DRN-3444217

The complaint

Mr and Mrs A complain that Bank of Scotland plc trading as Halifax didn't treat them fairly when they ported their mortgage. They say they were racially profiled, frustrated and delayed. Halifax didn't tell them it would waive the early repayment charge (ERC) until after completion, meaning they had to find the funds for it. And they complain about the way they were spoken to during calls and how their complaint was dealt with.

What happened

Mr and Mrs A had a mortgage with Halifax. They had a fixed interest product with an ERC which was payable if they repaid the mortgage before October 2025. They could avoid having to pay the ERC if they ported the mortgage product.

Mr and Mrs A made an application in 2021 to port their mortgage and take out additional borrowing. Halifax issued a mortgage offer in mid-May 2021, conditional on Mr and Mrs A repaying some of their debts. The mortgage completed at the end of June 2021. Mr and Mrs A complain that:

- They were racially profiled
- Halifax caused delays
- Halifax made unreasonable requests for them to repay unsecured debt
- Halifax spoke to them in an inappropriate way on calls
- Halifax didn't tell them they didn't need to pay the ERC, causing delays while they found the funds. They were left with no money – they couldn't afford to pay a removal firm and had to move furniture using their own car
- Halifax took a direct debit for the previous mortgage, and they were told they had to wait 15 days for a refund. Mr A says Halifax didn't cancel the direct debit because it doubted they would meet the conditions in the mortgage offer
- Halifax didn't investigate their complaint properly and paid £100 into their account without their consent

Mr and Mrs A say the minimum compensation should be 10% of the ERC and Halifax should undertake not to add ERCs to ported mortgages. They say they feel mentally drained by the way Halifax dealt with their porting application.

Our investigator said Halifax was entitled to ask for information as part of the application process. It had to check that the new mortgage was affordable. Halifax said the loan Mr and Mrs A wanted wasn't affordable due to their unsecured debts. Our investigator said he hadn't seen anything to suggest Mr and Mrs A had been racially profiled, and having listened to recordings of the calls he didn't think Halifax spoke to Mr and Mrs A inappropriately.

Our investigator said while Mr and Mrs A's conveyancer misunderstood, he thought the redemption statement was clear that the ERC needn't be paid if Mr and Mrs A were porting their interest rate product to a new mortgage.

Mr and Mrs A didn't agree. Mr A said their conveyancer had tried to check with Halifax if the ERC had to be paid and received a generic answer, which was unacceptable. He said the investigator hadn't taken into account that he told Halifax they didn't have enough funds to repay their unsecured debts and pay the ERC.

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.

Where the evidence is incomplete, inconclusive or contradictory, I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

Did Halifax make it clear that the ERC needn't be paid?

It seems Mr and Mrs A's conveyancer told them they had to include the ERC in the redemption funds. This put Mr and Mrs A in a difficult position, having to find the funds so that their sale and purchase could complete. I don't think though that Halifax was responsible for this.

The redemption statement sets out the amounts payable to redeem the mortgage on 30 June 2021. It set out the outstanding mortgage balance and the ERC separately. It says the ERC can be deducted if the product is ported to a new mortgage taken out at the same time. It set out details of the product, such as the interest rate, end date and product number.

The product details – the interest rate, end date and product number – set out in the redemption statement match those in the mortgage offer sent to Mr and Mrs A in May 2021. A copy would have been sent to the conveyancer. I think it was reasonable for Halifax to expect the conveyancer to understand that in these circumstances ERC could be deducted.

The conveyancer asked Halifax to confirm the ERC could be deducted. Mr A says the conveyancer received a generic response. I don't think this changes matters. I think the redemption statement was sufficiently clear about the circumstances in which the ERC needn't be paid.

Mr A called Halifax on 25 June 2021. He said he had a problem with the ERC being on the redemption statement as his solicitor didn't understand that the ERC didn't need to be paid. Halifax confirmed this was a full porting case and the solicitor didn't need to pay the ERC. Halifax said it had emailed the solicitor to this effect, and suggested Mr A ask his solicitors to call.

Mr A called Halifax on 1 July 2021. Halifax confirmed he shouldn't have been charged the ERC and said it would refund the ERC to the solicitor. Mr A asked if he could have the money direct to avoid a further bank charge for the transfer from the solicitor. Halifax said this was possible if it had confirmation from the solicitor.

It was unfortunate that Mr and Mrs A's solicitor paid the ERC with the redemption money. This left them shorter of funds than they should have been, which must have been difficult when they had the costs of moving to cover. I don't think Halifax was responsible for this. Halifax said it had provided clear information to the conveyancer, but offered £100 to Mr and

Mrs A as they'd been caused inconvenience. It refunded the ERC on a prioritised basis. I don't think Halifax needs to take any further steps.

Did Halifax treat Mr and Mrs A fairly during the porting application process?

First, I should set out what happens with porting. It's not the mortgage (which is the charge on the security property) or the loan that's transferred or ported. The mortgage loan is repaid and the lender's charge is released. A new loan is taken out which is secured by a new charge on the new property. It is the product that is transferred (or ported) to the new mortgage. This allows customers to retain the product terms (such as the interest rate) and avoid the cost of the ERC.

I should also say that rules on mortgage regulation require lenders to carry out stringent affordability checks before agreeing to offer or vary a mortgage contract.

Here, Mr and Mrs A applied for a new mortgage to buy a property. This was for more (almost double) the amount of their existing mortgage loan. Rules on mortgage regulation meant Halifax had to carry out affordability checks. Halifax is, like all lenders, entitled to make a decision about its lending criteria.

I've listened to recordings of Mr and Mrs A's calls with Halifax, and I don't think Halifax was unfair in asking them for information related to their application. Mr A had expected Halifax to base its affordability assessment on his expected future income. Halifax used Mr A's past income, evidenced by his tax calculations, which was lower. Halifax treated part of Mr A's income as from self-employment and its underwriters asked for more information about this. Mr and Mrs A's income came from more than one source, which meant they had to provide additional information and evidence. Halifax went through Mr and Mrs A's income in detail, and it sounds like it wasn't always straightforward for Mr and Mrs A to provide the information Halifax asked for. From what Mr and Mrs A have said, they didn't expect this – they expected their track record of maintaining payments to make the process easier. While I can understand this, I think it was reasonable for Halifax to ask for income information and suitable evidence. It needed this to carry out an affordability assessment, as is required by rules on mortgage regulation.

Halifax told Mr and Mrs A the mortgage they wanted wasn't affordable. Mr A asked what would happen if they repaid some of their debts. Halifax re-assessed affordability on the basis the debts were repaid. As the mortgage was only affordable if the debts were repaid, I think it was reasonable for Halifax to make this a condition of the mortgage offer.

While Mr and Mrs A first spoke to Halifax about porting in March 2021 they hadn't found a property at that point. The application process started in April 2021. All of the income information required was provided by early May 2021. A valuation was carried out on 11 May, and a mortgage offer was issued on 18 May 2021. I don't think Halifax caused unreasonable delays with the application.

Other concerns raised by Mr and Mrs A

Halifax had sent a direct debit request in late June 2021 for Mr and Mrs A's monthly payment. It says it was too late to cancel this once the redemption funds were received. The payment was received at about the same time as the mortgage was redeemed. Mr A says Halifax didn't cancel the direct debit because it was so sure that they wouldn't be able to meet the conditions set out in the mortgage offer. I think it's more likely that Halifax followed its usual process in sending a direct debit request and didn't cancel it for the reason it gave – that it was too late to do so once the redemption money was received.

When Mr A spoke to Halifax on 1 July 2021 it said it would refund the direct debit payment. It explained the process for this, and said Mr A could ask his bank to reclaim the direct debit if he wanted the money returned sooner. Mr A said he didn't want the money back quicker, he just wanted to check this would happen. Halifax provided evidence it refunded the direct debit. I don't think Halifax made an error or acted unfairly in taking or returning the direct debit payment.

Mr and Mrs A say they were racially profiled by Halifax, and we asked what made them think this had happened. Mr A says Halifax doubted their ability to meet the conditions in the mortgage offer. He said Halifax's staff used an elevated tone questioning their ability to meet the conditions. Mr A said Halifax didn't think it was important to make it clear that they didn't need to pay the ERC.

Having listened to recordings of Mr and Mrs A's calls with Halifax, I don't think it spoke to them inappropriately. I don't think Halifax caused delays with Mr and Mrs A's application or added unfair conditions to the mortgage offer. I think Halifax was clear that they didn't need to pay the ERC. I haven't seen anything to suggest Mr and Mrs A were asked for information or evidence that Halifax wouldn't have requested from any other customer in a similar position. As such, I can't agree they were treated unfairly.

My final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A and Mr A to accept or reject my decision before 19 July 2022.

Ruth Stevenson
Ombudsman