

## The complaint

Mr and Mrs D's complaint is about a mortgage they held with Atom Bank PLC and their application for another one. They said:

- they are unhappy the application for a new mortgage, and porting of the product, to a new property was rejected;
- the early repayment charge (ERC) was not a reasonable pre-estimate of the cost to Atom of the mortgage being repaid early; and
- the ERC was unfair as it didn't decrease with the term and didn't model any break costs for Atom.

## What happened

In 2017 Mr and Mrs D took out a mortgage of around £120,000, over 20 years on a repayment basis. The mortgage had a fixed interest rate product linked to it until June 2022. In section 8 of the document it detailed that an ERC would be payable if the mortgage was repaid before the end of the product and the percentage of the amount repaid that would be charged. The percentage depended on how far through the product term the repayment happened.

In 2019 Mr and Mrs D decided they wanted to move home. They found a property they wanted to move to. However, having looked at Atom's website, their broker concluded Atom wouldn't allow them to take out a new mortgage on that property, and port the interest rate product to it. As a result, no mortgage application was made. Mr and Mrs D considered the lending criteria were restrictive.

Atom said that it understood that Mr and Mrs D were concerned that the house they wanted to buy wouldn't meet Atom's lending criteria. It said this was not something it was able to provide advice on and so recommended they consult their mortgage broker. In relation to the ERC, it said that this had been clearly set out in the mortgage offer they'd accepted.

Mr and Mrs D weren't satisfied with Atom's response and asked us to look at their complaint. They subsequently completed their move to their new home. When they did so they were charged an ERC of slightly over £2,300.

One of our investigators considered the complaint. She highlighted to Mr and Mrs D that Atom hadn't declined to provide them with a new mortgage, as they hadn't made an application. Rather they had decided not to do so having been told by a third party that it wouldn't be granted. As such, Mr and Mrs D said they didn't want to pursue the first part of their complaint. She didn't recommend the complaint about the ERC be upheld.

Mr and Mrs D didn't accept the investigator's conclusions. They said, for example, the ERC at five years was almost double the amount of the interest that wouldn't be paid over the remaining term of the product. In addition, they believe that Atom wouldn't lose all the income it would have expected from the money, as it would be available to re-lend, reducing

the marginal borrowing or the deposits in their Bank of England account. They repeated that they believe the tranche of mortgages that shared the interest rate product they had, were loss leaders. As such, they asked for their complaint to be reviewed by an ombudsman.

### **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.

Whilst Mr and Mrs D confirmed they didn't want to proceed with their concerns about porting being refused by Atom as they hadn't actually completed an application, for completeness I will briefly comment. A lender is able to decide what risks it is willing to take and, as part of that risk assessment, it can decide what types of properties it is willing to lend on. We wouldn't interfere with those decisions as long as the lender's criteria was applied fairly to all its customers. As such, even had Mr and Mrs D made an application that had been declined, any complaint about that issue would have been unlikely to succeed.

The ERC was clearly documented in the mortgage offer that was sent to Mr and Mrs D before the mortgage was advanced. It was detailed as being payable for the five years of the product at 5%, 4%, 3%, 3% and 2% respectively. Mr and Mrs D accepted the mortgage that was on offer and the ERC that was associated with it.

As for Mr and Mrs D's concern that the amount of the ERC is unfair, I would explain that in order to be able to lend to consumers, lenders will borrow money themselves. As with loans made to the lender's customers, there are costs associated with borrowing that money. When the lender decides the format of the loans it's going to use a tranche of money for, it has to include an assessment of the potential risks associated with doing so. Included in those risks is that some customers may repay their borrowing early. When that happens some of the money expected to be received by the lender will not be, but the lender remains liable for its own cost of borrowing the money. In addition, if the lender repays its borrowing early, there may be costs associated with that too.

In light of this, lenders are allowed by the regulator to charge ERCs to cover the costs to it of consumers repaying borrowing early. This can be done on an individual mortgage basis, but is more commonly calculated for a tranche of money or group of mortgages (of a similar type) and based on a proportion being repaid early. This calculation will be based on the lender's experience of the likelihood of early repayment and assessment of future conditions. The regulations allow a lender to calculate ERCs in this way.

Mr and Mrs D consider the ERC is unfair because it doesn't decrease each year and they don't think it models the breakage costs Atom will experience if the mortgage is repaid early. As I have explained above there are many factors that can be taken into account when an ERC is calculated and Atom has detailed to us how it estimated the ERC. Under the rules, provided the charge is a reasonable pre-estimate of the loss suffered by Atom if the mortgage is paid early, it can make the charge. The evidence of the calculations I have seen, although it can't be made publicly available as it's commercially sensitive and confidential, satisfies me the amount charged in this case was a reasonable pre-estimate of loss. I don't think the charge should be refunded.

I have noted Mr and Mrs D's opinions about the mortgage they held with Atom and the resultant losses Atom would suffer, based on their reading of Atom's annual report 2017/2018. Whilst Mr and Mrs D are entitled to their opinions about the losses that would be incurred, as I have explained above, the evidence that has been provided shows that the ERC they were charged was a reasonable pre-estimate of Atom's costs.

**My final decision**

My decision is that I don't uphold this complaint. Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs D to accept or reject my decision before 10 June 2021.

Derry Baxter  
**Ombudsman**