



## **The complaint**

Mr C complains that Bank of Scotland plc (trading as Halifax) applied an Early Repayment Charge ("ERC") when he redeemed his mortgage.

He also complains that Halifax mistakenly told him that he didn't need to make his final monthly payment.

## **What happened**

Around December 2019, Mr C took out a repayment mortgage with Halifax over 30 years. The interest rate on the mortgage was fixed at 3.06% until 31 December 2021.

In August 2021, Mr C asked Halifax what the ERC would be if he repaid his mortgage on 31 August 2021. Halifax said it would be £2,888.10. Mr C felt that amount was unfair so he complained. He paid an ERC of £2,882.65 on 30 September 2021 when he redeemed his mortgage.

Halifax said it hadn't done anything wrong, so Mr C raised a complaint with the Financial Ombudsman Service.

Our investigator looked into the matter. He didn't think Halifax had made a mistake when it applied the ERC. He was satisfied that Mr C's mortgage offer said that an ERC of 3% of the outstanding balance would apply if the mortgage was redeemed on or before 31 December 2020. And an ERC of 2% of the outstanding balance would apply if the mortgage was redeemed on or before 31 December 2021.

Our investigator went on to say why he thought the ERC applied was fair in Mr C's case with reference to the regulatory regime around ERCs. He said Halifax had done enough to tell Mr C what his ERC was. Our investigator also considered what Mr C had told him about his personal circumstances when he redeemed the mortgage, but he didn't think those circumstances meant that Halifax should waive or reduce the ERC.

Mr C also complained about the way his September 2021 mortgage payment was handled. Our investigator said that Halifax hadn't been clear that Mr C still needed to make that payment and said it should pay Mr C £200 compensation to reflect that. He also said that Halifax should remove the adverse information it had recorded on Mr C's credit file about the missed payment between September 2021 and January 2022.

Halifax agreed to implement our investigator's recommendations but Mr C remained unhappy. He asked for his complaint to be reviewed by an ombudsman, so it has been passed to me to decide. Mr C still thought the ERC was unfair given his personal circumstances. He also said that £200 compensation didn't reflect the stress and anxiety he'd been caused. Nor did he think that £200 was in enough in comparison to the ERC charged.

## **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.

Having done so, I've reached the same conclusion as our investigator. I'll explain why.

### Should Halifax have waived the ERC?

I'll begin by saying that the ERC was clearly documented in the 2019 mortgage offer that was sent to Mr C before he took out the mortgage. I'm satisfied that Mr C accepted that offer and the ERC associated with it. So my starting point is to say that I don't think it was unreasonable for Halifax to charge the ERC that Mr C had accepted as part of the contract he'd entered into when he redeemed the mortgage.

Mr C has told us he sold the mortgaged property in 2021 because he and his partner were expecting a baby. He decided to move in with his partner, and as she already owned a property near family, he says it made sense for him to move in with her. Mr C told us that his partner already had a mortgage on her property, so he couldn't port his mortgage to her property.

Mr C said that having a baby was a significant financial burden that meant he and his partner couldn't continue to run two households. So he feels he was effectively forced to sell his property and that the ERC should have been waived.

I appreciate Mr C's position. I've also taken on board the fact that he has told us that he had to sell his property during the covid-19 pandemic and redeem it when he did because the buyers of the property weren't willing to wait until 31 December 2021 to buy the property. So I understand why it made sense for Mr C to sell his property in September 2021 when the ERC was due and why it was so frustrating for him to have to pay an ERC when there would have been no ERC to pay if he'd redeemed his mortgage a few months later.

However, even if Mr C felt forced by his circumstances to sell it when he did, that wouldn't necessarily mean it was unfair for Halifax to charge the ERC. The purpose of an ERC is to allow a borrower to repay the mortgage early if their circumstances change – subject to the lender recovering the costs of the mortgage ending early. Mr C's circumstances *did* change, and he made use of the facility to repay early. That means his mortgage operated as it should. In deciding this complaint, I also need to consider the costs to Halifax of Mr C redeeming the mortgage early. I appreciate that our investigator has already said why lenders such as Halifax are allowed to charge ERCs. However, I think it's helpful for me to set out why again here.

In order to be able to lend to consumers, lenders will borrow money themselves. As with loans made to customers such as Mr C, there are costs associated with borrowing that money. If customers repay their borrowing early – as happened in this case – the lender won't receive some of the interest it expected to receive. But the lender remains liable for its own cost of borrowing the money.

In light of this, lenders are allowed by the regulator to charge ERCs to cover the costs to them of consumers repaying borrowing early. This can be done on an individual mortgage basis. However, it's more commonly calculated for a tranche of money or group of mortgages (of a similar type) and based on a proportion being repaid early. This calculation will be based on a lender's experience of the likelihood of early repayment and assessment of future conditions. The regulations allow a lender to calculate ERCs in this way. It also fulfils the regulator's requirement that a consumer is told in advance of taking the mortgage

what the ERC will be and is given an example of it in monetary terms.

Mr C thinks the ERC he was charged was disproportionate because it was more than the amount of money he would have needed to pay Halifax over the remaining term of the interest rate product.

I appreciate Mr C's point of view. But the mortgage offer was clear about the amount of the ERC and when that would apply. There's nothing in the offer to say that the ERC should be reduced if Mr C decided to redeem the mortgage shortly before the end of the fixed rate period. That's likely to be because there are many factors that are taken into account when an ERC is calculated. Under the rules, provided the charge is a reasonable pre-estimate of the loss suffered by Halifax if the mortgage is paid early, it can apply the charge. I've seen the evidence of the calculations and I'm satisfied that the amount charged in this case was a reasonable pre-estimate of loss, calculated across a group of mortgages in the expectation that some of them will end early. I appreciate that Mr C wants to see that evidence too. But I'm satisfied that the calculations are commercially sensitive so it wouldn't be appropriate for the Financial Ombudsman Service to share them with Mr C.

As I'm satisfied that the amount charged in this case was a reasonable pre-estimate of loss, it follows that I don't think the ERC should be refunded. I appreciate what Mr C has told us about his personal circumstances around the time he redeemed his mortgage. But I don't think that means that Halifax shouldn't be allowed to recover its costs when Mr C redeemed his mortgage early – it was the ERC that allowed him to repay the mortgage when his circumstances changed rather than being tied in to the end of the fixed rate term.

#### The September 2021 mortgage payment

Shortly before he redeemed his mortgage Mr C changed the date he needed to pay his monthly direct debit. Mr C spoke to Halifax on the phone after that and told Halifax he was going to cancel his direct debit given that he was about to redeem his mortgage. He says Halifax told him that he didn't need to make his September 2021 payment if he was going to pay the redemption amount before the end of that month.

I appreciate that was Mr C's recollection of the relevant phone call. However, Halifax has provided us with a recording of the phone call. The Halifax agent said that as long as Mr C made the September 2021 monthly payment by the last day of the month, it wouldn't affect his credit file. I'm not persuaded that Halifax told Mr C that he didn't need to make September 2021 payment if he paid the settlement figure and redeemed his mortgage by the end of September 2021.

I haven't seen a copy of the redemption statement Mr C was sent around this time. However, it appears that the statement assumed the September 2021 monthly payment would be made as usual, and so the redemption sum didn't take that into account. In other words, unless Mr C also paid the September payment, the amount quoted on the redemption statement wouldn't be enough to clear the mortgage balance.

Like our investigator, I think there was some confusion here. Halifax should have been clear that the redemption amount set out on the redemption statement didn't include the September 2021 mortgage payment. However, I can understand why that happened given that the redemption statement was issued around the same time as Mr C's September 2021 mortgage payment was due.

I can see that Halifax has agreed to pay Mr C £200 compensation for the distress and inconvenience that caused and to remove the adverse information it recorded on Mr C's credit file about the missed payment in September 2021. Halifax has recently provided us

with evidence to show that as things stand today there isn't any adverse information on Mr C's credit file about the September 2021 payment, and that his credit file shows that the mortgage account is closed.

In the circumstances I think the £200 compensation Halifax has offered is a fair and reasonable amount to reflect the nature of Halifax's mistake, the amount of time Mr C's credit file was affected and the impact of what happened on Mr C. I appreciate that Mr C doesn't think £200 compensation is enough. He has told us that Halifax wouldn't remove the charge it held over the mortgaged property until the mortgage balance was paid in full – in other words until the September 2021 payment was made.

I appreciate that was stressful for Mr C at a time when he and his partner were having a baby. But I can't say that Halifax was wrong to insist on that given that he needed to make the September 2021 payment to pay Halifax all the money he owed it.

Mr C has also said that he feels £200 compensation is disproportionate to the size of the ERC. However, as I said above, there are many factors that are taken into account when an ERC is calculated. I don't think it would be fair and reasonable for me to link the compensation offered in this case to the size of the ERC. In any case, I don't think the ERC was unfair – I'm compensating Mr C for the confusion over the September payment, not for having to pay the ERC. I've also considered whether Mr C was prevented from getting credit from other lenders as a result of what happened. That doesn't appear to be the case given the information available to me. I say that because Mr C asked us to help him get the information removed in case he wanted more credit in the future.

I appreciate that Mr C is likely to be disappointed by this decision, but for the reasons set out above I think Halifax should pay Mr C £200 to resolve this complaint. Mr C hasn't provided the Financial Ombudsman Service with a copy of his credit file, despite our investigator asking him for it. The available evidence shows me that there's nothing more Halifax needs to do to put the information it has recorded on Mr C's credit file about Mr C's mortgage right.

### **Putting things right**

To put things right Halifax should pay Mr C £200 to resolve this complaint.

### **My final decision**

For the reasons set out above, my final decision is that Bank of Scotland plc (trading as Halifax) should pay Mr C the £200 it has offered him to resolve this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 13 July 2023.

Laura Forster  
**Ombudsman**