

The complaint

Mr S has complained that, because Saffron Building Society (Saffron) had no staff available to deal with his application to port (transfer) his mortgage, he had to take out a new mortgage and pay an early repayment charge (ERC).

To settle the complaint, Mr S would like Saffron to reimburse him for the ERC and to pay compensation for distress and inconvenience.

What happened

I will keep my summary of the complaint fairly brief. There are several reasons for this. First, what's happened isn't really in dispute. Secondly, the details of the complaint have been set out in the letters from our investigator, and both Mr S and Saffron have copies of those. Finally, our decisions are published, and so it's important that I don't include in this decision any information that might lead to Mr S being identified.

Mr S had an interest-only mortgage with Saffron taken out in 2019. The mortgage was for just over £121,000 against a property valuation of £495,000. The mortgage was on a fixed rate of interest of 2.57% until August 2021. If Mr S repaid the mortgage during that time, an early repayment charge of 2% of the amount repaid would apply.

However, the mortgage also included a flexible feature which stated:

"You have the right to transfer this loan to another property. This portability is subject to our approval at the time of the application and our then current lending criteria will be applied to your application."

Mr S has explained that at the time of the application in 2019, his intention was always to move the following year, so he specifically wanted a mortgage he could port.

In July 2020 Mr S contacted Saffron about porting the mortgage. Saffron told Mr S he couldn't port his mortgage because it didn't offer a mortgage advice service. As a result, Mr S went through a broker to apply for a new mortgage with Saffron – which was quickly approved – and he repaid his existing mortgage, incurring an ERC of about £2,500.

Mr S didn't think this was fair and complained. Saffron, in its final response letter, acknowledged Mr S wasn't happy he couldn't port his mortgage but said this *"is a service we do not offer"*, and explained that Saffron doesn't provide mortgage advice.

Mr S complained to the Financial Ombudsman Service. An investigator looked at what had happened and thought the complaint should be upheld. She noted that Mr S had, for his new mortgage, borrowed £10,000 more than his previous mortgage. However, Mr S explained that, because Saffron wouldn't port his mortgage on a like-for-like basis, he decided to borrow a little more for home improvements. He explained that he could have completed his purchase without needing to borrow more, if Saffron had approved the porting request.

The investigator was satisfied the complaint should be upheld. She explained to Saffron that the Mortgages and Home Finance: Conduct of Business Sourcebook (MCOB) at 11.6.3 allowed lenders to disregard an affordability assessment if there was no change to the contract likely to be material to affordability. There was no change to affordability, and the loan-to-value ratio (LTV) had decreased.

Consequently, she didn't think Saffron had acted fairly, because the only reason it seems his porting application couldn't be considered is that Saffron didn't have the staff available to assist him with his request.

Although the investigator initially asked Saffron to reimburse the entire ERC, she later noted that Mr S's new mortgage was at a lower rate of interest of 1.47%, and so he had benefitted from this. Therefore, the investigator thought Saffron should do the following:

- refund the ERC, plus interest at 8% simple per annum from the date of payment until the date of refund;
- subtract from that the benefit Mr S had received from the date the new rate took effect until the previous rate would have come to an end in August 2021;
- reimburse Mr S for any extra fees over and above the fees he'd have had to pay if he'd ported the mortgage, with interest at 8% simple per annum from the date the fees were paid until the date of refund;
- pay compensation of £100 for trouble and upset

Mr S accepted the investigator's findings but Saffron did not. Saffron said that other cases had not been upheld by the Financial Ombudsman Service, and that initially the investigator hadn't mentioned refunding fees. The investigator clarified that it appeared Saffron was able to deal with Mr S's new mortgage application but not an application to port. As a result, she didn't think it was fair for Mr S to be charged the ERC. She explained to Saffron that her suggested redress took into account the cost of Mr S taking out the new mortgage.

Saffron still didn't think the investigator's findings were fair and asked for an ombudsman to review the complaint.

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.

The crux of this complaint lies, in my view, in the wording of the porting clause. This says that Mr S has the *right* to port his mortgage – not the *option*. I appreciate that the clause then goes on to say that it is subject to Saffron's approval at the time of the application, and to Mr S meeting its lending criteria.

Saffron has explained that when Mr S contacted it about porting, there wasn't a mortgage adviser available. Saffron says this was unexpected, but as a result, it wasn't able to offer a porting service.

Although I acknowledge this might have been unexpected, I am satisfied that it unfairly impacted Mr S. Saffron's inability to consider an application to port the mortgage isn't the same as considering an application and then declining it because it didn't meet Saffron's lending criteria. The availability of staff to deal with applications isn't part of Saffron's lending criteria.

Mr S subsequently went on to arrange a new mortgage with Saffron, and borrowed an extra £10,000. I'm satisfied that if Mr S had asked for a like-for-like port with no additional

borrowing he'd have been able to continue with his purchase, because the additional funds weren't needed for that purpose. I accept what Mr S says – that he only increased his borrowing (for home improvements) because he'd been told he couldn't port the mortgage. I can't see any barrier to a porting application being approved, but for Saffron's staffing issues.

Consequently, I'm satisfied that Mr S wasn't treated fairly; because he was denied the opportunity to apply to port his mortgage. His only option was to arrange a new mortgage with Saffron, and pay the ERC. At the very least, I'd have expected Saffron to have exercised its discretion and waived the ERC in this case. After all, the only reason Mr S wasn't able to port his mortgage was because of internal issues at Saffron, and not because he didn't meet lending criteria.

In the circumstances, I'm satisfied it is only fair and reasonable for Saffron to reimburse the ERC. Mr S's new mortgage is at a lower rate of interest and so he has benefitted from having this lower rate. It is only fair that this benefit is taken into account in the redress I am awarding.

I'm also satisfied that Mr S was caused some upset and inconvenience, for which he should also be compensated.

Putting things right

To settle the complaint, I direct Saffron Building Society to do the following:

- refund the ERC, plus interest at 8% simple per annum from the date of payment until the date of refund*;
- subtract from that the benefit Mr S had received from the date the new rate took effect until the previous rate would have come to an end in August 2021;
- reimburse Mr S for any extra fees over and above the fees he'd have had to pay if he'd ported the mortgage (including any broker and application fees), with interest at 8% simple per annum from the date the fees were paid until the date of refund*;
- pay compensation of £100 for trouble and upset

* If Saffron considers that it is required by HM Revenue & Customs to withhold income tax from any interest, it should tell Mr S how much it has taken off. Saffron should also give Mr S a tax deduction certificate if requested, so the tax can be reclaimed from HM Revenue & Customs if appropriate.

My final decision

My final decision is that I uphold this complaint. I direct Saffron Building Society to settle the complaint as detailed above.

This final decision concludes the Financial Ombudsman Service's review of this complaint. This means that we are unable to consider the complaint any further, nor enter into any correspondence about the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 2 May 2022.

Jan O'Leary
Ombudsman

