

The complaint

Mr P and Mrs P complain about the service Legal & General Home Finance Limited (L&G) provided when they applied to transfer their lifetime mortgage to another property and the early repayment charge they had to pay when they redeemed the mortgage.

What happened

Mr P and Mrs P took out a lifetime mortgage of around £440,000 with L&G in late 2018. Under the terms of the mortgage they could transfer it to a new home that was acceptable to L&G, subject to their lending criteria being met. The loan was subject to an early repayment charge (ERC) of up to around £109,650 if it was repaid before the younger of Mr P and Mrs P reached their 88th birthday.

Mr P and Mrs P wanted to downsize to be closer to their family. In January 2020 they approached L&G about transferring their mortgage to another property. L&G approved their application, but the buyer pulled out and the transaction didn't go ahead.

In June 2020 Mr P and Mrs P accepted an offer on their property. L&G agreed they could port their mortgage to another property they already owned. There was an initial delay in the conveyancing process when L&G's solicitors failed to progress things. L&G accepted responsibility for that. It then became apparent an extension to the property hadn't been signed off in line with building regulations. Repairs were needed before that could happen and due to the pandemic Mr P and Mrs P couldn't get their builder to carry out the work in the foreseeable future. They asked L&G to approve porting the mortgage to just the original part of the property, but L&G didn't agree to that. They acknowledged they took too long to let Mr P and Mrs P know their decision.

In mid-August 2020 Mr P and Mrs P asked L&G whether they'd be prepared to waive the ERC. Around the same time, they made a further application to port to another property they were planning to buy. Mr P and Mrs P wanted the transfer to complete by the beginning of October. L&G acknowledged their usual timescales for appointing a valuer were exceeded. But Mr P and Mrs P decided not to go ahead with the transfer shortly after the valuation had been instructed. They redeemed the mortgage and became liable to pay an ERC of around £109,500.

L&G offered Mr P and Mrs P £300 to compensate them for the poor service they'd received. Mr P and Mrs P thought, given all the circumstances, it would be fair for L&G to waive the ERC. Since L&G didn't agree, Mr P and Mrs P brought their complaint to this service. Our investigator felt the level of compensation L&G should pay should be increased to £500. Since the parties didn't accept our investigator's view, the complaint was referred to me to review afresh. I recently issued a provisional decision, an extract of which follows:

What I've provisionally 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 parties have provided detailed information about the circumstances surrounding Mr P and Mrs P's complaint, which I'm grateful for. I don't set out here everything they've told me. No discourtesy is intended by that – it reflects the informal nature of the service we provide. I'd like to reassure the parties I've considered all their information and arguments carefully in coming to my decision.

I'm conscious Mr P and Mrs P had been looking to move since late 2019/early 2020. So, I can understand it was stressful and frustrating for them that they hadn't managed to achieve that around nine or ten months later. And I acknowledge their strength of feeling about the impact of delays by L&G on the time things took, and on their decision to redeem their mortgage.

Mr P feels the impact of the pandemic should be taken into account in deciding what's fair and reasonable. I agree it's fair to assess what happened in Mr P and Mrs P's circumstances against that background. I can understand it made things even more stressful for them. But I think it's fair to say the pandemic put firms under pressure too as they had to adapt to new ways of working which inevitably led to delay. Despite that, L&G have accepted responsibility for some of the delays that occurred here.

I don't think L&G were to blame for anything that happened before June 2020. L&G acknowledge there was an initial delay of around a week after they instructed solicitors in mid-July when the solicitors misfiled their instruction. After that L&G were considering whether they'd allow the transfer of the mortgage to part only of Mr P and Mrs P's property based on a valuation carried out some years before. L&G acknowledged they should have given their decision sooner, although they've explained they were taking legal advice and considering their position during that period, and their records support that.

Mr P says his solicitors felt that without the delays in June/July, it would have been possible to get the transfer Mr P and Mrs P applied for in August completed in line with the planned completion date of 1 October. I think it's too speculative to reach any conclusions about that. Although I think they should have kept Mr P and Mrs P better informed about what was happening between July and mid-August, overall I don't think the time L&G took to come to a decision was unreasonable in the circumstances.

L&G agreed there was a slight delay beyond their usual timescales in instructing a valuation of the property Mr P and Mrs P were planning to transfer their loan to in August. Mr P and Mrs P had asked for this application to be dealt with as a priority. But they decided very soon afterwards to cancel their application, so the delay in instructing the valuer had no impact on how things then progressed.

It's unclear if Mr P and Mrs P had committed to the completion date of 1 October they were working towards. L&G's illustrations sent to them in August 2020 included a clear warning they shouldn't commit until L&G had agreed to the transfer and issued an offer. And I understand Mr P and Mrs P were aware of L&G's timescale of around 12 weeks for porting applications. I acknowledge Mr P and Mrs P's good intentions as regards their purchaser. They were keen to sell their existing property to the buyer they had lined up as it suited the buyer's particular needs. But it doesn't follow that L&G's refusal to waive the ERC means they've been unfair to Mr P and Mrs P.

The ERC was payable under the terms of the mortgage contract to which Mr P and Mrs P agreed. It was set out clearly in their mortgage offer and Mr P and Mrs P understood they'd have to pay it if they redeemed the mortgage.

Mr P and Mrs P argue L&G should reduce or refund the ERC for reasons of fairness. They say that since they'd only had the mortgage for two years when they redeemed it, L&G have had all their money back and a bonus of £109,000 as well.

The purpose of an ERC is to protect the lender from the costs of the mortgage being repaid early. In simple terms, a lender must raise the funds to lend to its customers from a variety of sources, including the wholesale money markets. There's a cost to the lender in raising the funds, which it recovers (with some profit) from the interest its customers are liable for when it lends those funds on.

To be able to provide long term loans like mortgages, a lender has to commit to repaying the costs of its own fund raising over a long term. It therefore needs to be sure that it will be able to recover those costs when it lends the money out. Where a lender charges interest on its mortgages, the parties have some certainty about what they will owe as the term progresses. However, because circumstances can change over the course of a long-term commitment, there is flexibility built into the mortgage to allow the borrower to repay the mortgage early if they need (or choose) to.

But early repayment reduces the income the lender will receive over the mortgage term, and so they charge an ERC to compensate themselves for that lost income. The lender works out the amount of the ERC by looking at its past experience and other information to see what the average cost to it is likely to be across a group of mortgages and raises funds, which it has to pay for, on that basis.

Bearing the above in mind, the ERC Mr P and Mrs P were liable for isn't a bonus for L&G; it covers the cost to them of Mr P and Mrs P repaying the loan early. So, I won't require L&G to refund the ERC to Mr P and Mrs P. But there are some areas where L&G could have provided better service and I think it's fair L&G should compensate them for that.

Mr P and Mrs P have told us poor communication and delays by L&G and the inability to port their mortgage caused them considerable distress, affected their long term financial plans and meant they weren't able to buy the property they wanted. I don't underestimate the stress Mr P and Mrs P were under. I acknowledge they felt under pressure to complete their sale and I've no doubt the pandemic was making things more stressful for them than they might otherwise have been. But in deciding what's fair compensation, I need to consider the impact of L&G's mistakes on Mr P and Mrs P.

I've mentioned the delays I think L&G were responsible for. And I've noted L&G could have communicated better with Mr P and Mrs P in July/August 2020. In addition, Mr P says he spoke to different people at L&G each time he rang and got the impression there was poor internal communication as he had to explain things many times. L&G didn't accept Mr P's concerns and said they can't guarantee the same people will be available to discuss things every time a customer calls. I can understand Mr P found it frustrating if he felt he was having to repeat himself and I'd expect L&G staff to have been able to discuss things with him easily by accessing his information without difficulty.

I'm conscious L&G accepted they'd provided a service below their own expectations and offered Mr P and Mrs P compensation in response to their complaint. Considering everything, I think the £300 compensation L&G offered Mr P and Mrs P to resolve their complaint was fair.

Bearing everything in mind, whilst I understand Mr P and Mrs P will be disappointed by my decision, I intend to partly uphold their complaint and direct L&G to pay them the £300 they've previously offered as compensation for distress and inconvenience.

My provisional decision

I intend to uphold Mr P and Mrs P's complaint in part and direct Legal & General Finance Limited to pay them £300 compensation for distress and inconvenience.

Developments

Mr P is concerned my provisional decision doesn't focus sufficiently on L&G's unfair treatment of him and Mrs P and the impact the pandemic had on their efforts to meet their timetable for moving. He feels I've overlooked L&G's lack of concern about the distress they suffered. And he thinks the compensation I've proposed doesn't take into account L&G's failure to provide advice or offer possible solutions, like those their independent financial adviser (IFA) mentioned, to the problems he and Mrs P faced.

L&G raised some points on the wording of my provisional decision but accepted the outcome.

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 mentioned in my provisional decision that the informal nature of the service we provide means I don't set out everything the parties have told me. But I've considered all their information and arguments carefully in coming to my decision.

I've acknowledged Mr P and Mrs P were in a stressful situation and I understand Mr P feels L&G lacked concern for them. I explained it's fair for the impact of the pandemic on both parties to be considered. And I accepted L&G should have communicated better, as they'd acknowledged. In assessing the level of compensation I've taken into account the impact of L&G's actions on Mr P and Mrs P.

It was unfortunate the pandemic affected Mr P and Mrs P's ability to carry out work that would have enabled their existing property to meet building regulations. But L&G weren't responsible for the difficulties in carrying out the work. And it was reasonable for them to be satisfied their lending would be adequately secured.

It's not clear if the possible solutions the IFA mentioned were put to L&G when they were considering the application to port to Mr P and Mrs P's existing property. I don't think L&G had to identify all the possible options. And from what I've seen they gave reasonable consideration as to how they could help, including whether indemnity insurance would address any risk the property presented as security for the loan. In the end L&G were entitled to come to a commercial decision about the level of risk they were prepared to accept and to decline the porting application if they felt the property didn't offer adequate security. I don't think L&G treated Mr P and Mrs P unfairly in coming to that decision.

I acknowledge the ERC was significant and I can understand why Mr P thinks the level of compensation I proposed was low in comparison. But payment of the ERC resulted from the decision Mr P and Mrs P made to redeem the loan. I'm still satisfied £300 is fair and reasonable to compensate Mr P and Mrs P for the distress and inconvenience they suffered as a result of L&G's mistakes.

Putting things right

I think the offer made by L&G to pay Mr P and Mrs P compensation of £300 was fair and

reasonable in all the circumstances. L&G should make that payment to them now as compensation for distress and inconvenience.

My final decision

I uphold Mr P and Mrs P's complaint in part and direct Legal & General Finance Limited to pay them £300 compensation for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P and Mrs P to accept or reject my decision before 22 April 2022.

Julia Wilkinson
Ombudsman