

The complaint

Ms H complains that Dudley Building Society unfairly declined her application to port her mortgage to another property and as a result incurred an early repayment charge (ERC).

What happened

In July 2018, Ms H took out a repayment mortgage with Dudley. In July 2019, she took a further advance also on a repayment basis. Both mortgages had an ERC if they were repaid before 2024 and 2022 respectively.

In July 2020, Ms H asked Dudley if she would be able to port her mortgage. It told her she needed to use a broker to submit a porting application. She did that and Dudley told her broker that the income multiple needed for Ms H to port was acceptable. This was not actually Dudley's policy at the time.

When Ms H's broker contacted Dudley to make a porting application it said it couldn't help as the loan to income ratio was too high. Ms H said she was too far along in the process of selling her home to pull out. So she went ahead with another lender, incurring the ERC.

I issued a provisional decision inviting any further comments and evidence. My provisional findings were (and which form part of this decision):

I'm required to take into account the relevant rules (amongst other things) to decide what I consider to be fair and reasonable in the individual circumstances of this complaint.

The relevant rules here are the Mortgages and Home Finance: Conduct of Business sourcebook (MCOB). MCOB 11.6.3 says that the affordability assessment required elsewhere in MCOB does not apply where there is no additional borrowing and there are no changes to affordability which are likely to be material to affordability.

In this case, Ms H wasn't looking to increase her borrowing. And there were no changes to the mortgage that were material to affordability. I note Dudley's point that it didn't get the opportunity to consider a full application and there might have been other reasons why it was not prepared to lend. But bearing in mind what Dudley told Ms H's broker, I consider it was reasonable for an application not to be made. And Ms H was able to obtain a mortgage with another building society with no problem, the property was conventional, and Dudley was prepared to lend to her around a year earlier – I've not seen any evidence that Ms H's position had materially worsened during that period. Overall, I consider it more likely than not that there was no valid reason for Dudley to decline an application had one been made.

Further, while Dudley is entitled to change its lending criteria, I don't think it is always going to be fair for it to do so for existing borrowers, who are tied into a fixed rate understanding that they have the flexibility of a portable mortgage – only to say that effectively the only way they could port was by reducing the amount they borrowed and incurring at least a partial ERC.

In view of that – and as there was no requirement for Dudley to carry out an affordability check in these circumstances, I don't consider it was fair for Dudley to apply the ERC in the individual circumstances of this complaint. It should refund it with interest.

Dudley has already offered £150 for giving incorrect information to Ms H's broker. I don't think that is enough purely for the incorrect information. I say that as Dudley ought to know that its customers are making life changing decisions, with potentially serious financial consequence based on the information they gave. I don't think £150 fairly reflects the disappointment, stress and inconvenience it would have caused Ms H when she found out that information was wrong – bearing in mind she had sold her home and was in the process of buying another because of the information Dudley had given her.

There is also the unnecessary inconvenience of Ms H finding another lender, going through the application and the stress of having to pay the ERC at what would have already been a stressful time for her.

In all the circumstances, I consider it would be fair for Dudley to pay Ms H £400 to reflect the distress and inconvenience caused to Ms H by the incorrect information, its unfair refusal to consider a porting application from her and the unfair application of the ERC.

I proposed that Dudley should:

- Refund the ERC it applied when Ms H repaid the mortgage and further advance.
- Pay interest on the above amount at 8% simple per year from the date the mortgage was repaid until date of settlement.
- Pay Ms H £400 for any distress and inconvenience.

Ms H accepted my provisional decision. Dudley said it had nothing further to add.

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.

As there were no substantive responses to my provisional decision, I see no reason to reach a different outcome here. I am going to uphold this complaint for the reasons set out above. Dudley had the ability to waive its usual affordability checks as Ms H was not increasing her borrowing. It would have been fair for it to do so here. In any event, I don't consider it was fair or reasonable for Dudley to apply the ERC in these circumstances where it would not allow Ms H to port (or she reasonably understood that it wouldn't do so) and she was tied into the mortgage.

My final decision

My final decision is that Dudley Building Society should:

- Refund the ERC it applied when Ms H repaid the mortgage and further advance.
- Pay interest on the above amount at 8% simple per year from the date the mortgage was repaid until date of settlement.

- Pay Ms H £400 for any distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H to accept or reject my decision before 23 March 2022.

Ken Rose
Ombudsman