

The complaint

Mr and Mrs D complain that Lloyds Bank PLC trading as Scottish Widows Bank (“SWB”) gave them the wrong redemption figure for their mortgage. They corrected this, but SWB still took the wrong amount. They said this was negligent fraud, and they wanted compensation.

What happened

Mr and Mrs D wanted to redeem their mortgage with SWB, in order to remortgage elsewhere. They said that when they received a redemption figure from their solicitors (assigned by their new lender) there was no breakdown, so they contacted SWB to query it. They discovered that SWB had calculated the early repayment charge (“ERC”) wrongly, and had greatly overestimated what they owed. Mr and Mrs D were reassured by SWB that this mistake would be corrected, but they said it wasn’t, and the incorrect amount was taken. They said they were overcharged by well over £5,000.

Mr and Mrs D said SWB had repaid what was overcharged, but had paid only £100 in compensation for what had gone wrong. They said this didn’t reflect the magnitude of the mistake SWB had made, and it didn’t cover the time Mr D spent putting this right. They said they’d donated this to charity.

Mr and Mrs D also wanted to complain about how SWB handled the complaint they made.

Mr and Mrs D said they had lost over £1,000 in Mr D’s income. And they’d paid an ERC of almost £3,000, which they referred to as profit for SWB. So they said that SWB should pay about half of this to them as compensation.

SWB accepted it had made a mistake over the ERC payable on part of Mr and Mrs D’s mortgage. It said this was human error, and it was sorry about this. It wanted to reassure them that this was never an attempt to defraud them. It paid them £100. But SWB disputed that it had failed to handle Mr and Mrs D’s complaint properly. SWB felt its compensation payment was fair, and it wouldn’t refund their ERC.

Our investigator didn’t think this complaint should be upheld. He said our service couldn’t look into the complaint handling issues Mr and Mrs D had raised. We could look at SWB’s actions when the mortgage was redeemed, and if SWB then did enough to put things right.

Both sides agreed that a mistake was made, and that Mr D had been in touch to correct this before the mortgage was redeemed, but SWB still used an incorrect redemption figure. Our investigator said he could see that SWB did put a note on Mr and Mrs D’s account showing the right ERC, but that wasn’t actioned. Our investigator thought this was human error.

Once Mr D told SWB about this, it made the refund the same day. So our investigator thought SWB sorted this out in a reasonable time, to minimise the impact on Mr and Mrs D.

Our investigator understood Mr D had spent a lot of time on this issue, but he said our service doesn’t assess compensation just on the basis of someone’s hourly rate. He’d considered the inconvenience to Mr and Mrs D, and thought SWB’s payment was fair.

Mr D replied on behalf of himself and Mrs D, to say they were disappointed. They thought one mistake was human error, but making the same mistake twice was negligent. They felt that big corporations can do as they please with little or no threat of any meaningful punishment. And they said that as they had paid several thousand pounds in ERCs, they didn't think they should be fobbed off with £100.

Mr and Mrs D wanted their complaint to be considered by an ombudsman, so it was passed to me for a final decision. I then reached my provisional decision on this case.

My provisional decision

I explained in my provisional decision why I did propose to uphold. This is what I said then:

I understand that Mr and Mrs D have been very unhappy with how their complaint was handled. They said SWB didn't try to get in touch to discuss the complaint before issuing a response, and it paid £100 in compensation without their agreement. They felt this should have been offered, rather than imposed. I know Mr and Mrs D have strong feelings about this, but unfortunately, I agree with our investigator that these points lie outside of our service's jurisdiction. Our investigator explained to Mr and Mrs D that unfortunately we're not able to look at this, and I understand they no longer pursue this point. I've included my own view on this, solely for the avoidance of any doubt.

Both sides have accepted that things went wrong here. But there isn't agreement on why this happened. SWB has described this as human error, but Mr D says that SWB fraudulently obtained money from him, and if he hadn't double checked, then the money would have been retained.

Mr D has suggested that SWB should be punished for this. But our service isn't a regulator, and we don't fine or punish businesses. We look at what's happened in an individual case, and seek to provide a fair and reasonable outcome. So that's what I've tried to do here.

It is clear SWB made a mistake. And although Mr D pointed out that mistake to SWB, it was repeated. Mr D has set out his view, that only his actions stopped him from having to pay a greatly over-inflated ERC. It does look like the problem was only identified by Mr D, so he's right in fact, but I'm not clear that this is how things ought to have worked.

When someone redeems a mortgage and moves to a new lender, a solicitor usually completes the formalities. And here Mr D has told us that he also rang the solicitors who were acting for him (assigned by his new mortgage company) and told that firm the redemption figure SWB had provided was wrong. But this still appears to be the figure that this firm then approved and paid, without further reference to Mr and Mrs D.

I don't think this takes away from the mistakes made, twice, by SWB. But I do think it means that SWB isn't solely and entirely responsible for what went wrong here.

Mr and Mrs D said they should be paid much more compensation. They have compared the compensation that SWB has paid them to the amount of the ERC that they were charged, of £3,000. So they say that refunding half of this would still leave SWB with a significant profit. But an ERC isn't simply profit. An ERC is a standard part of a fixed interest rate on a mortgage, and it allows lenders to ensure that they will still recover the costs of lending, if someone redeems a mortgage before that fixed interest rate period ends. Financial services rules mean that the ERC isn't just a windfall for lenders. It has

to be a reasonable pre-estimate of the costs incurred to the lender as a result of borrowers repaying their mortgages back early.

I can see that Mr and Mrs D were properly notified of the ERCs when they took out the fixed rate lending. And, for the reasons above, I don't think that SWB has to repay the ERC which was charged in this case. For the same reasons, I don't think that compensation in this case should be based on the ERC that Mr and Mrs D have paid. I also agree with our investigator, that it's not appropriate to work out compensation solely on the basis of the hourly rate that Mr D himself charges.

But I do think that SWB let Mr and Mrs D down, and I think that it should pay a little more compensation than it has already paid. I understand this is likely to fall far short of what Mr and Mrs D would like, but I think that a total payment of £250 in this complaint would provide a fair and reasonable outcome in this case. And, as SWB has already paid £100 to Mr and Mrs D, that means my award would require it to pay £150 now. That's what I currently propose to award.

I invited the parties to make any final points, if they wanted, before issuing my 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.

Both sides replied to my provisional decision. SWB said that it was happy to pay the additional compensation I'd suggested. And Mr and Mrs D said that they had nothing further to add, other than that they appreciated my recognising the failure of SWB in this instance.

Neither side has offered any further argument or evidence in response to my provisional decision, and I haven't changed my mind. I'll now make the decision I originally proposed.

My final decision

My final decision is that Lloyds Bank PLC trading as Scottish Widows Bank must pay Mr and Mrs D £150 in compensation, in addition to the £100 it has already paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D and Mrs D to accept or reject my decision before 14 September 2022.

Esther Absalom-Gough

Ombudsman