



The complaint

Miss J and Mr M complain HL Partnership Limited trading as Fidenti Mortgages & Protection ("Fidenti") caused them to incur an early repayment charge ("ERC").

What happened

Miss J and Mr M approached Fidenti, a broker, on 7 May 2021 for advice on purchasing a new home. At the time, they were tied into a fixed rate of 2.29% with their existing lender until 31 January 2023. The outstanding balance on their existing mortgage was around £114,526.

Fidenti told them they could either take a mortgage with a new lender and forfeit the ERC, port their existing mortgage product and apply for the additional loan they required or apply for a whole new mortgage with their existing lender. If they stayed with the same lender, they could claim back the ERC. Miss J and Mr M say they followed the adviser's recommendation to stay with the same lender even though they could have got a cheaper rate elsewhere.

Miss J and Mr M say they were told that as long as they completed on their new property within 90 days of moving out of their old property, they would qualify for the refund. But Miss J and Mr M say when they contacted their lender to request the refund, they were informed they didn't qualify because their broker had applied for a new product rather than to port their existing mortgage. Miss J and Mr M say the lender confirmed they would have been eligible for the refund if the application had been completed correctly. So, Miss J and Mr M think Fidenti should refund the ERC which has cost them £3,428.

Fidenti looked into Miss J and Mr M's concerns, but it didn't agree it hadn't processed their application correctly. It said that Miss J and Mr M had told the adviser they were going to sell their home and live in temporary accommodation for around one month before they moved into the new build property they were purchasing. This would have made them eligible to claim the refund, but Miss J and Mr M completed on their new property at the same time. This meant they no longer qualified to port their mortgage.

Fidenti said it's possible the adviser should have contacted Miss J and Mr M again around August 2021 to confirm everything was still on track as discussed, but it also felt Miss J and Mr M ought to have contacted the adviser to let them know their plans had changed. The adviser would then have been able to inform them of the implications of this. As a gesture of good will, Fidenti offered Miss J and Mr M £500, but it didn't accept it was responsible for the ERC.

Our investigator reviewed Miss J and Mr M's concerns, but they didn't think Fidenti had done anything wrong. As Miss J and Mr M disagreed, the complaint was 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.

Having done so, I don't think Miss J and Mr M's complaint should be upheld and I'll explain why.

The adviser produced a fact find on 7 May 2021. They confirmed Miss J and Mr M would be subject to an ERC of around £3,428 if they left their existing mortgage agreement, so this was factored into their advice. The adviser confirmed there were cheaper rates available with other lenders, and I've seen a list of mortgage comparisons which shows a number of rates for different providers, including Miss J and Mr M's existing lender.

While cheaper rates were available over the two-year period Miss J and Mr M wanted, the lower rates wouldn't have saved them enough to make up for the ERC they would have to pay. It was for this reason, staying with the same lender was the preferred option. And after a discussion about the various products on offer from that lender, it was decided a two-year fixed rate at 2.03% with a £999 fee was the preferred rate.

The adviser explained that if Miss J and Mr M ported or took a new mortgage with the same lender on a *non-simultaneous* basis they could request a refund, providing they complete on the new property within three months of the old property's completion date. I think the word non-simultaneous is particularly important here. This meant the properties could not be held at the same time, so the new purchase would need to complete after the sale of their existing home – at least one day later. So, as long as Miss J and Mr M moved out of their existing home before completing on their new home, and completed on their new home within three months, they would be eligible to have their ERC refunded.

The adviser recommended Miss J and Mr M do this rather than port their existing mortgage and apply for a top up loan for the additional sum required. While it's not explicitly explained why they recommended this, there is an emphasis on Miss J and Mr M wanting the lowest interest rate possible. So, as it would have been cheaper for Miss J and Mr M to apply for a whole new mortgage, instead of keeping their old mortgage which was on a higher rate, I think this is why the adviser recommended this option.

The notes confirm Miss J and Mr M explained they planned to move out of their current home in August and move into the new home in September – subject to the building being ready. Given it was a new build, and wasn't ready yet, I don't think the adviser had any reason to doubt the information they'd been given. Their advice was based on Miss J and Mr M completing on their existing property approximately one month prior to completing on their new property. And based on this, Miss J and Mr M met the criteria to obtain an ERC refund. Based on what I've seen, I don't think the adviser had any reason to think Miss J and Mr M would complete on both properties simultaneously.

On 9 May 2021, I can see the adviser double checked the proposed completion day with Mr M via WhatsApp. Mr M confirmed it was still planned to go ahead in September. The adviser asked Mr M to confirm what their plans for moving out of their current home were. Mr M responded and confirmed they hadn't had a precise date, but they understood it would be in August. Mr M said he would confirm this with his solicitor, but that they could move into his Mum's for a few weeks if necessary.

So, again, I think this gave the adviser the impression Miss J and Mr M would be out of their old home prior to completing on the new property. The adviser then reminded Mr M they had to complete within three months, which seemed to be the greater concern at the time given Mr M confirmed he may need to move into his Mum's in the interim. The adviser explained they would have to pay the ERC when they completed and then they could claim it back afterwards. I note the lender issued a decision in principle for the full sum required, for the whole mortgage, on the same day.

On 24 May 2021, the adviser contacted Mr M via WhatsApp again and asked him to reconfirm his move out date and intended move in date. Mr M confirmed the same dates but said he still hadn't had any specific target dates from his solicitor. He said he would try to speak to them tomorrow and that he'd let the adviser know. As nothing had changed, the adviser repeated the need to complete on the old property and complete on the new property within three months. I've no reason to believe the adviser wouldn't have reminded Mr M about the completion dates needing to be non-simultaneous if there had been any suggestion this might happen.

A mortgage illustration was then produced on 26 May 2021, showing that Miss J and Mr M were applying for a mortgage for £295,995 plus a £999 fee.

The adviser issued a letter on 1 June 2021, confirming their recommendations and reasons why based on the information gathered in the fact find. The adviser noted that Miss J and Mr M wanted to purchase a property for £369,995, so they required a mortgage of £295,996. This made it clear it was a whole new mortgage rather than just the additional sum they required.

The adviser reconfirmed the information recorded in the fact find. Specifically, that Miss J and Mr M would be subject to an ERC on their existing mortgage, but they could either port it to the new property or take a new mortgage with the same lender and ask for a refund. That the completions would need to be non-simultaneous. It also highlighted that Miss J and Mr M planned to move out of their existing home in August and planned to move into the new home in September. Based on this, they had recommended a new repayment mortgage with a two-year fixed rate at 2.03% with Miss J and Mr M's existing lender.

On 9 June 2021, Miss J and Mr M received an offer from their lender. All of the details of the offer are consistent with what was agreed in the fact find and recommendation letter.

There was a lot of back and forth between the adviser and Mr M on WhatsApp over the next few days, but I can't see that Mr M ever confirmed he'd spoken to his solicitor and obtained more specific completion dates. So, on 11 August 2021, the adviser messaged Mr M again to ask if there was any word on exchange of contracts. At this point, Mr M confirmed he'd received the paperwork and would return it the next day.

On 20 September 2021, Mr M confirmed it looked like they would be exchanging early that week for a completion date of 30 September 2021. Then on 26 September 2021, Mr M confirmed the move date would be 30 September 2021. But I don't think it would have been clear to the adviser that Miss J and Mr M's plans had changed. Based on what was said, it's possible the adviser thought Miss J and Mr M had already completed on their previous home and were just waiting to complete on their new home. The adviser wouldn't have been privy to this information unless Miss J and Mr M shared that with them. And again, I haven't seen anything to make me think the adviser wouldn't have reminded Miss J and Mr M of the need for the completions to be non-simultaneous if they had any reason to suspect the plans had changed.

After this, Miss J and Mr M completed on both properties simultaneously. This meant they wouldn't qualify for a refund of their ERC. I can see their lender informed them a different application would have been required to port the mortgage and that they would have needed a new application for the additional borrowing only. But that isn't really relevant. Miss J and Mr M could have taken this option if they wanted to, but they also could have obtained a refund the way the adviser recommended. And the adviser's recommendation was cheaper overall due to the lower interest rate available to them.

If they had chosen to do it the way the lender is suggesting, this would have been more expensive because it would have meant paying a higher interest rate than they needed to for the remainder of their existing mortgage – up to 31 January 2023.

Mr M has since told the adviser he understood they were going to have two accounts. But I don't think he had any reason to think this. All of the communication I've seen was very clear in showing Miss J and Mr M were applying for a whole new mortgage, including the offer Miss J and Mr M accepted from their lender. There was no reference to Miss J and Mr M keeping their existing mortgage product and only taking a new one for the additional sum other than the fact find and recommendation letter, which both confirmed this option had been ruled out.

It seems Miss J and Mr M may not of appreciated the significance of the completion dates being non-simultaneous, but the adviser says they explained this to them at the time and it was documented in the letters they received. I think Miss J and Mr M should have informed the adviser that their plans changed as soon as they became aware because the adviser wouldn't have had any reason to have known otherwise. And the adviser did ask Mr M to confirm the relevant dates a few times during the process. Mr M eventually provided this information, but it wasn't clear that both properties were now going to complete around the same time.

Fidenti has offered Miss J and Mr M £500 as a gesture of goodwill, recognising that Miss J and Mr M have lost their ERC and that the adviser could have checked more thoroughly closer to the completion date. I've thought about this carefully and while I empathise with the situation Miss J and Mr M find themselves in, I think Fidenti's offer is fair and reasonable in the circumstances as I don't think the adviser did anything wrong.

If Miss J and Mr M now wish to accept Fidenti's offer they can sign and return the attached form.

My final decision

For the reasons explained above, I do not uphold Miss J and Mr M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss J and Mr M to accept or reject my decision before 14 April 2023.

Hanna Johnson
Ombudsman