

The complaint

Mr and Mrs C's complaint about Bank of Scotland plc trading as Halifax (Halifax) relates to incorrect advice given to Mrs C by a Halifax mortgage advisor (MA) in January 2021, and when she made an application to re-mortgage her family home following a change in personal circumstances.

What happened

Mr and Mrs C took out a joint mortgage with Halifax in 2014 to purchase their family home. In 2017 Mr and Mrs C took further borrowings on their mortgage, a part of which they used to pay off their overdrafts. When their fixed rate mortgage came to an end in November 2020 they took out a new two-year fixed rate mortgage with Halifax.

Mr and Mrs C's circumstances changed in January 2021 leading Mrs C to make an application for a mortgage in her own name in order to purchase Mr C's interest in their property. The MA she first spoke to said that such a mortgage would be possible and that she could borrow enough to pay Mr C and to clear her debts. She received what is known as a mortgage promise from Halifax. However, when Mrs C made a formal application in March 2021 it was declined on the basis that Halifax's policy didn't allow for further debt consolidation until five years had elapsed since the previous one.

Mrs C went on to arrange a new mortgage with a third-party lender but in doing so she triggered an Early Repayment Charge (ERC) with Halifax. Mrs C asked Halifax to waive the ERC but they declined to do so.

Mrs C complained to Halifax who upheld part of her complaint, being the part relating to the incorrect advice she received in January 2021. They did not uphold the part relating to not waiving the ERC. Halifax paid Mrs C £750 in compensation to reflect the poor service given.

Mrs C was unhappy with Halifax's final response and so approached this service to see if we could assist in resolving the dispute. Our investigator thought that Halifax hadn't done anything wrong and had dealt with the complaint fairly. Mrs C didn't agree and asked for the complaint to be passed to an Ombudsman 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.

The relevant facts to this complaint are agreed by both parties; Mr and Mrs C re-mortgaged in 2017 and consolidated some of their debt. They then re-mortgaged on a fixed rate deal in November 2020. In March 2021, Mrs C made an enquiry about a new mortgage, a part of which was to consolidate further debt. Mrs C received incorrect advice from a Halifax MA regarding the mortgage promise. Mrs C took a new mortgage with a third-party lender and

Halifax did not consent to waiving the ERC. The ERC was calculated and applied in accordance with the strict terms and conditions of the mortgage.

When Mr and Mrs C took out the mortgage in 2020 they received a letter dated 23 November. That letter had attached to it a mortgage illustration and at section seven it set out the details of when and how much any ERC might be. I don't think Mrs C disputes that her 2020 mortgage was subject to an ERC, but in the event she does, the mortgage illustration confirms its applicability. Further, on page two of the letter it also makes it clear that,

You do not have the right to withdraw once this transaction has completed. However, you have the right to repay the mortgage subject to paying any early repayment charges or fees and any other terms that may apply.

So, I am satisfied that Mrs C was made aware of the existence of an ERC and when and how much might become payable.

At section eight it also states that any future application, would be assessed in line with the lending policy at that time. I don't think Mrs C disputes what Halifax's lending policy states, but in case I am wrong about that I have checked it and it does show that debt consolidation is not acceptable where customers,

Have previously consolidated debts onto their mortgage, regardless of provider, in the last 5 years.

So I am satisfied, that despite giving Mrs C a clear indication that her application for a new mortgage would be approved, Halifax have ultimately applied their lending policy correctly as Mrs C had in fact previously consolidated debt to her mortgage in the previous five years, when she did so in 2017. I've also considered what further actions Halifax took when considering all the circumstances and to see if they have acted fairly. I've seen internal correspondence which shows that Halifax did look to see whether an exception could be made for Mrs C and approached their underwriters to that effect. Whilst that was considered, but then declined, it does show Halifax were acting reasonably.

Halifax have accepted their MA gave incorrect advice in January 2021. They have paid compensation of £750. Having accepted they made an error, I do think it is right that compensation should be paid, and the issue is whether the sum already paid ought to be increased. In my view I don't think it should, because had Mrs C received the correct advice in January 2021 it would have been clear to her that she could not re-mortgage for further debt consolidation with Halifax. That would only of course have been a reminder of what she had already been told when she obtained her mortgage in 2020. She would have been reminded of the potential application of the ERC should she choose to redeem the mortgage to go to a new lender. This would have been the exactly the same position she found herself in, in March 2021. The giving of incorrect advice did not supersede the mortgage agreement and was not a binding agreement. It was a mistake and reflects poor service in failing to identify that she would not in fact be able to re-mortgage as she wished because of her previous debt consolidation.

When considering what an appropriate level of compensation might be for any service failures, I consider a variety of factors, including the trouble, upset, distress and inconvenience that may have been caused. Examples of the categories of awards the Financial Ombudsman makes can be found on our website.

What is important to remember is that there is no set figure, since the facts of each case are different, and ultimately it is an exercise of judgement, looking at all the circumstances of the

case and coming to a figure which feels fair, when set against the effect upon the complainant of any particular service failures.

In my view, any award for the trouble and upset caused here also needs to be balanced and measured against the ups and downs of life which we all face when dealing with other people, businesses and organisations, and recognising that at times it can be inconvenient. The effect of the mistaken advice in this case is to have given Mrs C a false expectation for around two months that she could re-mortgage with Halifax and thus have no ERC payable at all. It is not that she has been deprived of taking the mortgage she wished to.

So, having weighed up all the evidence, I think the offer made by Halifax of £750 is a fair and reasonable recompense for effect of the service failures upon Mrs C.

So, although Mr and Mrs C will probably be disappointed with my decision, and whilst Halifax have indeed made errors, I can't say Halifax has subsequently acted unfairly or unreasonably here and I'm not upholding this complaint.

My final decision

Bank of Scotland plc trading as Halifax has already paid Mr and Mrs C £750 to settle this complaint, and I think that is fair and reasonable. So, my final decision is that I don't require it to do anything else.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C and Ms C to accept or reject my decision before 16 March 2022.

Jonathan Willis
Ombudsman