

The complaint

Mr D and Mr R complain Skipton Building Society said the Early Repayment Charge (“ERC”) on their mortgage would take account of a 10% overpayment allowance on the mortgage, when they ported the mortgage and reduced their borrowing. But it didn’t reduce their ERC.

What happened

Whilst the complaint is brought by both Mr D and Mr R, as the mortgage is in both their names, all of our dealings have been with Mr R. So I’ll mainly refer to him below.

Mr D and Mr R planned to move house. They had taken out a mortgage with Skipton on their existing home in 2019, and had a five year fixed interest rate, running until 2024. They first planned to move to a new build home, which would have reduced their mortgage somewhat. But the timings didn’t work for the first property they’d hoped to buy, so Mr D and Mr R went ahead with a different purchase.

Mr R said he discussed with their financial advisor at the time whether any ERC would be reduced to take account of the 10% overpayment allowance on their mortgage. Mr R said their advisor told them it would be reduced, and she’d confirmed this with Skipton.

Mr R said they were worried because neither redemption statement, for the first or second planned purchase, reflected that their ERC would be reduced when they were porting their mortgage. So they asked for clarification on this. Mr R said they believed they would pay some early repayment charges, but this would be calculated after any 10% overpayment allowance was considered. So they thought they would pay around £800-£900. But they said Skipton wouldn’t confirm in writing what they would actually pay.

Mr R said he spoke to Skipton, and it confirmed the ERC would be based on the amount of the mortgage they were repaying, but it would be reduced based on the 10% overpayment allowance. Mr R said Skipton confirmed this on calls on 2 September and 4 October.

The house sale and purchase completed on 8 October, and Mr D and Mr R said they were charged around £2,600. They said they didn’t know this was going to happen until the day of completion. They said they’d complained, and Skipton initially said it would give them this money back. But then it refused. And they said emails showed Skipton had confirmed the ERC would be waived providing they ported the mortgage and completed on the same day.

Mr R said when Skipton responded to their complaint, it accepted they’d been given wrong information, but said the ERC had been charged in line with their original mortgage. So it wouldn’t refund the ERC. It would only pay £350 in compensation.

Mr R said that didn’t make up for what had happened. They’d had to borrow money for urgent work on the new house, which they’d expected to be able to pay for themselves.

Mr R thought Skipton should at least do what it originally offered, and reduce the ERC on their mortgage. So it should refund £1,777.50 as a minimum, but probably the whole ERC they’d been charged. And he thought it should pay more compensation. They asked for total

compensation in the order of £3,250.

Our investigator didn't think this complaint should be upheld. He understood this had been upsetting and stressful for Mr D and Mr R, but he did think Skipton's response was fair. He said although it can be concerning to see the full ERC on the statements, that wasn't unfair, it was standard practice, and he explained why that's done.

Our investigator did agree that Skipton had made mistakes, but he couldn't see that Skipton then agreed to pay the ERC back. And he said Skipton had followed the terms of Mr D and Mr R's original mortgage. So he thought it didn't have to pay this money back.

Our investigator didn't think Mr D and Mr R would have done anything differently if they'd been given correct advice on how the ERC would be calculated. He thought they would still have gone ahead with the house move, and paid the fees. So he thought that a payment of £350 fairly reflected the impact of the customer service failings on Mr D and Mr R.

Mr R replied. He said he and Mr D were glad our investigator agreed Skipton had made mistakes, but didn't think he'd got the outcome right. Mr R was unhappy that we didn't intend to penalise Skipton for its clear errors. He wanted to stress that these errors were repeated, and they'd relied on what Skipton said.

Mr R didn't think it was relevant to ask if they would have behaved differently if they'd received correct advice. But he said with hindsight, they thought they wouldn't have continued with the purchase of the house they bought. They said if they'd found out earlier about the ERC they could have tried to make arrangements to fund an overpayment without penalty. And they also had a reservation on a different, and more expensive property. Given the extra costs, they could have bought that property instead, not decreased their mortgage, and not incurred any ERC. But they said they weren't able to make informed decisions, because they got no proper advice from Skipton.

They said they were certain that they wouldn't have ended up with thousands in fees, and having to go into personal debt. They expected the ERC to be paid back, with interest on top. And they said that our service had told lenders to refund an ERC before. They quoted two previous cases which they said were similar, and set a precedent.

Mr R said that he and Mr D wanted this 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 issued a provisional decision on this complaint and explained why I did propose to uphold it in part. This is what I said then:

I understand that Mr R may not have read his 2019 mortgage offer, when trying to resolve the issue of how an ERC would be calculated when he reduced the amount of his mortgage. But I do think it's clear from the 2019 terms that Skipton wouldn't make any allowance for the 10% overpayment allowance when someone moves, ports a mortgage, and reduces the amount of their borrowing. The original terms say *"You can use the 10% overpayment allowance up to 5 working days before the redemption of your mortgage."*

Mr R said he hadn't understood how this would work, because he didn't think porting a mortgage counts as a redemption, but the 2019 terms set out how portability works, like this – *"If you complete on your new loan at the same time as you redeem your existing loan no early repayment charge will be payable."*

So it's clear that porting does involve the redemption of the existing loan. And those terms then go on to say *"If you do not port your loan in full, an early repayment charge will be payable on the balance not being ported."*

I think that Skipton followed the terms of Mr R's mortgage when it charged an ERC on the full amount by which his mortgage was being reduced.

Mr R said his advisor told him Skipton would include the 10% overpayment allowance when he reduced his mortgage, so an ERC would be based on the amount of the mortgage reduction, minus 10% of the overall lending. It's perhaps surprising that a mortgage broker would give this advice, as this isn't the usual approach taken by lenders, and it's not in line with Mr R's existing mortgage. But I note Mr R's broker said Skipton confirmed this to her.

Mr R didn't get anything in writing which said this from Skipton. So he rang Skipton. And it's not in dispute that Skipton gave Mr R incorrect advice on two calls, which happened on 2 September and 4 October. On both of those calls, Mr R outlined his understanding that when an ERC was calculated, Skipton would treat part of the payment he and Mr D made for redemption, as an overpayment. Then it would calculate the ERC based on the amount which was left owing after this. Skipton's staff wrongly confirmed that to Mr R, on each call.

Our investigator asked about the impact of this misinformation, and Mr R said he didn't think this was really relevant, Skipton should be penalised anyway for giving wrong information. But our service isn't a regulator, and we don't have powers to penalise firms for their mistakes. Rather, we try to provide a fair and reasonable outcome in the particular circumstances of each complaint. So it is important to think about how this impacted Mr R and Mr D, and what might have happened differently if they'd been given correct information.

Mr R and Mr D set out the impact of this on them personally. They said they only found out on the day of completion that they would be charged an ERC on the whole reduction on their mortgage. But Mr R also sent us an email dated two days before completion, where he says Skipton's ERC has been calculated without giving credit for the overpayment allowance. He said then that he and Mr D would need to complete on this basis, and at their risk.

I appreciate that only two days before completion is very late for the position to be confirmed, and in reality Mr R and Mr D had few real choices then. So I need to think about what would have happened if the correct position had been confirmed earlier.

Mr R said he might've been able to pay the 10% overpayment in advance, though he accepts this would've been difficult. From what he's said, I don't think it's likely that Mr R and Mr D would have achieved this. But I also think, because Skipton's advice was confused and unhelpful, they lost the chance to try. I'll bear that in mind when I think about compensation.

Mr R also said he and Mr D had a reservation on a new-build property, and they could have bought that instead. But Mr R also said they didn't buy this because the timetable for this property had changed. And he's referred to them having their heart set on the place they did buy. For those reasons, I think it's unlikely they would've bought the more expensive house.

Finally, Mr R said that what would not have happened is the position he and Mr D had ended up in, of having to take on new personal debt when they moved. The purpose of their move was to reduce their mortgage and their personal debt, all at once. So Mr R said he was planning this carefully, and watching costs closely. But all this was upended when he discovered he would be charged an ERC on the full amount of the mortgage reduction.

Because Mr R phoned Skipton about this twice, and because each time he was concerned to work out how much ERC he would be paying, I do think it's likely that he was keeping a very close eye on costs. And because Skipton wasn't giving him the right advice, but instead endorsed his misunderstanding of how the ERC would be calculated, he was planning on the wrong basis. Again, I'll bear this in mind when I'm thinking about compensation.

I do think Skipton followed the terms Mr R and Mr D agreed to in 2019, when it charged an ERC in 2021 on the full amount of their mortgage reduction. I don't think Skipton has to pay this back. Mr R says there is precedent for our service telling firms to do so, but each decision of this service is made on its own merits, and here, because I don't think it's most likely Mr R and Mr D would've avoided paying the ERC if they had correct advice at all stages, I don't think it's fair and reasonable for me to ask Skipton to repay the ERC in full.

But I do think Skipton should pay more than the £350 it offered. Mr R and Mr D are clearly deeply disappointed and upset by what has happened. And although I think it's most likely they would still be in broadly the same position now if they'd been given correct advice, they weren't able to make fully and properly informed decisions about their purchase. They also lost the chance, however slim, of avoiding the full amount of the ERC they were charged.

For those reasons, I think Skipton should pay a total of £600 in compensation.

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.

Skipton replied, to say it had no further points to add, and it would agree to pay £600 in compensation. Mr D and Mr R didn't reply.

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

My final decision

My final decision is that Skipton Building Society must pay Mr R and Mr D £600 in compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D and Mr R to accept or reject my decision before 9 November 2022.

Esther Absalom-Gough
Ombudsman