

The complaint

Mr and Mrs R complain that Bank of Scotland plc trading as Halifax misled them about its porting process. They complain that this has caused them to incur an early repayment charge (ERC).

What happened

Mr and Mrs R had an existing mortgage with Halifax. Their fixed interest rate was due to end on 30 September 2024, and they were in the process of selling their house, so they contacted Halifax at the start of September.

Initially Mrs R asked if Halifax offered any interest rate products without an ERC, to which it confirmed it didn't. Halifax's agent noted that Mr and Mrs R were selling their house and said that if Mr and Mrs R took a new fixed rate product and repaid the mortgage early, they would have to pay an ERC. Halifax also confirmed that if Mr and Mrs R didn't take a new interest rate product, their mortgage would revert to its variable rate of 8.49% at the time. That, in turn, would significantly increase their monthly payments. Mrs R said she would have a think about it.

Mrs R spoke with Halifax again around a week later. She explained that their existing deal was due to end on 30 September and she had seen their rate switch options on Halifax's portal. They had their house on the market and the mortgage would be moving onto the variable interest rate, increasing their payments a lot. Mrs R asked if there's a porting option where they can move a fixed rate to a new property. The agent said all of Halifax's mortgage products are portable so it would transfer the balance of the existing mortgage at the agreed interest rate. The agent also said any additional borrowing would form a separate sub-account on the new mortgage. Mr and Mrs R applied online for a new fixed rate on their mortgage.

Several months later, in January 2025, Mrs R spoke with Halifax. She asked for information about the porting process if they were to sell their property and buy a new one at a later date. Halifax explained the porting process including that if the new mortgage completed within three months of the old one being repaid, the ERC would be refunded. Halifax's agent said the next thing for Mr and Mrs R to do would be to obtain an agreement in principle. Mrs R said they had an appointment arranged already to do that.

Mrs R spoke with Halifax again a few weeks later. She wanted to confirm information about the porting process and how the ERC refund would work. Halifax explained the porting process and that Mr and Mrs R would have three months to complete their new mortgage application, from the date the old mortgage was repaid, to get a refund of the ERC. Towards the end of this conversation, Halifax's agent asked Mrs R if they had started an application yet. Mrs R confirmed they hadn't yet done that. The agent said that by starting an application at this point, Halifax would be able to provide more clarity about the process. Mrs R said they were going to seek advice from a broker.

Mr and Mrs R applied to port their product and for additional borrowing of around £130,000, shortly after this. Halifax declined their application and said the maximum it could lend them

was just under £319,000. Because of this, Mr and Mrs R decided to seek a mortgage with another lender and didn't receive a refund of the ERC from Halifax.

Because Mr and Mrs R felt they had been misled by Halifax, they complained. Halifax didn't uphold their complaint. It said the ERC had been correctly charged and that the information it gave to Mrs R during phone calls about porting and the ERC was correct, based on what it knew at that time.

Mr and Mrs R referred their complaint to the Financial Ombudsman Service. Our Investigator didn't think Halifax had acted unfairly and he didn't think it should do anything differently. Mr and Mrs R disagreed so their complaint has been referred 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'm sorry to hear of the difficult circumstances Mr and Mrs R have faced and how this matter has impacted their health. However, while I appreciate it will come as a disappointment to them, I find that I have reached the same overall conclusion as the Investigator. I'll explain why.

In Mrs R's conversations with Halifax in September 2024 I think it's clear she was concerned about the significant increase to their monthly payments, if their mortgage moved onto Halifax's variable rate. Mrs R asked Halifax's agents several questions, including whether they would be able to port a fixed interest rate. The agent said its products are all portable. And I don't consider that, or the other the answers the agent provided, were unclear or incorrect based on what the agent knew at that time and based on what Mrs R asked.

The conversations between Mrs R and Halifax in September 2024 were short. And I don't think there was anything in the information Mrs R provided at the time that ought to have prompted Halifax to ask more questions or tell her anything different. This is not to say that Mrs R should have told Halifax anything different and Mr and Mrs R themselves have said they didn't know which property they might end up buying, or if they would need to borrow more at the time. But when considering if Halifax ought to have done anything differently, I must think about what it was reasonably aware of at the time. And in this individual case I don't consider the content of the phone conversations in September should have prompted it to do or say anything more than it did.

Mr and Mrs R went on to complete their rate switch application online on a non-advised basis. Following that they were sent a rate switch offer and illustration which said, under section "8. Flexible features":

"Taking your product rate to a new mortgage

In the future, you can apply for a new loan on another property. If Halifax agrees to the new loan you can take the amount remaining on the following product(s) and any early repayment charge with you for the remainder of the product rate period(s). New loan applications are assessed in line with the lending policy at that time which may, for example, affect the repayment method, loan amount or term. The new loan will be subject to the terms and conditions in force when you make your application."

When porting an interest rate product, the borrower is applying for a new mortgage. Because of that, lenders will assess that application against their lending policy and criteria at the time. I think the offer clearly sets out that any new loan applications would be assessed in

line with Halifax's lending policy which could impact factors including the loan amount. And so, there was a possibility that any application Mr and Mrs R went on to make might not be successful, as with any porting application. I think Halifax did enough to make Mr and Mrs R aware of that, considering what it knew at this point and that this was a non-advised application – it wasn't required, for example, to check that the product Mr and Mrs R were taking would be suitable for them based on their circumstances. It was required to provide clear, fair and not misleading information, and I consider it did that. Mr and Mrs R chose to continue with the rate switch after Halifax had sent them the rate switch offer.

As things progressed, Mr and Mrs R agreed a sale of their property which completed in February 2025. Mrs R spoke with Halifax in the weeks leading up to the property sale and its agents answered her questions about how the porting process worked, including under which circumstances the ERC would be refunded. In summary, it said it would be refunded where a new mortgage application completed within three months of the previous mortgage being repaid. I don't consider Halifax gave Mrs R incorrect or misleading information based on the questions it was asked and what it was aware of at the time. Halifax didn't know at this point, for example, that Mr and Mrs R would be making an application to increase their existing borrowing significantly. If it had, then I would have expected it to take that into account when answering Mrs R's questions.

Halifax's agents also suggested that Mr and Mrs R may want to start their application so things could be clarified. But it appears they decided to sell their property before they started that process and before they had a formal offer of lending for a new property. It was for Mr and Mrs R to decide at which stage they took these steps and I can't see that Halifax gave them any advice about that at the time. But what I can see is that Halifax made a reasonable suggestion, in my view, for Mr and Mrs R to start their application so they had more information available to them, to help them decide how to proceed. Had they started the process, I think they would have found out quickly that they would not be able to borrow the amount they were expecting from Halifax – this is, after all, what went on to happen when they did apply for a new mortgage.

Overall, I don't think Halifax has acted unfairly in all the circumstances and I'm not persuaded it ought to have done anything significantly different. I understand it would have been disappointing for Mr and Mrs R to learn that Halifax wasn't prepared to lend them the amount they wanted. And that, with the benefit of hindsight, they may have chosen to do things differently with their interest rate. But I can't base my decision on hindsight, and each lender is entitled to decide the basis on which it is, or isn't, prepared to lend. Having carefully considered what's happened, I don't consider Halifax has acted unfairly in all the circumstances and I don't require it to do anything further.

My final decision

My final decision is that I do not uphold this complaint.

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 19 January 2026.

Keith Barnes
Ombudsman