

## The complaint

Mr and Mrs D complain that Bank of Scotland plc trading as Halifax said no ERC would apply if they redeemed the mortgage in the last few days of the fixed interest rate period. But it charged the ERC. Halifax later said the mortgage hadn't been redeemed, when it had.

## What happened

Mr and Mrs D said they were coming to the end of their fixed interest rate period on their Halifax mortgage, and had decided to sell the property and downsize. They said they wanted to fix the date of selling the property so that they wouldn't have to pay an ERC on the mortgage. So they went into a Halifax branch, and asked when they could finalise their move, without paying the ERC.

Mr and Mrs D say they were told that the fixed rate finished at the end of October, but as long as they paid their monthly payment at the start of September, they wouldn't have to pay an ERC if they redeemed after that. Mr and Mrs D then arranged the sale on this basis. But they said when they completed the sale, they were charged an ERC, of almost £2,000.

Mr and Mrs D said that they could, if they'd been given the right information in August, have arranged the sale of their property so the payment of an ERC was avoided. That was the whole purpose of having asked Halifax when the ERC stopped being payable.

Mr and Mrs D said when they first complained to Halifax, it told them they hadn't actually repaid their mortgage in full, they still owed some money, so they would still be charged interest. But then Halifax said that was wrong.

Mr and Mrs D said Halifax then accepted it had given Mr and Mrs D wrong information about their ERC, in the branch, as well as the wrong information it provided about their mortgage redemption when they called. They also said that the ERC is supposed to be there to cover Halifax's losses if they redeem early, and in this case Halifax hadn't lost anything. But it would only pay £200. It wouldn't pay back the ERC of £1,976.60 that it had charged.

Halifax said it had accepted Mr D had received incorrect information in a branch, about this mortgage, which had led them to incur an ERC. But it said that it was clear on the mortgage agreement when this ERC ended.

Halifax also said it was sorry Mr D was then wrongly told his mortgage hadn't been paid off.

Halifax said it had sent this ERC refund request for senior review, but it had decided not to refund the ERC. It said the ERC is its estimate, made in advance, of the loss it will incur if the mortgage is repaid before the end of the initial product rate period. Halifax said it had only charged the amount that it notified Mr and Mrs D of in their mortgage offer, and reminded them about in their annual statements.

Halifax said that the redemption document it provided to Mr and Mrs D's solicitor included these figures, so it would have expected their solicitor to notify them that an ERC was payable, and for Mr and Mrs D to then query that, if they didn't expect to be charged this.

Our investigator didn't think this complaint should be upheld. She said Halifax had accepted Mr and Mrs D were given wrong information in the branch. But she said the annual mortgage statement and the redemption statement all confirmed an ERC was payable, and were sent around the time Mr and Mrs D were looking to redeem their loan. She thought, considering the timings, that Mr and Mrs D had the opportunity to confirm whether or not the ERC was applicable before redeeming the loan, and they didn't. So she said she wouldn't ask Halifax to refund the ERC.

Mr D replied to disagree. He said he did get an annual mortgage statement, but he found that confusing because it only gives an ERC figure for 31 July 2022. So that's why he went to a branch, to check what the figures were after that date. He said he was clearly told the ERC for the date he was repaying would be zero. He said Halifax had admitted that. And he'd never seen the redemption statement, so he didn't think Halifax could expect him to read that.

Our investigator didn't change her mind. She said that the annual statement set out that the ERC applied until 31 October 2022. And the redemption statements were sent to his solicitors, as she would expect. So she didn't change her mind. Because no agreement was reached, this case then came 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 only proposed to uphold it in part. This is what I said then:

I've seen the documentation from the remortgage offer that Mr and Mrs D took out in 2017. And I'm satisfied they were properly notified at that time about the ERC payable on their mortgage. But Mr and Mrs D's complaint is about specific advice they received from Halifax, more recently.

In 2022 Mr and Mrs D were selling their home, and downsizing. Their solicitor asked for a redemption statement for the end of June, which presumably included an ERC. Mr and Mrs D were aware that their fixed interest rate period was coming to an end, and wanted to arrange the sale of their house so they wouldn't have to pay this.

They told us they were advised, in branch, that as long as they paid their September 2022 payment, they wouldn't be charged the ERC. This advice was wrong, and Halifax accepts that.

A redemption statement for Mr and Mrs D for September 2022 was issued on 8 September. Halifax said that did make clear that an ERC would be payable if the mortgage was redeemed that month, so it thought Mr and Mrs D should have been aware of the true position before the mortgage was redeemed.

Mr and Mrs D said they never saw this, and it was only sent to their solicitors. I don't think it would be Halifax's fault if information shared with the solicitor working for Mr and Mrs D, wasn't passed on to them, although I note it is possible that Mr and Mrs D were already committed to the sale, by this point.

But what I haven't been able to see is that Mr and Mrs D could, realistically, have done anything differently, if they'd been given correct information by Halifax when they went into the branch.

I have asked Mr and Mrs D about this, and they have said that they would have been able to defer the sale. But I'm sorry to have to tell Mr and Mrs D that what they have told us about this sale, makes me think it isn't likely they could have deferred this sale until after the end of October, over a month and a half later, so that the ERC wouldn't be charged.

Mr and Mrs D were selling to someone they've described as a nervous buyer. They told us he was very worried about being gazumped on this purchase, and keen for the sale to be complete. They've also said he was buying for investment purposes, and I think it's reasonable to expect that he would also be concerned about the loss of up to two months' rent on the property if he were to defer the sale. Because of this, Mr and Mrs D went ahead with their sale in September 2022, although the home they were then buying wasn't yet ready to be sold, and they weren't able to make their purchase until a little later.

Because their buyer was apparently very keen to progress the sale, and apparently quite nervous about this, and because Mr and Mrs D felt they had to take some unusual steps to sell their home before buying another in order to deal with that, I don't think it's likely that this buyer could have been persuaded to wait for several weeks, to complete the sale of Mr and Mrs D's home. So, on balance, I think it's likely that if Mr and Mrs D had been properly advised by Halifax, they would still have gone ahead with the early sale of their home, in order to avoid losing this buyer. And that means they would still have had to pay the ERC.

If Mr and Mrs D had been properly advised, however, they would not then have had the unpleasant surprise of finding they owed almost £2,000 more than they expected. And they would have been able to budget more accurately for their move.

I also note that Mr and Mrs D were then told their mortgage hadn't been paid off in full. Although this appears to have been based on what Mr D told Halifax about the payment he'd made, rather than any error on Halifax's systems, I think it was unhelpful and concerning for Mr and Mrs D to be given further incorrect information about their mortgage. I think Halifax's agent ought simply to have checked the position of their mortgage (which was fully repaid) before offering this advice.

I don't think that Halifax's offer of £200 properly reflects what has gone wrong here. Although I don't think Halifax has to pay Mr and Mrs D back the ERC they were charged, I do think it should pay a little more than it has offered to date. I think a total payment of £500 would be more appropriate in these circumstances. I think that would provide a fair and reasonable outcome to this complaint.

I understand that Halifax has already paid £200 which it previously offered. That means Halifax should pay £300 now.

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

Halifax replied to say it accepted my provisional decision. Mr and Mrs D didn't reply.

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 plc trading as Halifax must pay Mr and Mrs D £300, in addition to the sum of £200 which it has already paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D and Mrs D to accept or reject my decision before 5 April 2024.

Esther Absalom-Gough  
**Ombudsman**