

The complaint

Miss B complains that Dudley Building Society won't waive the early repayment charge ("ERC") that she will have to pay when she sells her property. Miss B would like Dudley to waive the ERC.

What happened

Miss B owned a property with her mother's ex-partner. She then bought his share of the property. Miss B's mother, who is living in the property has a disabling illness and is on Universal Credit although she is going to live abroad. Miss B has exhausted all her savings. She has made the decision to sell her house to ensure she can pay her credit card bills and not to worry about the house being repossessed for being unable to make the mortgage payments after a six months mortgage holiday. Miss B would like Dudley to waive the ERC when she sells the property.

Our investigator didn't recommend that this complaint should be upheld as under the terms of the mortgage product offer, Miss B had agreed to pay the ERC if she redeemed the mortgage. Miss B disagreed saying that this service had taken a different view in a similar case.

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.

Miss B has decided that she can no longer continue to make the mortgage payments and wants to sell her property, but she wants Dudley to waive the ERC that will be payable. Miss B, advised by an intermediary, asked Dudley to lend her money which Dudley did, and Miss B also took out a mortgage product with a discounted rate of interest. A term of the mortgage product is that if Miss B redeems the mortgage within five years, that she pays an ERC. An ERC is a charge which a lender raises to protect itself from losses as a result of the early repayment of mortgage products. If a mortgage is redeemed early the lender suffers a loss and the ERC is there to cover that loss. Dudley, I see from its notes, can waive the ERC in some exceptional circumstances but this doesn't fall into the category of exceptional circumstances for that purpose.

Dudley in its submissions says that it realised that Miss B was in financial difficulties and offered to look at a range of possible strategies to assist her. Miss B had the benefit of a payment holiday, at the end of which the arrears were capitalised. I then note that Miss B enquired about letting the property and Dudley provided information about this. Miss B then got a further payment holiday. The society says that it would have looked at alternative forbearance arrangements such as a term extension, repayment type switch or permission to let on the property subject to Miss B meeting the criteria. In cases of borrowers in financial difficulties we expect lenders to act positively and sympathetically and Dudley seems to have done that.

Miss B has decided to sell her property and wants Dudley to accept less than its owed. Miss B has referred us to a case with similar aspects to hers wherein the lender agreed to a reduction in the ERC. I have noted that case, but I have to look at each complaint individually in deciding what's fair and reasonable. I note that there is equity in the property. I understand Miss B hopes to sell for £430,000 and wants to pay off her credit card debts. Miss B has supplied me with some information about those debts she owes to credit card companies. On my rough calculations, it seems that those debts and Dudley can be paid from the sale of the property. In any case, even if all the credit card debts couldn't be paid, it would be unfair if I didn't allow Dudley to collect its secured debt in order to allow Miss B to pay her unsecured debt. That would seem to me to be giving an unfair preference to Miss B's unsecured creditors which I can't fairly do.

I am also mindful that in this case that if I require Dudley to waive the ERC it doesn't benefit Miss B in her housing situation. Miss B lives abroad in any case and I understand that her mother is moving there too. In addition, I have to consider that I would be imposing a loss on Dudley. In deciding on a complaint under the rules that govern us one of the considerations I am specifically directed towards is the law and that supports Dudley's claim to the ERC. So, taking all this into consideration, I don't believe I can fairly deprive Dudley of its legal entitlement to the ERC and I don't uphold this complaint.

My final decision

My decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 21 May 2021.

Gerard McManus
Ombudsman