

The complaint

Mr S complains that Bank of Scotland plc trading as Halifax refused to waive or re-negotiate the early repayment charge (ERC) for his mortgage when mortgage interest rates increased. Mr S says the ERC is a misrepresentation and an unfair charge as Halifax would not suffer a loss if he repays the mortgage early.

What happened

Mr S took out a mortgage with Halifax in 2022. He chose a 10-year 2.58% fixed interest rate product. An ERC applies if the mortgage is repaid before the product term expires.

Since Mr S took out the product, interest rates have increased. Mr S says if he repaid the mortgage Halifax would be able to close corresponding interest rate hedges at a profit and re-loan the funds at a higher rate. On this basis, he says Halifax would not suffer a loss if he repays the mortgage. Mr S put forward a formula that he says Halifax should use instead of the ERC set out in the mortgage offer. Mr S says the ERC is preventing him selling his house.

Our investigator said Mr S hadn't yet incurred the ERC, and she could only consider Halifax's decision to decline his request to remove or reduce the ERC. Our investigator said the ERC was set out in the mortgage offer, which Mr S agreed to when he took out the mortgage. She said Halifax had to calculate the ERC as a reasonable pre-estimate of the cost of the loan being repaid early, this was on the basis of a tranche of mortgages and there was no requirement for it to re-calculate the ERC as interest rates changed. Our investigator didn't think it fair to require Halifax to adjust or remove the ERC from Mr S's mortgage contract.

Mr S didn't agree. He said the uncertainty was affecting his decision whether to sell the property, and so he'd already been caused detriment. He said he'd suffer financial hardship if he had to pay the ERC and then reclaim it through a complaint. Mr S said he wouldn't recoup his loss due to paying stamp duty if he moved again. Mr S said there should be general guidance from the ombudsman as others less aware than him might be wrongfully charged a penalty.

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.

We provide an informal dispute resolution service. While we take relevant law, regulation and good industry practice into account, we make decisions based on what's fair and reasonable in all the circumstances of a complaint.

This service is not a regulator, and it's not our role to set rules on mortgage regulation. The regulator is the Financial Conduct Authority (FCA). The FCA has set out rules on mortgage regulation in its Mortgages and Home Finance: Conduct of Business sourcebook (MCOB). This includes provisions about ERCs.

In summary, an ERC must be capable of being expressed as a cash value (which is the case here) and must be a reasonable pre-estimate of the cost to the lender of the loan being repaid early. The lender can choose how it calculates an ERC, and it can do this across a group of mortgages of a similar type (it's not required to calculate the cost for an individual loan). It can make projections as to how many customers on average will repay early and at what point they're likely to do so. That means for some loans it will be an overcalculation and for others it will be an undercalculation. There's no requirement for a lender to refund the difference where there's an overcalculation – nor can it ask a customer to pay more if there's an undercalculation.

Mr S says due to his work he understand how financial instruments work. Mr S says Halifax set the ERC on the assumption interest rates would fall (which would result in Halifax suffering a loss if his loan is repaid early as it wouldn't be able to lend at the same or better rate). Mr S says because interest rates have increased, Halifax will make a profit if he repays the mortgage early: it will be able to exit interest rate hedges at a profit and re-loan the money at a higher rate. Mr S says Halifax should waive or change the ERC.

It seems to me that Mr S's concern isn't about how Halifax calculated the ERC before it entered into the mortgage contract, but that market conditions have since changed in a way that Halifax didn't predict when it did its calculations. There's no requirement (or right) for a lender to remove or change an ERC if market conditions change unexpectedly.

I don't think it's fair and reasonable to require Halifax to remove, waive, reduce or amend the ERC for Mr S's mortgage. This is for the following reasons.

- The ERC was clearly set out in the mortgage offer, in the form of a table. The ERC is a percentage of the amount repaid. This is 6% until 31 August 2027. After that it reduces each year until 31 August 2032.
- There's nothing in the mortgage offer to suggest that Halifax would adjust the ERC if interest rates were to increase, and no evidence Halifax told Mr S this was the case.
- Mr S agreed to the terms of the mortgage when he took it out, including the ERC. Halifax would be entitled to apply the ERC in accordance with the mortgage terms and conditions if Mr S repays the mortgage during the product term.
- Mr S has benefitted from having a fixed interest rate since 2022. He knows what his monthly payments will be and he's been protected from increases in mortgage interest rates.
- While Mr S says Halifax will make an unfair profit if he repays his loan early, he's basing this on current interest rates. His product is in place until 2032 and we can't know what will happen to rates between now and then.
- Mr S says the ERC has affected his decision whether to move house, and this is a detriment. Mr S hasn't said that he needs to move – for instance to be nearer his place of work – or even said that he wants to do so.
- The mortgage offer says the fixed rate product can be ported. This is provided Mr S's application meets Halifax's criteria and it agrees to offer a loan secured on another property. So if Mr S does need to move he might be able to do so without paying an ERC. He would need to contact Halifax to discuss a porting application.
- Halifax says if Mr S needs to sell the property due to exceptional circumstances it might be able to refer this internally, to consider if the ERC should be applied. If that's the case,

Mr S should contact Halifax and provide the information and evidence it needs to consider this fairly.

My final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 6 January 2026.

Ruth Stevenson
Ombudsman