

The complaint

Mr and Mrs P's complain that Bank of Scotland plc trading as Halifax (BOS) would not agree to waive the early repayment charge (ERC) on their mortgage, and also would not provide them with a mortgage sum in line with that offered in an agreement in principle (AIP).

What happened

In or about March 2023 Mr and Mrs P renewed their mortgage with BOS and one of the terms was that if it were repaid before certain dates, an ERC would become payable the size of which would diminish over time until 1 August 202. Mr and Mrs P decided they wished to sell their home and move. They completed an online application and obtained an AIP on 28 February 2024 to advance £286,995. It seems a further AIP was obtained on the same day for £275,325. The reason two AIPs were obtained was because the mortgage advisor (R) adjusted their income in relation to the overtime figures provided, as Mr and Mrs P had raised concerns about the amount on the most recent payslips not being a true reflection and showing a higher than average figure. Mr P has said that he specifically highlighted that he didn't want there to be any issues when applying for the mortgage in full due to his overtime.

A further AIP was provided on 14 March 2024 after Mr and Mrs P had met with another mortgage advisor (A). On this occasion the AIP was agreeing to advance £214,150. Although A offered to meet Mr and Mrs P again and go through their payslips once more, Mr and Mrs P went to see another mortgage broker and ultimately chose a different lender. This triggered the ERC of around £6,000 meaning they had to borrow more money to cover that payment.

Mr and Mrs P complained to BOS believing they had been misled about the amount they would be willing to lend, but their complaint was declined. BOS believed it had acted in line with its terms and conditions so far as the ERC was concerned, and with respect to the AIP, they pointed out that they had been based on information provided at the time and assumptions made which were liable to change. As such the amount set out in the AIP was subject to change and the document explained that.

Mr and Mrs P were unhappy with BOS' final response and so approached this service to see if we could assist in resolving the dispute. Our investigator thought that BOS hadn't done anything wrong and had dealt with the complaint fairly. Mr and Mrs P didn't agree and asked for the complaint to be passed to an Ombudsman for a final decision.

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.

Our approach to complaints is to look at what's happened, and using the available evidence, determine whether we think a business has been unreasonable. If we think they have, we

can ask them to recognise what's gone wrong and make a reasonable attempt to put things right. We're impartial and don't take sides – so we'll only ask a business to take further action if there is enough persuasive evidence to justify doing so.

I know the parties have provided a lot more detail than set out in my summary, but I have focussed on what I see as the key issues, because it reflects the nature of our service. We are an informal dispute resolution service and an alternative to taking Court action. So, if I've not mentioned something then this isn't because I've ignored it, it's simply because I don't need to comment on every individual argument to be able to reach what I think is the right outcome. Naturally, I have considered the views of both Mr and Mrs P and BOS together with the available evidence.

The starting point to this complaint is that an AIP and a mortgage offer are two entirely different things. The former does not bind the lender into making an offer of mortgage.

I have looked at all three AIPs and each show that the amount agreed in principle is subject to,

- assessment of the property to be mortgaged. A satisfactory
- supplied being correct, and The information you have
- may change depending on the type of property you choose as with certain types of property, we may ask you to put down a bigger deposit. The amount available

Under a section headed 'Please Note', the AIP also states,

- a binding legal commitment to buy a property until you have received, and are happy with, the full mortgage offer. You should not enter into
- on which the loan will be made will be set out in the mortgage offer, Full details of the terms
- has been based on certain assumptions which may change once you apply for a mortgage and we have fully assessed your needs and circumstances. This may mean the amount available shown in this promise is subject to change. The mortgage promise
- contain all of the details you need to choose a mortgage. This document does not

I've considered this information carefully and I think it is difficult for me to say that any of these AIPs constituted an irrevocable commitment to give Mr and Mrs P a mortgage at the level indicated. The AIPs make clear that a full mortgage application will be required, and the AIP was based on assumptions which might change. So, I can't fairly say Mr and Mrs P have been misled about what BOS would lend to them, since they knew it would be subject to a full mortgage application. The mortgage promise wasn't a guarantee.

I do acknowledge that Mr P made it very clear that he was concerned about his overtime payments and the effect this might have on any application, but that doesn't override the fact that the AIP was not binding and was subject to consideration of a full application. So, I can't agree that Mr and Mrs P were misled.

In relation to the ERC, this was a charge which Mr and Mrs P knew about when taking out the mortgage. I understand that this has led Mr and Mrs P borrowing more money, but all

BOS have done is apply their terms and conditions correctly and followed policy as they would in any other comparable situation with other customers. Mr and Mrs P were always going to have to pay the ERC if they chose to redeem their mortgage early in any event.

I've not seen anything showing me BOS acted unfairly towards Mr and Mrs P and I won't be asking them to do anything further about this complaint.

My final decision

For the reasons set out above I do not uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P and Mr P to accept or reject my decision before 9 December 2024.

Jonathan Willis
Ombudsman