DRN-3506719

The complaint

Mr B and Mrs S complain that because Bank of Scotland plc trading as Halifax unfairly refused them an increased loan, they were unable to port their mortgage when they were buying another property and had to pay an early repayment charge (“ERC”). Mr B and Mrs S want a refund of the valuation fee of £200 and the ERC of £12,370.51.

What happened

Mr B and Mrs S had a mortgage with Halifax with a mortgage product on a fixed rate for a fixed period. If Mr B and Mrs S redeemed the mortgage early, they would have had to pay an ERC, but this could be avoided if the mortgage product could be ported. Mr B and Mrs S were looking to move to a new house and, through a broker, got a Decision in Principle (“DIP”) from Halifax in September 2020 for a mortgage of £450,000. With that knowledge they looked for a new home. Mr B and Mrs S proceeded with the house purchase and on 18 January 2021, they got a DIP for £560,000. But then they were told on 11 February that they wouldn’t get the mortgage they needed to complete the house purchase. The maximum Halifax would lend was £391,005. So, Mr B and Mrs S had to go to another lender and pay the ERC. They say they were told that this was because Mrs S was self-employed and feel that this is discriminatory against self-employed people.

Our investigator’s view
Our investigator didn’t recommend that this complaint should be upheld as his view was that Halifax had done nothing wrong. Mr B and Mrs S disagreed saying in summary that on 18 January 2020, they got a DIP for £560,000 which was for more than the £435,000 borrowing they required but then in February Halifax declined to lend that amount. They consider it unfair that they have to pay an ERC because of Halifax’s refusal.

My provisional findings

I reviewed this complaint and issued my provisional findings as follows:

“Mr B and Mrs S had a fixed rate mortgage product with Halifax that would spark an ERC if it was redeemed. Like most such mortgages it could be ported but only if the lender approved the lending on the new property. In this case Mr B and Mrs S were increasing their borrowing but according to the DIP produced on 18 January that borrowing appeared affordable but then later Halifax decided that they would only lend to a maximum of about £390,000.
Mr B and Mrs S redeemed the mortgage in any case and, as they didn’t take out a new mortgage with Halifax, had to pay the ERC. They feel they were treated unfairly by Halifax. They have difficulty comprehending why, given the DIP, that the amount offered by Halifax was so reduced. Mr B is employed and Mrs S self-employed and they feel that the lending process may discriminate against the self-employed.

Since our investigator issued his view, we asked for further information from Halifax to clarify their position. There is clearly a substantial difference between the DIP and the possible loan available. Halifax says that the DIP was based on declared income and the potential offer based on verified income which was after an assessment of the documentation supplied verifying the income. So, as I understand it, the explanation for the difference is that the *declared income for Mr B which was input by the broker was substantially higher than the income verified by Halifax after it looked at the documentation submitted on behalf of Mr B.*

The other issue is how Mrs S's self-employed income was treated. Halifax applies different income multiples depending on whether it is employed or self-employed income. How Halifax assesses risk in terms of employment and self-employment is a matter for Halifax's commercial judgement as long as it applies its assessment fairly. Lenders do treat the sources of income differently and some treat self-employed income as a less sure source of income than income from employment. That's not unreasonable given that employed income will normally be based on a contractual entitlement under a contract of employment whereas self-employed income wont. So, I don't consider treating sources of income differently was unfair.

In any case, Mrs S's income was substantially below Mr B's and I don't consider that the differentiation between employed and self-employed income in terms of income multiples would have made any significant difference to the application. So, I consider that there is a reasonable explanation for the difference in outcome between the DIP and the maximum loan available. Halifax appears to have treated the application fairly and assessed the application using its affordability criteria. Unfortunately, Mrs S and Mr B didn't meet Halifax's affordability criteria for the loan they wanted. So, as Halifax did nothing wrong in regard to the mortgage application and Mr B and Mrs S redeemed the mortgage in any case, I can't fairly require Halifax to refund the ERC.

There is one other matter. We noticed that in the notes Halifax said that because of the nature of the application that it wouldn't instruct a valuation until the underwriters approved the application. But a valuation was instructed in any case and not put on hold. As a result, Halifax has now agreed to refund the valuation fee of £200. As this failure would have caused Mr B and Mrs S distress and was one of the reasons for bringing this complaint, I believe that they should receive compensation of £100 for that distress and on that basis, I'm upholding this complaint in part and awarding that compensation."

Before issuing my final decision, I invited any further submissions from Mr B and Mrs S or from Halifax. Halifax said it had nothing further to add. Mr B and Mrs S forwarded me correspondence between the broker and Halifax and say that they still don't understand why Halifax declined to lend because of an *"internal score*" and they shouldn't be made to pay a penalty because Halifax decided not to move their mortgage.

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 realise that this was a substantial ERC that Mr B and Mrs S had to pay to Halifax. An ERC will be payable if a mortgage is redeemed unless the mortgage product was ported to a Halifax mortgage on a new property and that required Halifax to offer a mortgage on the new property. In this case Mr B and Mrs S have difficulty reconciling the fact that they got a DIP showing that the mortgage was affordable but when they applied for that mortgage, Halifax said that their income wouldn't support the mortgage that they wanted and that's supported by the affordability assessment that Halifax conducted on the application. Halifax explained the discrepancy with the DIP resulting from the difference between the information inputted by the broker and the verified income inputted by Halifax at application stage which produced a lower figure. But in any case, Mr B and Mrs S's income as verified by Halifax and under its lending criteria didn't support the mortgage that they wanted. That was unfortunate but there is nothing to suggest that Halifax did anything wrong and considered the application fairly. Mr B and Mrs S have sent me further documentation that I've considered but I’m afraid it doesn’t alter my view that my provisional decision represents a fair outcome to this complaint. So, I shall be upholding this complaint in part but not to the extent that Mr B and Mrs S would wish me to do.

Putting things right

Halifax should pay compensation of £100 and refund he valuation fee of £200.

My final decision

My decision is hat I uphold this complaint in part and require Bank of Scotland plc trading as Halifax to pay compensation of £100 and refund the valuation fee.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr B and Mrs S to accept or reject my decision before 21 July 2022.

Gerard McManus
Ombudsman