

## The complaint

Mr and Mrs J's complaint relates to a mortgage they had with Bank of Scotland plc trading as Halifax (BoS). They are unhappy that BoS would not lend them the amount they needed to purchase their new home, which meant they were unable to port the interest rate product and had to pay an early repayment charge.

In settlement of the complaint Mr and Mrs J want BoS to refund the early repayment charge and pay them a sum equivalent to the additional interest they will pay because they could not port their existing interest rate product.

## What happened

Mr and Mrs J took out a mortgage with BoS in 2020 of £163,000 over a term of 30 years on a repayment basis. They added a five-year fixed interest rate product to the mortgage in 2023. An early repayment charge (ERC) was payable if the mortgage was paid off before the end of the product term – 30 June 2025. However, the product was portable and, if Mr and Mrs J applied for and were accepted for a new mortgage with BoS, the product could be transferred to the new mortgage and no ERC would be payable.

The offer stated: *Taking your product to a new mortgage*

*In the future, you can apply for a new loan on another property. If Halifax agreed to the new loan you can take 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 the 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.*

In the autumn of 2023 Mr and Mrs J were looking to move home. They received an agreement in principle (AIP) in September 2023 from BoS that said they would likely be able to borrow £227,000 over a term of 27 years. This was subject to an application being submitted and fully assessed.

Mr J spoke to BoS in October 2023 and an affordability assessment was completed. It was concluded that given the cost involved in Mr J's car salary sacrifice scheme BoS couldn't offer Mr and Mrs J the amount they wanted. Mr and Mrs J confirmed the following day that they wanted to borrow the same amount as they had on the existing mortgage. Over the following week Mr and Mrs J provided documentation that BoS requested regarding their incomes. The application was accepted on 24 October 2023 and an offer was issued to Mr and Mrs J the following week.

In January 2024 Mr and Mrs J confirmed their property purchase had fallen through. However, they had found another property and needed a mortgage that was £99,000 more than the outstanding balance on the existing mortgage – approximately £250,000. It was confirmed on 30 January 2024 that this was outside BoS' affordability criteria. Mr and Mrs J told BoS that they had a mortgage offer elsewhere and would be moving their mortgage away.

The following day Mr and Mrs J raised concerns about how a disability benefit payment for one of their children and the salary sacrifice for one of their cars had been treated. BoS confirmed that the disability benefit could not be used as it was not being paid for one of the applicants, although Mrs J's carer's allowance had been taken into account. In relation to the salary sacrifice for the car, Mr J was of the opinion that a figure net of tax should be used rather than the gross figure. They complained.

Mr and Mrs J said they were unhappy that BoS would not agree a mortgage of the amount they needed for their move, whereas other lenders had issued AIPs for more than enough for them to buy the property they wanted. They highlighted that their income had more than doubled since they took the mortgage in 2020, and so would have expected the amount BoS would lend them to approach nearly double. They highlighted that BoS not being willing to offer them more meant that they would have to pay the ERC of over £3,000 and would pay around £5,000 more in interest over the remaining term of the fixed rate. They didn't think this was acceptable.

On 1 February 2024 Mr and Mrs J decided that they wanted to start their application again as they had been able to get the amount of lending they needed from every other bank they had approached. They met with a mortgage adviser the following day. The assessment again concluded that the amount Mr and Mrs J wanted to borrow didn't fit in with BoS' affordability criteria. During this application, an incorrect amount was keyed for Mr J's salary sacrifice for the car – it had used the benefit-in-kind taxable value of the car rather than the salary sacrifice figure. BoS said that it would look to support the application and pass it to an underwriter, but Mr J would need to evidence the pay rise that had been included in the assessment, as it was not reflected in his payslips.

When the application was reviewed, the mistake with the amount of Mr J's salary sacrifice was noticed and corrected. Based on the revised affordability assessment, it was again determined the amount Mr and Mrs J wanted to borrow was outside of BoS' lending criteria. Mr and Mrs J have provided a recording of the call in which the mistake was acknowledged and Mr J was told the salary sacrifice meant that their application failed BoS' affordability check. It was confirmed that the full amount for the sacrifice had to be used, rather than a net figure as Mr J wanted, because BoS input all income figures gross.

BoS responded to the complaint on 6 February 2024. It acknowledged that it had incorrectly recorded Mr J's salary sacrifice as £59 per month rather than £577 per month, which had led Mr and Mrs J to believe the amount they wanted to borrow was affordable. While it had a record of a bonus Mr J had told it about, it had been unable to verify its existence and so couldn't use it in the affordability assessment. It confirmed that if Mr and Mrs J could provide payslips that evidenced the bonus, it could consider if that would increase the amount it would lend them. BoS said that while Mr and Mrs J considered the mortgage they'd applied for would be affordable, it had to ensure that mortgages were not just affordable at the time of application but would also be affordable in the future. As such, it carried out stress tests at higher interest rates. It had done that and decided it could not offer Mr and Mrs J the amount they wanted.

Mr and Mrs J were not satisfied with BoS' response and referred their complaint to this Service. When they did so they said that if they genuinely didn't meet BoS' lending criteria, they could accept that, but they didn't think that was the case. They believe the application failed because of inaccurate data BoS had input – Mr J's annual bonus was not taken into account, nor was the allowance Mrs J received for being a carer, nor the disability benefit received for their son. In addition, Mr J confirmed that the car scheme BoS had listed as £577 per month was deducted before tax and so actually cost him £360 net.

One of our Investigators considered the complaint, but she didn't recommend that it be upheld. She was satisfied that BoS had assessed the application in line with its normal procedures and had treated Mr and Mrs J fairly.

Mr and Mrs J took a mortgage elsewhere to fund their move and BoS charge them an ERC when the mortgage was paid off.

Mr and Mrs J didn't accept the Investigator's conclusions. They reiterated that their application was not assessed fairly by BoS and that not being able to port the interest rate product had had serious financial implications for them. As they considered BoS had acted incorrectly, the Investigator's conclusions were wrong.

Subsequently they also said that the lender they moved their borrowing to had been able to verify Mr J's bonus, and had BoS waited it could have too. They then went on to set out what their new lender had been able to do using the same documentation that BoS had when it refused their application. They repeated that they had been treated unfairly and that they considered BoS had looked at Mr J's payslip in the wrong way. In addition, they reiterated that BoS should not have put the details of Mr J's salary sacrifice into the application form as car finance/lease. This was because it included insurance, breakdown cover and maintenance, and it was deducted before his tax liability was calculated.

Mr and Mrs J also said they had additional savings they could have put down as a deposit if they'd been offered more by BoS. As such, they were denied the ability to avoid the ERC. Mr and Mrs J said they had a recording of the last call they had with the mortgage adviser in February 2024 and said the notes BoS had provided of that call were not accurate. They did not provide a copy of the call. Ultimately, Mr and Mrs J asked that the complaint be referred to an Ombudsman.

Following the case being passed to me, I asked Mr and Mrs J to provide the call recording they mentioned. They did so, and I have documented its contents above. They also provided copies of Mr J's payslips that would have been available to BoS when they completed the February 2024 application, along with later ones showing a bonus payment and salary increase in February 2024.

### **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.

When Mr and Mrs J wanted to borrow the same amount as their existing mortgage, BoS was willing to lend them that amount. However, when they had previously and subsequently wanted a higher amount, their application failed BoS' affordability checks. Given that Mr and Mrs J wanted to increase their borrowing by a significant amount, it was not unreasonable for BoS to want to ensure the proposed mortgage would be affordable for them, given their income and expenditure. Indeed, the Regulator's rules would require it to do so, and to ensure that affordability was not just immediate, but also in the longer term in the event of increases to interest rates.

A lender is allowed to set its own criteria for lending based on its own appetite for risk and commercial judgment. As long as those criteria are applied fairly to all customers in similar circumstances, we would not look to interfere with a lender's commercial judgement. The fact that different lenders will be willing to lend different amounts doesn't mean that some have acted inappropriately, as it is simply down to a difference in criteria.

Mr and Mrs J's main concern is that BoS used a gross figure for the cost of Mr J's salary sacrifice relating to one of their cars, whereas he thinks it should have been input net of 40% tax, as it was a deduction from his income before tax was calculated. However, as BoS explained to Mr J in the call recording Mr and Mrs J provided, all income related figures are input into its affordability assessment gross. As the salary sacrifice was deducted from the gross income figure BoS used, it does not seem unreasonable that the figure was also deducted gross.

As for Mr J's salary increase and bonus, BoS explained to him that it needed these figures to be verified. That is not an unreasonable requirement for a lender to take, as I've already explained, it is required to ensure affordability of a mortgage. It can't do unless it has evidenced facts about income and expenditure.

BoS confirmed that when completing the affordability assessment, it took into account Mrs J's income as a carer. However, it would not take into account the benefit paid to support their son, as that benefit was not paid for the benefit of either of them. I don't consider that it's unreasonable that BoS only took the incomes of the parties to the mortgage into account when completing its assessment.

Overall, I am not persuaded that BoS was wrong in not offering Mr and Mrs J the new mortgage they wanted, given that the application had not passed its affordability checks. As the existing mortgage was repaid during a period where an ERC was chargeable, which Mr and Mrs J were aware of, I don't consider it was unreasonable for BoS to have applied the ERC.

BoS responded to Mr and Mrs J's complaint within a few days of the complaint being raised. In that response it told them that if they could evidence Mr J's bonus, it would reconsider the application. BoS had already during earlier discussions offered to consider the pay rise he was about to receive if he could evidence it. I consider this position on the part of BoS was fair and reasonable in the circumstances. It doesn't appear that Mr and Mrs J took BoS up on the offer and instead borrowed elsewhere to purchase their new home. That was their decision to make, but I can't hold BoS responsible for any consequences of it.

### **My final decision**

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

Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs J to accept or reject my decision before 3 October 2024.

Derry Baxter  
**Ombudsman**