

## **The complaint**

Mr W's complaint is that Clydesdale Bank Plc trading as Yorkshire Bank (and referred to here as YB) declined his request to port (transfer) his mortgage interest rate product onto a new mortgage on a different property. To settle the complaint, Mr W wants YB to reinstate the mortgage on his new property and pay him compensation for his financial losses.

## **What happened**

I will summarise the complaint in less detail than it's been presented. There are several reasons for this. First of all, the history of the matter is set out in detail in correspondence, and in the investigator's letter dated 19 May 2022. All parties have a copy of that letter, so there is no need for me to repeat the details here. I will instead concentrate on giving the reasons for my decision. I also note that YB has agreed it made a mistake, and so all I need to decide is what needs to be done to put things right. In addition, our decisions are published, so it's important I don't include any information that might lead to Mr W being identified. So for these reasons, I will keep my summary of what happened quite brief.

Mr W had a mortgage with YB for just under £300,000 that was on an interest rate product taken out in April 2020 when Mr W fixed the interest rate for just over two years, until 30 June 2022. The term of the mortgage at that point was 20 years and 2 months. The loan to value ratio (LTV) was 21%. If the mortgage was repaid during the fixed rate period, an early repayment charge (ERC) would apply. The mortgage conditions said the interest rate product was portable, subject to meeting YB's lending criteria.

In 2021 Mr W decided to move house. He sold his property for £1.3 million and decided to buy another property for £492,500. He applied to port the mortgage in full onto the new property, increasing the LTV to around 59%. After considering the application, YB declined it on the basis that Mr W wasn't able to demonstrate that he had sufficient income to service the mortgage.

Mr W thought this was unfair, explaining that he'd paid himself about £145,000 the previous year, drawing £130,000 from his pension fund and £15,000 from his company. Mr W also said he had planning permission to build two houses valued at £400,000 on a piece of land he owned, and more than £40,000 in his bank account. Nevertheless, YB would not agree to the port. Mr W sold his property, redeemed the mortgage and paid the ERC. He bought his new property free of mortgage.

A complaint was raised with YB, which didn't uphold it, so Mr W referred the complaint to our service. An investigator looked at what had happened and thought the complaint should be upheld. He was satisfied that, under the regulations that apply to porting, YB should have allowed a like-for-like port of the interest rate product, at the same LTV of 21%.

The investigator asked YB to reinstate Mr W's mortgage as if he'd ported it with the same LTV of 21%, reimburse that proportion of the ERC he would have been due, and reimburse Mr W for the difference in the amount repaid when he redeemed against the amount he

would have repaid if he'd ported, less the monthly repayments he'd have had to make. The investigator also asked YB to pay compensation of £250.

YB agreed to this but Mr W did not. He wanted the full £300,000 reinstated on his new property. Mr W also said that the LTV should be taken against the value of the property as it is now, not as it was when he purchased it. This would make the LTV 47.5%.

Mr W was also disappointed that the compensation of £250 didn't include any penalty against YB. In addition, Mr W has explained to us that he'd always had a dream of being able to buy a holiday cottage, and he's thought about how very different his life would have been if YB had ported the mortgage. If the port had been allowed, he would have had the funds available to be able to buy a holiday cottage. If the mortgage is not reinstated in full, Mr W wonders how he can ever realise this dream.

Because Mr W didn't accept the investigator's findings, 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.

The Financial Ombudsman Service isn't a regulator, and so I have no power to impose a penalty on YB, even if I thought it was appropriate to do so. In this case, YB made a mistake, which it has offered to put right, which is what we would expect it to do.

As I said at the outset, YB has agreed to reinstate the mortgage at 21% LTV, but Mr W doesn't think this is reasonable. He wants the full amount of £300,000 to be put onto a new mortgage on the property. However, I'm not persuaded this is a fair outcome.

Under the regulations, YB should have allowed a like-for-like port of the mortgage onto the new property, so a 21% LTV. I think this is fair, and that it should be calculated at the point where the port would have happened in May 2021, so on the property purchase price of £492,500, not any increased valuation since then.

I've noted what Mr W has said about how things could have been very different for him if he'd been allowed to port the full £300,000, particularly in relation to being able to buy a holiday cottage. However, after selling his property for £1.3 million and buying for £492,500, even taking account of the costs of sale, Mr W would still have had at least £700,000 from the proceeds of sale.

Given this, I'm not persuaded that a holiday cottage was unaffordable for him in May 2021. So although I acknowledge Mr W's disappointment about this, I don't think that responsibility for him not buying a cottage can be attributed to YB.

I appreciate YB's actions caused Mr W distress and inconvenience, but I think the redress recommended by the investigator is fair, reasonable and proportionate.

### **Putting things right**

If Mr W wants the mortgage reinstated, I think YB should do this at a LTV of 21% on £492,500 (so £103,425) over the remainder of the term. As at October 2022 this is 17 years 8 months. The mortgage interest rate product had a further 13 repayments from the date the mortgage was redeemed in May 2021.

As the interest rate product expired on 30 June 2022, if Mr W accepts this decision, I think YB should look at what interest rate products would have been available from 1 July 2022 and re-work the mortgage from 1 July 2022 on the lowest two-year fixed rate product available from that date, if Mr W confirms his agreement to this. I think it is likely Mr W would probably have fixed his interest rate again at that point, and so it is only fair that he is put in the position he'd have been in if the port had gone ahead in May 2021.

YB should also do the following:

- reimburse Mr W the ERC he paid on redeeming the mortgage on the date of redemption,
- deduct from this the proportionate amount of the ERC he would have paid if he'd ported at 21% LTV the amount he would have paid in monthly mortgage payments if the mortgage had been ported, from May 2021 to date;
- take into account when calculating any refund the fixed rate product that expired on 30 June 2022 and any other fixed-rate product applied to the remaining balance, as detailed above, subject to Mr W's agreement to any new product.

If there is any remaining balance due to Mr W, YB should pay interest on this at 8% simple per annum from the date of redemption of the mortgage to the date of reimbursement. If YB considers that it is required by HM Revenue & Customs to withhold income tax from any interest, it should tell Mr W how much it has taken off. YB should also give Mr W a tax deduction certificate if requested, so the tax can be reclaimed from HM Revenue & Customs if appropriate.

I've noted Mr W's claim for solicitors' fees incurred in redeeming the mortgage and a mortgage exit administration fee. However, when a mortgage interest rate product is ported, the existing mortgage must be redeemed, and so these fees would have been payable in any event. Therefore I'm not ordering YB to reimburse these costs.

Finally, I direct YB to pay Mr W £250 compensation for distress and inconvenience.

### **My final decision**

My final decision is that I uphold this complaint. In full and final settlement I direct Clydesdale Bank Plc trading as Yorkshire Bank to settle the complaint as set out above. 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 Mr W to accept or reject my decision before 2 November 2022.

Jan O'Leary  
**Ombudsman**