 July 2022 to get some more information. He referred to an earlier call with Mrs F where she was told it wasn't possible to switch to the 10-year fixed rate deal because of age limits. Mr F said their broker told them Halifax would in fact lend past the age of 70. He said the broker had found them a good deal, but they first wanted to check if they could fulfil their plans with Halifax to avoid having to switch lenders.

Halifax explained its criteria. It said that on interest only it would only lend up to the age of 70. It could lend up to the age of 80 but the mortgage would need to be on repayment terms. Halifax also clarified that past the age of 70, only pension income would be considered to assess affordability. It wouldn't take into account earned income. Halifax explained Mr and Mrs F could explore the option of extending their mortgage further, but they'd need to speak to a mortgage advisor to go through a full application process. Mr F was grateful for the clarity. He said he'd speak to Mrs F and call back to discuss possibly making an appointment.

What followed was an email from Mrs F to the staff member she'd spoken to previously. The email said:

"Hi X,

Further to our phone call the other day, I have tasked my husband with doing some research across the entire mortgage business including brokers who highlighted to us that many mortgage companies now have extended their age limits some as high as 85 years old but in respect to Halifax they believed that is at least 80 years old.

We are now totally confused as my husband actually spoke to a Halifax Representative in your mortgage product information department today and went through our circumstances and the advice given was there does not appear to be any problems with re mortgaging to a term of 15 years based on our age on an interest only basis with a fixed rate of 3.33%.

We are about to make a decision to go with [a different lender] and clearly we do not make that decision if we could have remained with Halifax as indicated by mortgage brokers and your own departments".

X responded to the email. It appears because Mrs F had referred to someone 'going through their circumstances' and receiving 'advice', X thought a mortgage application had been made. X said she couldn't find details of a mortgage application but could provide some clarity on the criteria for lending to the age of 80. She said, in some circumstances Halifax could lend up to the age of 80 if the term is only being extended to align with a Repayment Plan which has a fixed maturity date (e.g. Endowment or Investment Bond). Which didn't appear to be the case for Mr and Mrs F.

Mrs F responded with another email asking about shorter fixed rate options and the interest rates applicable and asking for clarity of the ERC payable now and after the 1% drop from 1 November 2022. X said that it would be best to arrange a call to talk through their questions, she said she wasn't working the next day, so she arranged a call with a colleague.

Mr and Mrs F say the call took place (albeit with a different colleague). Mr and Mrs F say the staff member confirmed that they were eligible for an internal product transfer with no ERC and an interest rate of 3.30%. They say this information was confirmed in an online chat too and completely confused them as the information now given was inherently different to what they'd been told before. They say that they also found out later that Halifax did at the time offer a Retirement interest only mortgage with a rate of 3.02% (and no fees or an ERC) but this was never discussed or mentioned.

Were Mr and Mrs F misinformed or given an inadequate service from Halifax?

Mr and Mrs F wanted to end their current mortgage deal early to secure a 10-year fixed rate deal ahead of any anticipated interest rate rises and explore lending into retirement options.

The core of their complaint is that they were mis-informed on several occasions – particularly about the ERC applicable if they were to redeem their existing mortgage early and on Halifax's policy on lending into retirement. I'll set out Halifax's relevant policies and then consider whether Mr and Mrs F were misled or misinformed.

Lending into retirement and extending the term of the mortgage.

Mr and Mrs F complain that they were at several times given inconsistent information about their ability to extend the term of their mortgage to accommodate switching to a 10-year fixed rate deal.

The mortgage term is the length of time a mortgage is due to run for. This is agreed when the mortgage is taken out and will be shown on the mortgage agreement. Extending the term of a mortgage is a variation to the existing mortgage contract and requires customers to undergo a full mortgage review to proceed. It's only once a fact find has been carried out to establish the customers circumstances and affordability that a lender can give tailored advice. Anything outside of that is considered general information.

It's important to note here that Mr and Mrs F didn't go through a full application or as such receive any tailored advice about the options available to them based on their specific circumstances. Instead, they made several general enquiries to Halifax and in return received general information about general lending criteria from different members of staff.

Mr and Mrs F's enquiries about extending the term of their mortgage were largely made on 13 July 2022. A couple of calls took place that day. During both calls it was explained that Halifax could lend to the age of 80 but to lend past the age of 70, affordability would be assessed on pension income only. Affordability would only be assessed on earned income up to the age of 70.

I accept in the first call it was suggested to Mr F that they could possibly extend their mortgage past the age of 70 and affordability could possibly be assessed on interest only terms. The first call handler clearly explained nothing was guaranteed and they'd have to go through a full mortgage review to explore their options. Mr F called back a second time and was given clear information about Halifax's policy. That being that the maximum age at the end of the mortgage term is 80 years for all repayment mortgages and 70 if any part of the mortgage is on an interest only basis. So I can't reasonably say there's been any detriment here and Mr F was in receipt of the correct information about Halifax's policy that same day to make an informed choice about their options moving forward.

When considering everything I'm not persuaded Mr and Mrs F were intentionally misled by Halifax or that they received the poor service they suggest. As I've explained, to vary the existing mortgage contact by changing its term – requires an application with a mortgager advisor. This was made clear to Mr and Mrs F, and they were offered an appointment at an early stage during their initial enquires.

This is the usual process and would have been the most effective way for them to truly understand all their options and receive the advice they were after. It's unclear why they chose not to proceed with an application through Halifax. Instead, they continued to make several general enquiries which meant the information they received was limited and was not specific to their personal circumstances.

Mr and Mrs F had mentioned finding attractive deals with other lenders including a 10-year fixed rate on interest only terms. It's unclear what deal they chose to go with in the end, but there was nothing preventing them from exploring their options further with Halifax. Instead, it appears to me that they chose to proceed with a different lender to secure a deal (that they knew suited them) promptly amidst a period of fast rising interest rates. Halifax acted as I'd expect by offering an appointment for a mortgage review and application. So, in the circumstances I can't reasonably hold it responsible for the choices Mr and Mrs F made.

<u>ERC</u>

Mr and Mrs F don't dispute that an ERC is chargeable in line with their mortgage terms. But they say that Halifax has deliberately withheld a copy of a further call that took place and the supporting chat history during which they say Halifax confirmed that they were eligible for an internal product transfer with no ERC. As such they're concerned that they've possibly missed out her on an internal transfer option. I can assure them they haven't, I'll explain why.

Whilst I have no reason to disbelieve what Mr and Mrs F have said, Halifax has assured our service that its provided copies of all the calls and contact history it has on file in relation to this complaint. In any event even if Mrs and Mrs F were given that information as they suggest, this has little bearing on the outcome of this complaint.

I can confirm that under the relevant rules, lenders are entitled to apply an ERC. And I'm satisfied that the ERC was set out clearly and prominently in the mortgage offer, which Mr and Mrs F accepted when they took out their existing mortgage deal.

I'm satisfied that during all the calls I've listened to Mr and Mrs F were given clear and accurate information about the ERC applicable if they were to redeem their existing mortgage early – including the different amounts payable due to the staggered nature of the ERC terms. According to their mortgage terms they'd incur an ERC equivalent to 3% of the amount repaid on or before 31 October 2022 and 1.75% of the amount repaid thereafter.

The ERC formed part of the contract Mr and Mrs F had with Halifax and in line with the mortgage terms, I can confirm the ERC was applicable irrespective of whether Mr and Mrs F were applying for a new rate internally or re-mortgaging with a different lender. When a lender offers a fixed rate mortgage product, both the lender and borrower are tied into the fixed rate for the duration of the term. So, it was not possible for them to obtain a new interest rate with Halifax without incurring an ERC – that's the nature of a fixed rate product. If that weren't the case, customers would be free to change their product with their lender at any time, without paying a fee – defeating the purpose of a fixed rate product.

And when taking all of that into account, I don't think Mr and Mrs F relied on that information to their detriment. They still chose to redeem their mortgage with Halifax early and re-mortgage with a different lender – knowing that would certainly incur an ERC in the circumstances. So even if they were given incorrect information about the internal process, as they suggest, that has little bearing here as they still went elsewhere and even if they chose to switch to a new rate internally, in the circumstances it wouldn't be unreasonable for Halifax to apply its correct policy and apply an ERC.

So, it follows that I'm satisfied Mr and Mrs F were given enough information to know how the correct ERC policy operates and I've seen nothing that suggests the amount they paid should be refunded in the circumstances.

Summary

For the reasons I've explained I'm not persuaded there has been any detriment to Mr and Mrs F here caused by Halifax's actions. To end their current mortgage deal early and secure a new 10-year fixed rate they'd need to pay the ERC regardless of whether they stayed with

Halifax or not. If they wanted to extend their mortgage past the age of 70 and remain on interest only, they would have always had to re-mortgage with a different lender as that was outside Halifax's lending criteria. They may have been able to remain with Halifax and extend their mortgage past the age of 70 (albeit not on interest only terms) but they didn't make an application to explore that further so I can't safely say its certain their application would be accepted with Halifax in any event.

I also don't think staff Mr and Mrs F spoke to were rude or dismissive as they suggest. All the calls were quite pleasant, and the staff were as helpful as they could be in the circumstances. I appreciate that since sharing copies of the calls with Mr and Mrs F they have some concerns about the nature of the conversation that took place between two Halifax colleagues during an internal transfer. Halifax has consented to our service sharing those calls with Mr and Mrs F, so its aware they are in their possession. However, this is not something I'm able to consider as part of my decision because this is a new complaint that has not yet been raised with Halifax. Under our rules businesses must first be given the chance to address a complaint before our service can consider it.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F and Mrs F to accept or reject my decision before 16 November 2023.

Arazu Eid
Ombudsman