

The complaint

Mrs O has complained that Clydesdale Bank Plc declined her request to port (transfer) her mortgage onto another property and borrow additional funds (along with her partner). In order to proceed with her new purchase, Mrs O and her partner had to find another lender. As a result, Mrs O had to pay an early repayment charge (ERC) when she repaid her mortgage to Clydesdale. Mrs O thinks this is unfair.

In addition, Mrs O says she was told the ERC was only 1% of the repaid balance, when in fact it was 4%. Mrs O says the ERC was never explained to her when she originally took out the mortgage in 2018.

To settle the complaint, Mrs O would like Clydesdale to reduce the ERC to 1% rather than the 4% she was charged.

What happened

In 2018 Mrs O took out a mortgage with Clydesdale. She borrowed £97,000 over 20 years 4 months on a capital repayment basis. The mortgage was on a fixed rate of interest until 30 November 2021. If the mortgage was repaid before that date an ERC would be charged. The mortgage offer shows that this was on a tapering basis, being 6% in the first year, 5% in the second year and 4% in the third year.

The mortgage offer also stated that the mortgage interest rate product could be ported (transferred) onto a new mortgage *"if you meet all of our lending criteria when you ask to port"*.

In 2020 Mrs O wanted to sell her property and purchase a new one with her partner. She wanted to port her existing mortgage product and borrow a total of £195,000, which was more than double the amount of her original mortgage.

Clydesdale declined to issue an Agreement in Principle (AIP) as the amount Mrs O and her partner required was outside Clydesdale's affordability assessment. Mrs O says she was told that the bank had changed its lending criteria, which is why the request for an AIP was declined. Clydesdale said it would agree to Mrs O porting the amount of her existing mortgage (about £92,000) but with no additional borrowing.

However, this wouldn't have allowed Mrs O and her partner to purchase the property they wanted and so they decided to source a mortgage from another lender. Mrs O contacted Clydesdale to ask about the ERC and was incorrectly told that it would be 1% of the amount repaid, whereas, in fact, it would be 5% if the mortgage was repaid before 30 November 2020, and would reduce by 1% to 4% on 1 December 2020.

The mortgage was repaid in January 2021, with an ERC of 4% of the amount repaid.

Mrs O complained to Clydesdale. She wasn't happy that the AIP had been declined and that Clydesdale had changed its lending criteria since she had first applied for the mortgage in 2018 without telling her. Mrs O was also unhappy that she'd been told the ERC was 1%

when she had actually been charged 4%. Mrs O said that she'd never been given any explanation of what the ERC was when she'd taken out the mortgage.

Clydesdale acknowledged Mrs O believed she had been given incorrect information about the ERC. The bank paid her £25 compensation for this. However, the bank explained in its final response letter that the ERC was (at that point) 5%, but would reduce to 4% on 1 December 2020.

Clydesdale also explained that any new application to port the mortgage was subject to meeting lending criteria at the time of the application. Clydesdale said that it wasn't required to tell customers about changes in its lending criteria.

Dissatisfied with Clydesdale's response, Mrs O brought her complaint to the Financial Ombudsman Service. An investigator looked at what had happened, but didn't think Clydesdale had done anything wrong in relation to declining the AIP. The investigator explained that, if Mrs O had applied to port the same amount as her existing mortgage, Clydesdale could have bypassed any affordability assessment. But as there was additional borrowing requested, Clydesdale was entitled to consider whether this was affordable. The AIP showed that it was not.

The investigator was also satisfied that the bank was entitled to charge the 4% ERC. But he thought the compensation of £25 offered by the bank for incorrectly telling Mrs O that the ERC was 1% was too low. He thought the bank should pay compensation of £100 for this mistake.

Clydesdale doesn't appear to have responded. Mrs O disagreed with the investigator's opinion. She maintained that there had been no change to her credit history since the original mortgage had been taken out.

Mrs O said that she and her partner had been "*forced*" to take out another mortgage, and feels it is unfair she had to pay the ERC only because Clydesdale had changed its lending criteria. Mrs O said that on the day of completion, after thinking the ERC was going to be £970 (1%), she found out it was £3,900 (4%), and that this was no small sum to find on the day of completion.

Mrs O said that if she'd been told in 2018 that she might not be able to port, she'd have looked at other lenders at that time. Mrs O was also unhappy that the Financial Ombudsman Service was not "*taking the consumer's point of view at all*".

Because the matter is unresolved, it falls to me to issue a final decision.

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.

I will begin by explaining that the Financial Ombudsman Service is independent and impartial. This means that we do not represent the interests either of consumers or of the businesses they are complaining about. We are neither a consumer champion nor an industry watchdog. Our role is to consider individual complaints against businesses and reach a decision which is fair and reasonable in all the circumstances of the complaint.

AIP: I can see from what Mrs O has told us that she believes the AIP was declined because she had had a previous default on her credit file. The AIP shows that the maximum Clydesdale was prepared to lend was lower than the amount Mrs O and her partner wanted

to borrow, and in addition there were other issues on Clydesdale's scoring which resulted in a decline. As a result, Clydesdale wasn't prepared to allow her to port the existing mortgage plus additional borrowing.

Mrs O has focussed on an earlier default she had prior to the 2018 mortgage as what she says is the (unfair) reason for the decline. However, in common with most mainstream lenders, Clydesdale's scoring is not based solely on a customer's credit score, but is a more nuanced, risk-based assessment.

The mortgage offer is clear that any application to port is based on Clydesdale's lending criteria in place at the time of the request to port. Clydesdale isn't obliged to contact every customer each time its lending criteria change. If mortgage lenders were to publish all their lending criteria, customers could temporarily manipulate their finances in order to meet criteria and obtain a mortgage that they would otherwise not be eligible for. For this reason, lenders generally keep their detailed lending criteria confidential. (To be clear, I am not suggesting for one minute that Mrs O falls into the category of a customer who would manipulate their finances, but I am explaining this to clarify why lenders don't publish their detailed lending criteria.)

Clydesdale was prepared to allow a port of the interest rate product without any additional borrowing. As this wouldn't meet Mrs O's requirements for her new purchase, she and her partner decided to go elsewhere. This was their choice, and I can't see that they were, as Mrs O claims, forced to do this. Clydesdale wasn't under any obligation to offer Mrs O and her partner another £100,000 on top of the existing mortgage if they didn't meet its lending criteria.

I don't uphold this part of the complaint.

ERC: Mrs O says the ERC was never explained to her. But I can see that details of the ERC appear in the mortgage illustration and mortgage offer. The explanation of how the ERC works is quite clear, and shows the percentage amount of the ERC on a tapering basis, and the dates when the percentage will reduce. The ERC is a contractual term to which Mrs O agreed when taking out a fixed rate on her mortgage. Because the contract was ended before the fixed rate period expired, the ERC was payable to Clydesdale.

It's unfortunate that Mrs O was very briefly led to believe the ERC would be 1% of the amount outstanding when it was in fact 4%. Mrs O told us on 9 March 2022 that on the day of completion of her purchase (14 January 2021) she thought the ERC was £970, but then found out it was actually £3,900, leaving them with insufficient funds to complete the purchase. She says *"this is not a little sum of money to be short on day of settlement..."*.

I am not persuaded, however, that it was only at the point of completion of her purchase that Mrs O first found out about the amount of the ERC. I say this because Mrs O also sent us an email she wrote to her mortgage broker dated 30 October 2020 in which she says *"I started a complaint with CB about the ERC they are charging me 4% which they are not waiving ..."*. And in her original complaint to the Financial Ombudsman Service on 30 October 2020 Mrs O told us that she knew at that point the ERC was 4%. In addition, in its final response letter dated 23 October 2020, Clydesdale clarified that the ERC would be 5%, reducing to 4% on 1 December 2020. In that final response letter Clydesdale offered Mrs O £25 for incorrectly saying the ERC would be 1%.

Given this, I am not persuaded that it was only on the day of completion on 14 January 2021 that Mrs O first discovered the ERC was 4% and had to find the extra money on that day in order to complete her purchase. It appears Mrs O was aware of the amount of the ERC several months earlier.

Putting things right

Clydesdale paid Mrs O £25 compensation for any misunderstanding over the ERC. I agree with the investigator that this is insufficient and I think a sum of £100 is more appropriate for the distress and inconvenience Mrs O was caused in relation to the mistake over the ERC.

I appreciate this isn't the outcome Mrs O was hoping for. I can see she feels very strongly that the Financial Ombudsman Service hasn't taken her side. But as I explained above, we do not take sides or represent either one of the parties in a complaint. I've looked carefully at everything Mrs O and Clydesdale have said and, having done so, other than increasing the compensation for distress and inconvenience, I'm unable to find Clydesdale has done anything wrong.

My final decision

My final decision is that Clydesdale Bank Plc must pay Mrs O £100 compensation for distress and inconvenience in full and final settlement of this complaint. I make no other order or award.

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 Ms O to accept or reject my decision before 26 April 2022.

Jan O'Leary
Ombudsman