

## The complaint

Ms O complains that, because she was wrongly informed about the early repayment charge (“ERC”) on her buy to let mortgage with Bank of Scotland plc trading as Halifax, she sold her property when a 2% ERC applied, when she could easily have waited until the ERC was 1%.

## What happened

Ms O took out a new fixed interest rate mortgage product in early 2023, for her BTL property. In early 2024, she sold the property.

Ms O said that she had been wrongly informed by Halifax about the ERC payable on her account. She said different dates and percentages were given, and the original illustration was wrong. Ms O said she had called Halifax more than four times between September 2023 and the sale of the property, but wasn’t given the right information about her ERC.

Ms O said she paid a significant ERC on her property, and that could have been avoided if she’d been given the correct information by Halifax staff. So Ms O wanted Halifax to pay back the ERC she’d been charged.

Halifax told our service that Ms O had previously complained about the new mortgage rate she was able to secure, when she was coming to the end of her old mortgage deal in early 2023. Ms O told Halifax that when she asked about a new mortgage deal in December 2022, Halifax said she was too early to secure a new rate, and would need to wait. So she rang back in February 2023. But rates had risen, and Ms O could have booked a new rate in December 2022 after all.

Because of that, Halifax agreed to backdate Ms O’s mortgage interest rate in February 2023. It said that in late February 2023 it had issued an offer to her for a rate fixed at 5%, but this rate was then amended after she took it up.

Halifax showed us this offer, which said Ms O’s ERC would be charged at 2% until 30 April 2024. But Halifax had lowered the relevant rate after this, to 4.76%, and backdated the rate by a month. Halifax accepted it hadn’t issued an illustration for this backdated rate.

Transactions on Ms O’s mortgage account show it was redeemed on 15 January 2024. Ms O had shown our service a letter dated 7 February 2024 which said –

*I confirm that a fixed rate of 4.76% has been applicable on your account since 1 April 2023. This fixed rate product expires on 28 February 2025.*

*The early repayment charge percentage applicable on overpayments above your 10% allowance is 2% until 29/02/2024 and 1% from 1 March 2024 until 29 February 2025.*

So Ms O says she didn’t know until after her property was sold, that if she’d waited just a few more weeks, the ERC would have been halved.

Our investigator didn't think this complaint should be upheld. He said that Ms O received a mortgage offer which set out the circumstances in which an ERC would be payable, and provided examples of the costs Ms O would be asked to pay, if she redeemed the mortgage or took out a different fixed rate product over the mortgage's term.

Our investigator said Ms O took out this mortgage after a call with Halifax on 25 February 2023. But Ms O wasn't going to get the rate she applied for then, she had only completed this application so that Halifax was able to amend the new interest rate, and give her the rate she could otherwise have secured in December 2022. An illustration was not produced for this backdated rate.

Our investigator said Halifax was clear that an ERC of 1% rather than 2% should have been applicable from 1 March 2024, and he thought Halifax should have provided Ms O with this information earlier. But he said Ms O sold her property before 1 March 2023, so a 2% ERC was properly charged by Halifax. And there was no guarantee that the sale could have been postponed until 1 March 2023.

Our investigator thought Ms O was made aware that an ERC was in place in December 2023, and redeemed her mortgage in mid-January. Although she was then told the date for the ERC rate change was 1 May, she didn't try to postpone the sale until 1 May 2024.

Our investigator did think Halifax should have sent Ms O an updated illustration when it backdated the rate, so that she had accurate information about her ERC. Because Halifax hadn't done that, he said it should pay £150.

Halifax accepted that, but Ms O didn't. She said she didn't know that the ERC would be significantly reduced on 1 March 2024 until it was too late to defer the sale. And she said that the purchaser could confirm he would have waited a few weeks, to buy at the start of March. Our investigator didn't change his mind. Because no agreement was reached, this case was passed to me for a final decision. And I then reached my provisional decision on this case.

### **My provisional decision**

I issued a provisional decision on this complaint and explained why I did propose to uphold it. This is what I said then:

Ms O received a mortgage illustration in February 2023. She knew that she then got a rate lower than the one set out in that illustration. But Ms O appears to have considered that the rest of the details of the illustration would apply to her, and in particular, that the dates when the ERC would reduce were accurate.

I've listened to the call that Ms O had with Halifax when this loan was taken out, and I can't hear that Halifax had told Ms O that these dates weren't accurate.

Halifax didn't just reduce the rate that it gave Ms O at the start of April 2023. It also backdated that rate, so it took effect from March 2023, and refunded the additional interest Ms O had been charged for March. I think that was an appropriate step for Halifax to take. I can hear on the call that Ms O had with Halifax, she had expected to be able to take out her new mortgage deal on the same day, and that wasn't possible. I understand that Ms O then went to some trouble to get the paperwork back to Halifax promptly.

Halifax says that, under this rate, Ms O's ERC would reduce from 2% to 1% on 1 March 2024. But it accepts that it didn't then issue an illustration which reflects the offer Ms O

actually got, or gave her the right dates for the ERC.

It appears that Ms O was, at some point in early 2024, told that her ERC wasn't going to reduce on 1 May 2024, as she'd thought, but would in fact drop on 1 March 2024. Ms O was understandably annoyed, as she said she could have delayed the sale by a relatively short period, and paid around half as much in ERC as she'd been charged.

I think there is considerable force in the argument Ms O makes here. I think Halifax made a mistake by not issuing an illustration in early 2023, which reflected not just the amended rate Ms O got, but also the differing end date for that rate. And that different end date, in turn, affected when her ERC would reduce.

I don't think I can conclude, because Ms O had decided not to wait a further three and a half months, until after April 2024 to sell her property and pay a 1% ERC, that she would not have waited around six weeks, to achieve the same reduction. On balance, it does seem likely Ms O could, if she'd been properly informed by Halifax, have delayed the sale to this extent.

Because Ms O didn't have the opportunity to schedule her sale for just after her ERC was reduced, and because I think that's Halifax's fault, I will ask it to recalculate her ERC, so it is charged at 1%.

Halifax has shown our service that Ms O made a smaller overpayment shortly before she redeemed the mortgage, and it says it will usually then include that overpayment, when working out how much the ERC should be. It doesn't look as if Halifax did this, when it worked out Ms O's 2% ERC, but I can see that Halifax's terms allow it to do this. They say this –

*Currently, as a concession, in each calendar year you can make regular or lump-sum overpayments of up to 10% of the amount owed at 1 January, without having to pay an early repayment charge.*

..

*If you repay the loan in full within six months of making a regular or lump-sum overpayment, you'll need to pay the full early repayment charge, including the portion we previously did not charge.*

So I think that Halifax can, when recalculating Ms O's ERC, include the repayment she made in the same calendar year as the redemption, as part of her redemption figure used to decide the ERC payable.

I think Halifax should recalculate Ms O's ERC as set out above, then pay her back any excess she paid as part of her February 2024 redemption. I think Halifax should also pay Ms O interest at 8% simple on that amount, from the date the redemption was received to the date the refund is made.

And finally, I think Halifax has caused Ms O some distress and inconvenience through the mistakes it has made here. So I will also ask Halifax to pay Ms O £300 in compensation.

I invited the parties to make any final points, if they wanted, before issuing my final decision. Both sides replied.

### **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.

Halifax replied to say it would agree. It has worked out that it needs to refund £346.43, plus a little interest, as well as a payment of £300 in compensation. Ms O only sent her bank details, which I understand means she does want to accept the payment I suggested.

I'd like to flag to Ms O that she will need to reply to formally accept this decision, before Halifax is obliged to make this payment.

Neither side has offered any further evidence or argument, and I haven't changed my mind. I'll now make the decision I originally proposed.

### **My final decision**

My final decision is that Bank of Scotland trading as Halifax must recalculate Ms O's Early Repayment Charge, at 1% of the February 2024 redemption figure instead of 2%.

Bank of Scotland trading as Halifax can include in Ms O's redemption figure, the overpayment she made in January 2024.

Bank of Scotland trading as Halifax must then refund the excess part of Ms O's redemption payment, plus 8% simple interest on that excess, from the date it was paid to the date it is returned.

HM Revenue and Customs requires Bank of Scotland trading as Halifax to take off tax from this interest. Bank of Scotland trading as Halifax must give Ms O a certificate showing how much tax it's taken off if she asks for one.

Bank of Scotland trading as Halifax must also pay Ms O £300 in compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms O to accept or reject my decision before 20 August 2024.

Esther Absalom-Gough

**Ombudsman**