

## **The complaint**

Miss P is unhappy with the service received from The Co-operative Bank Plc (trading as Platform) when trying to port her mortgage.

## **What happened**

Miss P held a mortgage with Platform, her rate was fixed for five-years at 2.39% until December 2021. The offer for this mortgage explained that if the mortgage was redeemed early, an early repayment charge (ERC) would apply on a staggered basis – starting with 5% of the amount repaid in the first year, reducing by 1% each year thereafter until the end date of the product.

In September 2020, Miss P began discussions with Platform about porting her mortgage and borrowing more money. Miss P's offer on a new property was accepted around that time. Her intention was to reside at the new property and transfer her existing property to a buy-to-let. Platform said the process would take 3-4 months to complete, as its normal service levels were impacted.

Unhappy with the timescales quoted, Miss P explored other options. Her partner (a mortgage advisor) suggested applying for a new mortgage with Platform, through an intermediary channel, as the timescales were shorter (four weeks). Miss P's mortgage was agreed within these timescales and her purchase completed four weeks later.

Miss P complained to Platform about being charged an ERC in the circumstances. Platform didn't agree to waive the ERC, so Miss P raised a formal complaint. Miss P also raised concerns about Platform's complaints handling process. She says there was a lack of communication on Platform's part and it took eight weeks to provide a generic response. She also says she was accused of mortgage fraud.

Unhappy with Platform's response, Miss P brought her complaint to our service. An investigator looked into things and didn't uphold the complaint. He thought Platform was within its rights to charge an ERC in line with the terms of Miss P's mortgage. Miss P didn't agree and asked for the case to be considered by an ombudsman.

I issued my provisional findings to both parties to explain why I thought this complaint should be upheld. Platform didn't respond to my provisional findings. Miss P responded to say she agreed.

## **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.

Whilst I agree the ERC does form part of the terms and conditions of the mortgage, I must consider what's fair and reasonable in the circumstances of this case.

It's clear Miss P's intention to port her mortgage was driven by her desire to avoid paying an ERC. When she approached her lender (Platform) she was quoted timescales of 3-4 months. Platform has acknowledged in its final response letter that its usual timescales of 6-8 weeks was impacted by a high demand for its products and services. I must consider whether it's fair for Miss P to suffer a loss as a result.

Miss P's preferred option was to port her mortgage. Had Platform been able to process her application within a reasonable timeframe, I'm persuaded she would have proceeded with the application which was likely to be accepted as we've seen by the new mortgage being granted.

The timescales quoted to Miss P didn't suit her and would put her at risk of her purchase falling through. This is supported by the fact she says she completed on her purchase in 8 weeks. When considering everything, I don't think 3-4 months to consider a porting application is reasonable, especially as Platform was still able to turn around brand-new applications in four weeks.

Platform has provided a reason for the different turnaround times, but from Miss P's perspective I can see why it would be difficult for her to understand the difference. So, in the circumstances I don't think it was unreasonable for her to consider other options. Miss P could have chosen to take a mortgage with a different lender, but she decided to apply again with Platform in the hope that as a remaining customer, it might consider waiving the ERC.

I'm not persuaded it was fair to expect Miss P to wait 3-4 months for her application to be processed and risk losing the home she wanted to purchase. Leaving customers with no choice but to explore other options is essentially removing a key feature of the mortgage – the ability to port. In normal circumstances I wouldn't expect a lender to waive the ERC when a customer repays their mortgage early and applies for a new product. But as Miss P's actions were driven by circumstances outside of her control, I don't think it's fair that she suffers a loss as a result.

During a call that took place on 3 November 2020, Platform asked Miss P about her living arrangements. It asked whether she was living in her existing property or letting it out. The latter would be in breach of her residential mortgage terms. There were notes on file suggesting her current property was being let, but that was her intention after purchasing her new property. Miss P has interpreted the question as an accusation of mortgage fraud. When considering everything, I'm not persuaded that was Platform's intention. During the call Platform explained why the question was asked and apologised for the mistake. So, the confusion was cleared up at the time.

Miss P says Platform took the full 8 weeks to respond to her complaint, only to provide a generic response. I can see that she was promised call backs during this time but on occasion she didn't hear back within the agreed timescales. Businesses are allowed 8 weeks to respond to a complaint and Miss P should have allowed that. But if calls were agreed those should have been honoured. The first response issued in mid-December 2020 didn't include the full facts of the circumstances – including commenting on the key factor here, that being Miss P remaining a customer of Platform's and what impact, if any, this had on Platform's outcome of the complaint. So, Miss P had to get back in touch to ask Platform to explore that part of her complaint further. This led to another investigation and new final response being issued in Mid-January 2021. I find that this would have likely caused Miss P an element of unnecessary distress and inconvenience in the circumstances.

## **Putting things right**

For reasons I've explained, Platform should put Miss P back in the position she would have been in if her ability to port wasn't restricted.

Platform says that on completion Miss P had around £89,000 outstanding on her existing mortgage. Her rate was 2.39% fixed until 31 December 2021. The new mortgage was for a total amount of around £269,000 on a rate of 1.85% fixed for five years. Other changes were made to the mortgage such as a term extension and adding a joint applicant – both of which could have been actioned as part of a porting application.

I think the most fair and reasonable way to settle this complaint and put things right for Miss P is to refund her the ERC applied. I appreciate Miss P has benefitted from a slightly lower rate on a small portion of her mortgage, but as explained the need to apply for a new mortgage was a consequence of the porting restrictions. Such a settlement will avoid causing the disruption of having to alter the mortgage retrospectively at any detriment to Miss P.

As such, to ensure a fair compromise in the circumstances for both parties and to reflect the benefit that Miss P will receive as a result of the difference in interest rates, I won't be awarding further compensation for the distress and inconvenience caused by Platform's errors during the complaint handling process or asking it to pay 8% interest on top of the ERC refund.

## **My final decision**

My final decision is that I uphold this complaint and require The Co-operative Bank Plc (trading as Platform) to refund the early repayment charge paid by Miss P.

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

Arazu Eid  
**Ombudsman**