

The complaint

Mr G and Mr C have complained about the early repayment charge (ERC) on their mortgage. Leeds Building Society gave Mr G incorrect information in a phone call about when they could remortgage without incurring an ERC, and they say they relied on that information to their detriment.

Whilst this was a joint mortgage, this has mainly been dealt with by Mr G as part of his intended remortgage was to take the mortgage into his sole name as he'd separated from Mr C. Any reference to Mr G in this decision should be taken to mean him also acting on behalf of Mr C where appropriate.

What happened

Mr G and Mr C took out this mortgage in January 2018. The mortgage offer shows the interest rate was fixed until 31 March 2023, and that if the mortgage was repaid before that date then an ERC would be charged. That information was repeated in each of the annual mortgage statements that were issued.

On 24 May 2022 Mr G phoned Leeds. He was abroad at the time with no access to his paperwork and he wanted to know when he could remortgage to a different lender without incurring an ERC. He was told that the product came to an end on 31 March 2023, but that he could remortgage from 1 January 2023 without incurring an ERC.

Mr G followed up the call with a secure message to confirm that information *"I'm just trying to clarify the exact date I could switch my mortgage without having to pay a penalty please?"* Leeds responded on 27 May to say that there would be no ERC after 31 March 2023.

There was a further phone call on 1 June in which it was explained that the information given on 24 May was incorrect, and there would be an ERC charged if the mortgage was repaid on or before 31 March 2023. Mr G said that he'd started an application for a new mortgage, and that whilst he could stop it he might not do so depending on the amount of the ERC.

Leeds issued a response to Mr G's complaint on 6 June and in that it again confirmed the ERC would be payable up to 31 March 2023. It apologised for the incorrect information Mr G had been given on the phone on 24 May and offered £50 compensation for that. It said the ERC as at the date of the letter was just under £4,800.

Mr G and Mr C referred the complaint to us in July 2022 and in the meantime Mr G continued with his new application with the other lender. He received a mortgage offer from the other lender on 8 August 2022 and paid his broker a fee a few days later. He then instructed a solicitor, paying them on 24 September.

Our investigator looked at the complaint. He said whilst Leeds had initially given the wrong information to Mr G, that was corrected within days and long before Mr G had paid any fees for the new mortgage application. He said whilst he could understand why Mr G decided to proceed with the new mortgage application, he'd done so in the knowledge the ERC would

be payable if the mortgage was repaid on or before 31 March 2023. He recommended the compensation be increased to £175.

Mr G didn't accept our investigator's findings and so the matter has been passed to me to decide.

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 trust Mr G and Mr C won't take it as a discourtesy that I've condensed their complaint in the way that I have. Although I've read and considered the whole file I'll keep my comments to what I think is relevant. If I don't comment on any specific point it's not because I've not considered it but because I don't think I need to comment on it in order to reach the right outcome.

Mr G has said that Leeds misled him into thinking he could remortgage from 1 January 2023 without incurring an ERC. This is what we call a misrepresentation; that is, Leeds gave incorrect information to Mr G about the ERC on his mortgage with Mr C.

When we're looking at complaints about misrepresentation we consider the appropriate remedy is to place the consumer in the position they would be in if the incorrect information hadn't been given. We don't put them in the position they would be in if the misinformation had been correct (that is, Mr G could remortgage on 1 January 2023 without incurring an ERC).

Mr G is already back in the position he would have been in had he been told on 24 May that he would incur an ERC if he remortgaged on or before 31 March 2023, as that information was given to him on 27 May (in a secure message), 1 June (on the phone) and 6 June (in an email which was Leeds' response to the complaint).

He could never have been in the position where he could remortgage sooner without incurring an ERC. For that reason, there are no grounds for me to order Leeds to do anything further in respect of this issue.

Our investigator looked into whether Mr G had incurred any irretrievable costs in those few days as we would then have ordered Leeds to cover those. But Mr G didn't incur any costs until he received his new mortgage offer on 8 August. Whilst I can understand why he didn't want to do so, Mr G could have pulled out of the remortgage entirely without cost up until that point and so I can't hold Leeds liable for Mr G's costs as it was his choice to continue once Leeds had made the true position clear to him.

Mr G has said *"Even when it became clear that I had been given the incorrect date, I still assumed (as it was their mistake) we would be able resolve the situation amicably."* Whilst I appreciate that was Mr G's assumption, there's nothing that Leeds said that led him to that mistaken belief. It was clear in its response to the complaint that the ERC was fairly due, and I can't order Leeds to do something just because Mr G assumed it would.

Whilst I acknowledge how frustrating it is when a business makes a mistake, mistakes do happen. In this case it was simple human error that meant Mr G was initially told that they wouldn't incur an ERC from 1 January 2023. As the mistake was corrected within days Mr G has already had the appropriate remedy in that he knew the true position before he was tied to remortgaging.

Mr G put various offers to Leeds to end his mortgage early, such as Leeds just charging the remaining interest due until 31 March 2023 rather than the ERC.

The rules of mortgage regulation include provisions about ERCs. In summary, they say that an ERC must be able to be expressed as a cash value and must be a reasonable pre-estimate of the costs resulting from early termination of the mortgage. But a lender can choose how it calculates an ERC and can calculate the same level of ERC across a group of mortgages of similar type, rather than for individual loans.

Leeds is entitled to set an ERC based not on the actual cost to it of Mr G and Mr C ending their own mortgage early, but on a reasonable pre-estimate of the costs of early termination of a group of mortgages of similar type. And there's no obligation on Leeds to vary that amount just because Mr G and Mr C might repay their mortgage only weeks before the ERC period was due to end.

Lenders generally raise money to offer preferential rates for their mortgage customers (both new and existing) on the wholesale money markets. There's a cost to that, and it's generally fixed in advance. But a lender expects to receive a return to outweigh those costs in the form of interest on the mortgages it makes using the money it's borrowed. If a mortgage ends early, it doesn't get that interest, and so doesn't make back the costs in raising the funds to offer that preferential rate.

It's complex and onerous for lenders to calculate individual losses as and when individual customers decide to terminate their contracts early. And it isn't possible to estimate, for any given individual, when or if they might do so. So Leeds is allowed to project how many customers, on average, are likely to terminate early and, on average, at what point they're likely to do so, and to apportion that cost across the mortgages in the group. For some individual mortgages that will end up being an over-calculation, but for others it will be an under-calculation. But that's allowed; Leeds doesn't have to refund the difference, but equally it doesn't tell a consumer to pay the difference if it goes the other way.

I understand Mr G thinks he and Mr C could have just made the last payment and then they would have made all the payments due in the fixed rate period, and that it would obviously have been a lot cheaper for them to pay that rather than the ERC. But it wasn't an ERC until a set amount of payments were made; it was an ERC until 31 March 2023. Even if Mr G and Mr C make the payment due in March 2023, they would still incur the ERC if they repay the mortgage in full before 31 March 2023.

In the circumstances, I'm satisfied Leeds are entitled to charge Mr G and Mr C an ERC as set out in their mortgage contract if they repay their mortgage early. I'm also satisfied there is no requirement for Leeds to only charge an amount worked out based on Mr G and Mr C's individual loan and date of redemption, instead it was allowed to charge an amount based on its pre-estimate of the costs of early termination of a group of mortgages of similar type.

Mr G has said that they took out the mortgage in January 2018 so it should end in January 2023. But the fixed rate Mr G and Mr C applied for was always due to end on 31 March 2023. That was explained in the contractual mortgage offer in December 2017. It didn't matter whether the mortgage completed in December 2017 or May 2018 (for example), the fixed rate would always run until 31 March 2023.

Some lenders offer their fixed rates for a set time period (such as 60 months), others offer their fixed rates until a set date in time (such as until 31 March 2023). Neither is right or wrong, and both are completely acceptable ways to set up a fixed rate, provided the documentation sets out the details clearly. It's clear from the mortgage offer in this case that the fixed rate would end on a set date regardless of when it started and Mr G and Mr C

accepted that offer. The 2018 preferential rate was sold to Mr G and Mr C by a broker acting on their behalf, so if they feel they were mis-advised on that basis then they would need to raise that complaint with their broker, not with Leeds.

Having considered everything I don't order Leeds to waive or vary the ERC because:

- Leeds is entitled to charge Mr G and Mr C the ERC set out in their mortgage contract if they repay their mortgage early.
- There is no requirement for Leeds to only charge an amount worked out based on Mr G and Mr C's individual loan and date of redemption, instead it is allowed to charge an amount based on its pre-estimate of the costs of early termination of a group of mortgages of similar type.
- Leeds didn't have to treat Mr G and Mr C any differently to any of its other customers that redeem their mortgage whilst there is an ERC in force.
- Mr G was told on 27 May, 1 June and 6 June that the ERC would be charged until 31 March 2023, and so any potential misrepresentation was resolved at that point which was just days after the call where the initial misinformation was given.

We're not the regulator and it's not our role to fine or punish a business and our awards aren't punitive. Clearly no amount of compensation can change what happened; all I can do is consider the impact of a business' actions on the consumer. I also look at the awards of compensation we've made in other similar cases.

I can see Leeds offered £50 in its response to the complaint, but our investigator felt £175 was a more reasonable sum

I agree with our investigator that £50 isn't enough bearing in mind the incorrect information that was given, and then the lack of response to Mr G after the final response was issued. Leeds didn't give our investigator any reason why it felt £175 was too much, and in the absence of any arguments, and having considered everything that has happened, I agree that £175 (which includes the £50 already offered by Leeds) to be fair and reasonable.

My final decision

I uphold this complaint in part and order Leeds Building Society to pay £175 compensation to Mr G and Mr C (less any amounts already paid).

This is a joint mortgage so my award of compensation would normally also be joint. But as Mr G and Mr C have separated that wouldn't be appropriate in this case.

I ask Mr G and Mr C in their response to this decision, to both individually confirm how that money should be split. In the absence of an agreement being received then it will be split equally between them.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G and Mr C to accept or reject my decision before 31 March 2023.

Julia Meadows

Ombudsman