

complaint

Mr and Mrs G complain that Bank of Scotland plc (trading as Halifax) didn't give them a cashback for which they were eligible. They also complain about fees that Halifax charged including an early repayment charge (ERC). And that Halifax forced them to use a solicitors firm on its panel which cost them extra.

background

Mr and Mrs G had an existing mortgage with Halifax. In 2015 they approached Halifax because they wanted additional funds to purchase a new-build property.

On 11 April Mr and Mrs G spoke with a mortgage adviser from Halifax. A few weeks later they contacted Halifax and arranged to meet the adviser again on 9 May 2015 to complete their mortgage application. And on 3 June 2015 Halifax issued a mortgage offer which subsequently Mr and Mrs G accepted.

In September Mr and Mrs G complained to Halifax. They said that on 11 April the adviser had told them they were eligible for a cashback offer of £500. But she told them to wait because 'a better offer' would be coming out soon. However, at their meeting on 9 May the adviser said that the new cashback offer of 1% of the purchase price only applied to first-time buyers.

Mr and Mrs G also complained that the adviser hadn't told them about the valuation fee and mortgage account fee at their first meeting. And that Halifax wouldn't let them port their mortgage product to the whole of their new mortgage and it would charge them an ERC. Mr and Mrs G were also upset that Halifax made them use one of its panel solicitors as by that stage they had instructed their own solicitors and incurred search fees.

Halifax said that on 11 April the adviser would only have known the cashback rates in existence at that date. And Mr and Mrs G weren't eligible for the existing cashback offer because neither of them was a first-time buyer. Also their loan to value (LTV) ratio was more than 80%. However, Halifax apologised if the adviser had given any indication that the offer may have been open to them. And it paid £100 into their mortgage current account as compensation for their trouble and upset.

Halifax also said that the valuation fee, mortgage account fee and ERC were all clearly set out in the existing mortgage and the new mortgage offer. And it had applied them appropriately. It said that it had set out the options for Mr and Mrs G in terms of legal representation. And they had chosen to instruct their own solicitor.

Mr and Mrs G didn't accept this. And they complained to the Financial Ombudsman Service. An adjudicator didn't uphold Mr and Mrs G's complaint. The adjudicator thought it unlikely that Halifax had said a better cashback offer was coming out. And Mr and Mrs G weren't eligible for the offer that was available at the time of the first meeting. The adjudicator also thought that Halifax hadn't treated Mr and Mrs G unfairly in terms of legal representation and the fees it charged. Mr and Mrs G don't accept this and they've asked an ombudsman to look into it.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I'm afraid that I'm likely to disappoint Mr and Mrs G because I agree with the adjudicator. I don't think that Halifax did anything wrong. Or that it should have to pay more compensation than it has offered.

I say at the outset that I cannot be sure what was said at the meeting on 11 April as I wasn't there. And there are no written or audio records. I've looked at the rate cards though and it's clear that Mr and Mrs G were only eligible for a cashback of £150 due to being Halifax current account holders. But they weren't eligible for any other cashback offer. This was because these only applied to first-time buyers. Or for new-build purchases with an LTV of no more than 80%. But Mr and Mrs G weren't first-time buyers. And at the time of their first meeting they were looking to borrow 84% LTV; even though in the end they actually borrowed less than 75% LTV.

Therefore on 11 April Mr and Mrs G weren't eligible for a cashback of £500. And I've seen no evidence that the adviser believed at that stage that either Mr or Mrs G were first time buyers. I think it unlikely that she would have done so. This is because Mr and Mrs G already had a mortgage with Halifax. And they had specifically queried the ERC that it was expecting them to pay.

The adviser has said '*I do not know in advance what offers we have available until a day or so before they are launched*' which I would expect to be the case. But I can understand that in discussing with Mr and Mrs G the current cashback offers on 11 April, the adviser might have led them to think that an offer could become available in future. And when it didn't I can also understand Mr and Mrs G's frustration. Therefore I think that Halifax's offer of £100 to compensate them for this is reasonable.

I've also thought about the other fees that Mr and Mrs G have complained about. And I agree with the adjudicator. I don't think that Halifax did anything wrong by not discussing all of the fees at the first meeting. That meeting was to discuss rates and eligibility. And I note that the follow-up 'mortgage promise' document supports that point. It says that full details of the terms of the loan would be set out in the mortgage offer. And that's the case. The valuation fee and the mortgage account fee were detailed in the mortgage offer. And I think it was for Mr and Mrs G then to decide whether they wished to accept that offer.

Similarly, Mr and Mrs G had taken out their existing mortgage in the knowledge that it included an ERC. And in what circumstances it would be applied. I cannot see therefore that Halifax has treated them unfairly by charging an ERC or by allowing them to port their mortgage product only to the value of their existing loan.

I do understand the point that Mr and Mrs G make about their legal representation. They wished to instruct their own solicitors. And they were frustrated when Halifax said they couldn't. But again, this was a term of the mortgage offer. And it was for Mr and Mrs G to decide whether to accept that offer.

I note that Mr and Mrs G had completed their mortgage application with the adviser on Saturday 9 May. On Monday 11 May the adviser contacted Mr and Mrs G's solicitors and established that they weren't on its panel. And the adviser then told Mr and Mrs G. In the

'mortgage promise' document dated 11 April Halifax had advised Mr and Mrs G not to enter into a binding legal commitment to buy a property until they were happy with the mortgage offer. I think that Mr and Mrs G were therefore taking a risk when they instructed their solicitors to carry out property searches before they'd even concluded their mortgage application. And I don't think that Halifax can be blamed for this.

Therefore I don't think that Halifax acted unreasonably towards Mr and Mrs G. And I think the compensation of £100 that it's paid to them is reasonable to reflect their trouble and upset.

my final decision

Therefore, my final decision is that I don't uphold Mr and Mrs G's complaint against Bank of Scotland plc. And I don't think it should have to pay any more compensation to them than the £100 it's already paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs G to accept or reject my decision before 11 April 2016.

Alan Harris
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