

The complaint

Miss P complains about the actions of Bank of Scotland plc trading as Halifax (Halifax) in refunding an early repayment charge on a mortgage she'd held jointly with her former partner.

What happened

In 2018 Miss P and her former partner (X) took out a mortgage with Halifax that was secured over a residential property they owned jointly. In 2020 they agreed a five-year fixed interest rate product (the mortgage product) with Halifax. If they repaid the mortgage before the deal ended, they had to pay an early repayment charge (ERC).

Miss P and X split up. Miss P bought X's share of the property and took out a new mortgage in her own name with another lender. The Halifax mortgage was redeemed and the mortgage account was closed. The ERC had to be paid. Half the ERC was deducted from the payment Miss P paid X for his share of the property. Miss P's solicitors made a payment on her behalf to redeem the mortgage and pay the ERC. Miss P and X had therefore paid 50% of the ERC each.

Halifax later agreed X could transfer (port) the mortgage product to a mortgage on a new property he was buying with a Halifax mortgage in his sole name. X let Miss P's solicitors know they'd refund the ERC to their client account. Miss P spoke to Halifax and explained the refund should be sent to her solicitors for them to divide between her and X.

When the money didn't arrive, Miss P contacted Halifax. Halifax said initially the ERC ought to have been refunded to her solicitors' client account in view of the matrimonial dispute marker against the closed mortgage account. But they said later they'd acted in line with their internal policy in making the payment to X.

Miss P disagreed and complained. Halifax didn't uphold her complaint. They relied on their policy which stated:

"Where a customer qualifies for an ERC refund on a non-simultaneous completion, the customer will need to call to request the refund after the completion of the new mortgage. A payment will be made, as follows... Joint to Sole – Refund sent to sole customer named on new mortgage – no authority is required from other customers named on the previous mortgage".

Halifax said they'd followed the right process in making the payment to X and wouldn't take any further action. But they paid Miss P £80 compensation for, broadly, giving her the wrong information at first about how they'd refund the ERC.

Miss P rejected Halifax's outcome and brought her complaint to the Financial Ombudsman Service. She said:

- she'd repaid the mortgage in full and paid the ERC which she and her former partner had funded equally in line with an agreement between them;

- it was wrong to say X was transferring the joint/closed mortgage into his sole name as he was taking out a new mortgage with Halifax;
- Halifax were aware of a matrimonial dispute since they'd put a warning on their system, and they should have taken care in making decisions about payment;
- since Miss P's solicitors had made the payment to redeem the mortgage and paid the ERC, any refund should have been paid to them;
- Halifax caused confusion by saying at first they'd pay the refund to the solicitors but then changing their mind and paying it to X;
- Halifax hadn't provided a copy of the policy they relied on in making the payment to X; the policy is unfair; and it isn't part of what she agreed to; and
- the £80 Halifax had offered her wasn't enough. She was solely responsible for caring for her family with little support from X. The ERC refund was important to her financially and she was entitled to it. Halifax's actions had caused X to benefit financially and her to lose out. They should take action to get her share of the ERC back for her.

Our investigator didn't think Halifax had done anything wrong in refunding the ERC to X given the terms of the mortgage and their policies. But she felt Halifax should pay Miss P total compensation of £250 to reflect the impact on her of giving her the wrong advice about how the ERC would be refunded initially.

Since Miss P didn't agree, her complaint's been passed to me to decide.

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 appreciate Miss P's strength of feeling about what happened and her difficult personal circumstances. I want to reassure her and Halifax I've considered all the information they've provided and the points they've made. I may not mention everything here. No discourtesy is intended by that – it simply reflects the informal nature of the service we provide. Whilst I understand Miss P will be disappointed, I've come to the same view as our investigator for similar reasons.

The mortgage Miss P and her former partner took out in 2020 allowed the mortgage product to be ported to a new mortgage on another property subject to making an application and Halifax's lending criteria at the time. It was possible for a mortgage product to be ported where the existing mortgage account had been repaid and closed if the new mortgage was taken out within three months; and for the ERC to be refunded once the new mortgage had started. The information Halifax gave to Miss P and X when they took the mortgage out made this clear. There's no reason to think Halifax acted wrongly in agreeing to X's application to port the mortgage and recover the ERC.

I've thought carefully about what happened leading up to the ERC refund. Miss P expected the ERC to be paid to her solicitors. It was reasonable for her to think that from what X and Halifax had said.

I've seen a copy of Halifax's internal policy relating to the refunding of ERCs. The policy essentially provides guidance to Halifax about action to take in certain situations. It isn't part of the mortgage contract. So, I wouldn't expect Halifax to have given it to Miss P when she and X took out their mortgage.

We can't generally interfere with a firm's policies. I'm satisfied Halifax acted correctly in refunding the ERC payment to X without Miss P's authority. And even though there was a

marital dispute marker, Miss P didn't qualify for an ERC refund from Halifax since she hadn't ported the mortgage product, X had. On balance, I think Halifax acted reasonably in following their policy here.

Even if I thought Halifax had acted unreasonably, I wouldn't expect them to get involved in recovering Miss P's share of the ERC from X. Miss P's dispute with X about that is a personal issue she'd need to resolve with him direct, although I appreciate her difficulties in doing so.

However, I think it's fair for Halifax to compensate Miss P for her loss of expectation; the disappointment she felt when she didn't receive the refund she was hoping for, which would have helped her financial situation; and the inconvenience she was put to in calling Halifax about what had happened and complaining. Halifax has already paid Miss P £80. I agree with our investigator that the compensation Halifax paid should be higher. In all the circumstances I think the £250 our investigator proposed is fair to reflect the impact of Halifax's actions on Miss P.

Putting things right

Halifax should pay Miss P £250 compensation less the £80 they have already paid her.

My final decision

I uphold Miss P's complaint and direct Bank of Scotland plc trading as Halifax to pay her £250 compensation for distress and inconvenience, net of the £80 they have already paid, so, a balance of £170.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss P to accept or reject my decision before 25 February 2024.

Julia Wilkinson
Ombudsman