

The complaint

Miss G's complaint is about a mortgage she has with Bank of Scotland Plc trading as Halifax (BoS). She is unhappy that when she made enquiries in 2022 about changing her interest rate product early, requiring an early repayment charge (ERC) to be paid, she wasn't told that she wouldn't have to pay the ERC until the change in rate was applied. This meant that she didn't go ahead with a change and when she became aware of the correct situation and had support to pay the ERC, the rates on new products had increased.

In settlement of the complaint Miss G wants BoS to provide her with a new interest rate product equivalent to the one she had wanted when she first contacted it.

What happened

In 2022 Miss G had an existing mortgage with BoS, which had two interest rate products attached to it. The interest rate product on most of the mortgage was due to expire at the end of January 2023 and that on the remaining part in April 2023. If the mortgage was paid off or the products were exited early, an ERC was chargeable until three months before the end of the product term if a new one was taken.

In August 2022 Miss G initially contacted BoS to find out information about leaving the interest rate product that was due to end in January 2023 early. It was confirmed she would have to pay an ERC to do so at that time. She was told it would be November 2022 before the ERC would not be chargeable. Miss G concluded that there was potential benefit to paying the ERC. BoS then said that it could look into her doing so, but there was a cost 'upfront'. She was then given the amount of the ERC at that date and there was some discussion about whether the ERC would decrease each month. The BoS member of staff said that he didn't know how the ERC would be affected from month to month and so couldn't answer her question. Miss G said that it didn't matter as *'I haven't got it today, ...'*. She was advised to speak to a mortgage adviser to discuss the implications of taking a new product early if and when she wanted to proceed and the call ended.

Miss G spoke to BoS again on 29 September 2022. She wanted to know what the ERC was and what products were available to her, as she'd been unable to access this information online. BoS confirmed she was able to change the product on most of her mortgage on 1 November 2022 without paying an ERC. She was then given the amount of the ERC for the whole mortgage; approximately £1,700. When she questioned that the ERC was not much lower than it had been in August, it was confirmed it was calculated as a percentage of the outstanding balance, and so it wouldn't change a great deal each month. Miss G was given details of the five- and ten-year fixed interest rate products that were available to her (3.53% and 3.73% respectively), along with the respective monthly payments that would be needed. Miss G speculated about what would happen to interest rates on 1 November and BoS confirmed they were expected to go up in November and 'next month', i.e. October. The conversation ended following Miss G commenting in relation to the ERC that she *"might as well wait until I've made the next payment on the first of October. It'll bring it down slightly, won't it?"*

Miss G told us that when she spoke to BoS in September 2022 she didn't have the money to pay the ERC. However, having discussed the matter with a relative after that conversation, she was offered assistance from a relative in paying the ERC and told she should look to take action. Miss G tried calling BoS on 30 September 2022, but she was unable to get through due to the level of demand on the phone lines. It was not until 5 October 2022 that she was able to speak to BoS and by that point the ten-year interest rate product that was available was 4.9%. Miss G was provided with an illustration, and it was confirmed that the ERC would not need to be paid until the application completed, rather than at the point it started. Miss G complained a couple of days later.

BoS responded to Miss G's complaint in its letter of 7 November 2022. It set out what had happened at the end of September and beginning of October 2022. It apologised for the fact that call times were longer than usual and this represented a poorer level of service than Miss G could have expected to receive. In addition, BoS concluded she could have been provided with more information, but it didn't believe it had misled her or given her any incorrect information. As such, it didn't uphold that aspect of the complaint.

Miss G was not satisfied with BoS response and, when it was not willing to change its conclusions, she referred the complaint to this service.

One of our Investigators considered the complaint, but he didn't recommend that it be upheld.

Miss G disagreed with the Investigator and asked that the complaint be referred to an Ombudsman. She said she had been given incorrect information in that she had been told the ERC had to be paid upfront. It was not until her discussion with a mortgage adviser on 5 October 2022 that she was given the correct information. As for having the ability to pay the ERC, she said she had been raising the funds to pay it and wasn't far off the amount needed when she spoke to BoS on 29 September 2022. She also said that had she been told the right information in either the August or September telephone calls, she would not have been inconvenienced by the longer call waiting times. Miss G subsequently clarified that she had understood that the ERC had to be paid at the start of the application process, which she had made clear to BoS during the telephone calls, but it didn't correct her.

Miss G has subsequently provided evidence that she had around £1,300 in a savings account at that point, as well as a current account balance, presumably used for normal household expenditure. In addition, she has provided bank statements from the relative who said they would assist her with the ERC, which evidence he had more than sufficient funds to assist her in paying the ERC.

I also asked questions of BoS regarding the process Miss G would have gone through to change products. It has confirmed that its rates were withdrawn on 30 September 2022 and so in the week leading up to that point its telephone lines and mortgage advisers were extremely busy. BoS has said that if Miss G had asked to speak to a mortgage adviser on 29 September 2022, it doesn't know when that would have been possible – the fact she had been able to speak to someone the following week was due to call volumes having dropped significantly. In addition, it confirmed the ERC would have been payable on the day the offer for the new product was accepted, which could have been done over the phone with the mortgage adviser or later if she'd asked for time to consider the details of the arrangement.

I issued a provisional decision on 26 October 2023, in which I set out my conclusions and reasons for them. Below is an excerpt.

'Miss G has said she would have taken action to change her interest rate product earlier had she been told she didn't need to pay the ERC until the new product was applied to her

mortgage. Having listened to the telephone call from August 2022, I accept that Miss G could reasonably have taken BoS' comments to mean that the ERC had to be paid at the time of application. In addition, while she has told us she didn't have the money to pay the ERC on 29 September 2022, she has evidenced that she was working on accumulating the money needed and had a significant portion of it. Furthermore, the implication within the conversation of September 2022 was that Miss G believed she would be able to pay the ERC in the near future.

In light of this, had the poor wording about when the ERC needed to be paid not have been used in August 2022, it is possible Miss G would have asked for an appointment with a mortgage adviser in the conversation of September 2022. However, given that call was late in the afternoon, it is impossible to know whether Miss G would have been able to speak to a mortgage adviser in what was left of that day or the following day. BoS has confirmed it was extremely busy at that time with borrowers looking to do the same thing as Miss G and this is supported by her complaint about the telephone queues and being unable to get through the following day or for several thereafter. I know this will disappoint Miss G, but I am not persuaded it is more likely than not that she would have been able to speak to a mortgage adviser in time to book a new product before the rates changed on 1 October 2022.

That said, it is clear that the poor wording used in the August 2022 conversation misled Miss G and, in the belief she might have been in a better financial position had that not happened, she has been caused upset. In light of this, I consider BoS should pay her £100 compensation.

As I have said above, Miss G is unhappy about not being able to get back through to BoS earlier than 5 October 2022 because of how busy its phone lines were. As has been explained, changes in the mortgage market caused a very sudden increase in demand for borrowers to speak to their lenders. This was not just a problem for BoS, and it was across the industry. I can understand it was frustrating for Miss G not to be able to speak to BoS when she wanted to, but that was not something BoS could have controlled and as such, I can't find it was at fault.'

BoS agreed to pay Miss G the £100 compensation.

Miss G didn't accept my provisional decision. She reiterated many of her previous comments about the conversations she had with BoS from August 2022. In addition, she said that she hadn't at any point been given any written information on the process for paying an ERC. She maintained that she believes she has suffered a financial loss due to, initially, being given misleading information and then that mistake not having been corrected earlier. Miss G also commented on what she considers the inadequacy of the systems BoS has in place for dealing with its customers.

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 have reviewed the file again in its entirety and I have revisited my provisional decision in light of Miss G's response. Having done so, I am still of the opinion that even had she not been given misleading information in the first call with BoS, she would not have been able to speak to a mortgage adviser in time to obtain an interest rate product with a lower rate than the one she did. As such, I can't agree that she suffered a financial loss because of BoS' mistake.

Although it doesn't affect the outcome of the complaint, I would explain to Miss G that I would not expect her to have been given written information about the payment of an ERC. When an interest rate product is sold, it is done so on the assumption it will run its entire term and an ERC is unlikely to need to be paid unless there is a change of circumstances. As such, there would be no reason to provide information about how an ERC would be paid.

Miss G has commented on the systems BoS have in place to deal with its customers and how inadequate they are. I would firstly comment that telling a financial business how to run that business and what systems and resources it has in place, doesn't fall within the remit of this service. Such things fall into the remit of the industry Regulator, the Financial Conduct Authority. I would also reiterate that at the time Miss G was trying to sort out a new interest rate product for her mortgage, so were many others for the same reasons. The demand on lenders' telephone lines and for appointments was unprecedented, and while lenders did what they could to cope, it is unfortunate that there was only so much they could do.

My final decision

My final decision is that I uphold this complaint. In full and final settlement, I require Bank of Scotland plc to pay Miss G £100 compensation.

Under the rules of the Financial Ombudsman Service, I am required to ask Miss G to accept or reject my decision before 15 December 2023.

Derry Baxter
Ombudsman