

The complaint

Mr R and Mrs R complain that Bank of Scotland plc trading as Halifax (Halifax) unfairly turned down their application to port their mortgage to their chosen property.

What happened

Mr R and Mrs R held an existing mortgage with Halifax which was subject to an Early Repayment Charge (ERC) if it was repaid before February 2026.

In February 2022, Mr R and Mrs R decided they wanted to port their mortgage to a new property. They say they were initially told they were not eligible for the mortgage but were subsequently able to submit their application in September 2022.

The valuation was paid for in early November 2022 and took place three days later. The report found that the property in question did not meet the lender's criteria for suitable security as it shared a communal space with commercial properties, so it did not return a value. It also commented on potential cladding to the exterior of the property.

Halifax declined the porting application in light of the valuation report. Mr R and Mrs R continued with the sale of their property and had to pay an ERC – they've also explained that by doing so, they've now lost the low interest rate they were hoping to port over to the new property.

Mr and Mrs R complained and said the property was up to building standards, cladding was not an issue and while there was a shared communal entrance and lift, the property itself had its own secure entrance. They also said it was unfair Halifax wasn't sharing its full lending criteria ahead of applications to help inform consumers – and its decision to decline in this instance was unfair.

Halifax responded to the complaint but did not uphold it. Explaining that it is entitled to have criteria against which it is happy to lend and that it would not be appropriate to share its full lending policy. It also said it would be happy to look at a subsequent porting application should Mr R and Mrs R find a different property. It defended the application of the ERC and the valuation fee and did not agree either should be refunded.

Dissatisfied, Mr R and Mrs R referred their complaint to our service.

One of our investigators looked into the complaint but didn't think it should be upheld. She thought it was reasonable for Halifax to both have and rely on criteria against which it assesses mortgage applications. She did not think Halifax ought to have shared the full policy with Mr R and Mrs R. The investigator also set out that the ERC was a contractual charge Halifax was entitled to apply should the original mortgage be repaid early – so it would not be reasonable for her to say this should be refunded. She also explained that the valuation fee was non-refundable and so she did not think this should be refunded to Mr R and Mrs R.

Mr R and Mrs R disagreed with the investigator's findings. They highlighted that:

- They had provided Halifax with detailed plans of the proposed property ahead of the valuation and at no time did it explain that the property would not meet its criteria.
- Halifax and the valuer had misunderstood the access arrangements to the property which have been accepted by multiple other organisations as providing adequate security for lending.
- The property is approved by building control and is not unique – there being numerous instances in the UK where there are shared mixed-use ground floor entrances serving both offices and residential properties.
- It is not clear from the valuation if the property was even inspected and there is a lack of rationale to support the findings.
- Halifax has a “Consumer Duty to act to deliver good outcomes as well as provide fair and reasonable accountability to its existing customers...”

As the complaint could not be resolved informally, it has now 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.

In doing so, I've taken into account relevant law and regulations; regulators' rules guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

Although I've read and considered the whole file, I'll keep my comments to what I think is relevant. If I don't comment on any specific point, it's not because I've not considered it, but because I don't think I need to comment on it in order to reach the right outcome.

It is clear Mr R and Mrs R feel very strongly about this complaint and I do not doubt that it has caused them distress and inconvenience to find out that they could not complete their porting application after they had already started the conveyancing process on their original property. However, to uphold the complaint I need to find that Halifax has made an error which has resulted in Mr R and Mrs R being treated unfairly. And I am not persuaded that is the case here. While I know this will come as a disappointment to Mr R and Mrs R, I hope my explanation will help them to understand why I have reached this conclusion.

Mr R and Mrs R's original mortgage contained the option to port. But this is not an automatic and unconditional right. Instead, the process requires consumers to submit an application which will be assessed in a number of ways to determine, amongst other things, whether it meets Halifax's lending criteria. And only if it is approved, will the original mortgage be able to be ported. This means that there will always be a chance that the application will be declined either due to the consumer's circumstances (such as affordability if further borrowing is being taken) or due to the property being considered as unsuitable to lend against – and in such a scenario, it is not the case that costs incurred by the consumer during the application process would be refunded automatically.

It is also important to note that a lender is entitled to set its own lending criteria and to determine the types of property against which it is willing to lend – as long as it then applies that policy fairly. And a lender's policy is separate to the various regulations and legislation that surround building control and planning permission.

So, while I'm aware Mr R and Mrs R have cited both building regulations and that other organisations would be happy to view the property as adequate security, that does not mean Halifax's decision not to lend on this policy was made in error.

Mr R and Mrs R say they submitted detailed information about the property in question in September, so they are frustrated that Halifax did not tell them until several months later, and after they had paid the valuation fee, that the property did not meet its criteria.

However, I can't see that Mr R and Mrs R told Halifax that access to the property was shared with other commercial properties when they first submitted the application and while I note they included the plans for the property, Halifax is entitled to rely on the specialist knowledge of a valuer to determine whether the property in question represents adequate security. And while I can see the valuation did not take place until November, this does not appear to be due to avoidable delays on Halifax's part – and once payment had been made for the valuation, it was undertaken within three days.

Overall, I'm not persuaded Halifax has treated Mr R and Mrs R unfairly or made an error in this case. It appointed a suitably qualified surveyor to carry out a valuation of the property and it is entitled to rely on the contents of that report. The property's adherence to building regulations is not a reason for Halifax to depart from the advice of its surveyor or to not apply its lending criteria. And while I appreciate Mr R and Mrs R think it's unreasonable for Halifax to not share its full lending criteria with them, I disagree. Such information is commercially sensitive, and Halifax has provided a summary of why it cannot lend which I consider to be sufficient.

I am aware that Mr R and Mrs R have now paid the ERC applicable to their original mortgage which they would like refunded. But as I do not think Halifax has made an error in this case, it would not be appropriate for me to direct it to refund a charge it is contractually entitled to levy. And for similar reasons, I am not going to recommend that the valuation fee be refunded. There is not enough for me to say that Halifax had been put on notice that this property would not meet its criteria at outset, and as a result, its decision to progress the application to the stage of instructing a surveyor (and therefore incurring the fee) was reasonable.

I note Mr R and Mrs R also referred to the Consumer Duty. But this came into force after their application to and subsequent decline from Halifax. So, it is not a relevant consideration on this complaint.

My final decision

For the reasons I've given above, I do not uphold this complaint against Bank of Scotland plc trading as Halifax.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R and Mrs R to accept or reject my decision before 11 March 2024.

Lucy Wilson
Ombudsman