

The complaint

Miss H and Mr R complain that they were misled by Bank of Scotland plc trading as Halifax to believe that they would be able to get a much higher mortgage than they in fact were able to get. As a result, they sold their home, had to pay an early repayment charge (“ERC”) and were unable to port their mortgage product to a property they wanted to buy.

What happened

Miss H and Mr R had a mortgage with Halifax. In early 2021 they were thinking of moving home and spoke to a Halifax mortgage adviser to see what mortgage they would be able to get. Since this discussion, Halifax produced a Mortgage Promise. Then at the beginning of May, Miss H and Mr R contacted Halifax again to update the Mortgage Promise as they had a property in mind to purchase and had more information about their income. The Mortgage Promise was updated, and Miss H and Mr R were told that on a short-term mortgage, they could borrow up to £236,000 and on a long term up to £278,000. Miss H and Mr R also received information about porting and that they could sell their house and port their mortgage if they bought another property on which Halifax would grant a mortgage within three months of the sale of their own. Otherwise, they would have to pay an ERC of £2,493. In July Miss H and Mr R sold their property and paid an ERC.

In September Miss H and Mr R contacted Halifax to say that they had an offer accepted on a property and wanted to proceed with a mortgage application and the adviser went through the figures including the income figures. But the mortgage that Miss H and Mr R were able to get was substantially below what they expected from the Mortgage Promise - £181,190 - and so were unable to buy the property they wanted to buy and were unable to port the mortgage which meant they couldn't recoup the ERC.

Our investigator recommended that this complaint should be upheld because of ambiguity on the first call in March 2021 as a result of which Miss H and Mr R could have expected to have got a mortgage in line with the Mortgage Promise and that they should be compensated for their loss of expectation of £500. Miss H and Mr R also asked to listen to a number of calls that were significant to this complaint. But there were delays in obtaining these and making them available to Miss H and Mr R and our investigator recommended further compensation of £125. Miss H and Mr R disagreed saying that they wouldn't accept this settlement without payment of 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.

This complaint arises from the information that Miss H and Mr R were given in a phone call with a Halifax adviser in March 2021. The purpose of the call was that Miss H and Mr R were looking some guidance about what they could afford to buy if they moved house. From listening to the call, I understand that at this stage of the process the adviser was going

through a limited assessment of Miss H's and Mr R's income, outgoings, and credit commitments to come up with a figure. I appreciate that at this stage of the process the adviser is reliant on the information provided by the customers as she wasn't scrutinising any documentation.

I recognise that Miss H and Mr R are a straightforward couple answering the questions posed to them by the adviser. The difficulty was with Mr R's self-employed income. The adviser wanted to know Mr R's total income as he was self-employed. Miss H and Mr R were unsure whether this meant his profit or his gross income to the business and the adviser asked for his total income which in the context of this discussion meant for Miss H and Mr R the gross revenue of his business. When Miss H and Mr R queried this, as a broker they used previously had used Mr R's profit for the assessment, the adviser assured them that it was income not profit that she wanted and that their previous broker may have used the profit figure because other lenders had different requirements.

The source of this complaint is really in that discussion which I have summarised. Assessing self-employed income can be complicated, as Miss H and Mr R discovered later when they applied for a mortgage and Halifax has shown us that complexity when it provided its procedure for keying in self-employed income at application stage.

But this wasn't a mortgage application. It was a pre-application request for guidance on affordability and produced misleading information because Mr R's self-employed income was overstated. There is an onus on the customer where no documentation is produced to produce the right information. But if the customer is confused and asks for direction, the adviser should give that direction even if only to stress that this isn't a straightforward calculation and to raise warnings that would at least have managed Miss H and Mr R's expectations.

Our investigator has referred to an ambiguity in the discussion. I agree there was an ambiguity that could have been resolved by the adviser. The adviser should have simply been clearer in the information she required from Miss H and Mr R and clarified matters so that they weren't confused and so that a more realistic Mortgage Promise was produced. For that reason, I believe that this complaint should be upheld. I note that Halifax agreed with our investigator that there was ambiguity and told us *"I think we should have clarified what was meant by total gross income taking into account that Mr R was self-employed."* When Miss H and Mr R later found out that the Mortgage Promise overstated what they could in fact borrow, they were reasonably very upset by that.

After they got The Mortgage Promise Miss H and Mr R made a number of decisions including selling their house, paying the ERC and hoping to port and recoup the ERC but were unable to do so as the mortgage they could get fell below the amount they needed and what they expected to get from their discussions with the Halifax adviser. The question I have to consider is what compensation is due to Miss H and Mr R.

It's fair to say that The Mortgage Promise contains warnings that this isn't a commitment to Halifax to provide a mortgage to the amount requested including:

"You should not enter into a legal commitment to buy a property until you have received and are happy with the full mortgage offer"

And

“The mortgage promise has been based on certain assumptions which may change once you apply for a mortgage and we have fully assessed your needs and circumstances. This may mean that the amount available shown in this promise is subject to change “

Miss H and Mr R sold their house but their ability to recoup the ERC depended on them getting a mortgage offer in the future and the Mortgage Promise warned them about relying on that document as it didn't mean that they would get the mortgage offer they wanted. Although I'm sympathetic to Miss H and Mr R they were essentially selling their house in the hope of getting a satisfactory mortgage offer but without a guarantee that they would get one. Halifax wasn't guaranteeing that they would get a mortgage offer in the terms of the Mortgage Promise and I can't fairly penalise Halifax as if it had. If Miss H and Mr R didn't get the mortgage offer they wanted, they would have to pay and not recoup an ERC and that's what happened, and it seems to me that the ERC was fairly due to Halifax. An ERC is not an extra fee that Halifax levies but is meant to cover the cost of a customer redeeming a mortgage early so I can't say that it was unfairly charged.

My view is that Miss H and Mr R should be compensated for their disappointment but not their financial loss. I believe that the figure of £500 represents fair compensation for that together with £125 as compensation for the difficulties Miss H and Mr R had in accessing the phone calls they requested from Halifax.

Putting things right

Bank of Scotland plc trading as Halifax should pay Miss H and Mr R £625.

My final decision

My decision is that I uphold this complaint and require Bank of Scotland plc trading as Halifax to pay Miss H and Mr R £625.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H and Mr R to accept or reject my decision before 6 January 2023.

Gerard McManus
Ombudsman