

The complaint

This complaint is about an application Mr D and Mrs L made to port the interest rate product on the mortgage they held with Clydesdale Bank Plc trading as Virgin Money to another mortgage on a new property. Virgin turned down their application, resulting in the mortgage being repaid, and an early repayment charge (ERC) being levied. Mr D and Mrs L say Virgin treated them unfairly and should refund the ERC and the valuation fee they paid.

What happened

The above summary is in my own words. The basic background to this complaint is well known to both parties so I won't repeat the details here. Instead I'll focus on giving the reasons for my decision. If I don't mention something, it won't be because I've ignored it. It'll be because I didn't think it was material to the outcome of the complaint.

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.

Where the evidence is incomplete and/or contradictory, I'm required to reach my decision on the basis of what I consider is most likely to have happened, on the balance of probabilities. That's broadly the same test used by the courts in civil cases.

Virgin didn't have a contractual obligation to agree another mortgage for Mr D and Mrs L on another property. The starting point here is that no one is entitled to borrow money and lenders aren't obliged to lend it, even where they've lent before. That's apparent from the mortgage offer, which explains that any proposal to do would be dependent on:

- any new application meeting Virgin's lending criteria at the relevant time; and
- the proposed new property being acceptable security.

Virgin set the terms of the offer out in a manner that met the requirements of the regulator. Any request for a new mortgage on a different property, in order to port an existing interest rate product, is a new lending decision for a lender. It's subject to lending policy and criteria – and the consumer's individual circumstances - as they stand at the time the request is made. Lenders can, but aren't obliged to, make their lending policy known to the public at large. They can if they wish regard the policy as commercially sensitive.

In Mr D and Mrs L's case, the surveyor instructed by Virgin concluded that the property they were proposing to buy wasn't acceptable security under Virgin's lending criteria. That's no doubt a source of genuine frustration and upset for Mr D and Mrs L. But it's not down to anything Virgin did or failed to do. It's entitled to rely on the opinion of the qualified professional appointed to assess the proposed property's suitability as security for a mortgage. It's not within my remit to consider whether the surveyor's assessment of the property was faulty in any way.

I've no regulatory function; it's not my role to decide what Virgin's lending policy (or any lender's for that matter) on acceptable properties should be. If Virgin is reluctant to lend on a property, that's a matter for its commercial judgement. But it should apply that policy fairly, and here I'm satisfied it did so by relying on the surveyor's opinion. In the event Mr D and Mrs L have since been able to obtain a mortgage elsewhere, that doesn't change my conclusion. Each lender will have its own appetite for risk and set its lending policy accordingly.

With Virgin having decided, legitimately, not to lend, Mr D and Mrs L were faced with a choice between two unwelcome alternatives; abort the purchase of this specific property in favour of an alternative on which Virgin would lend, or continue with the transaction knowing they would have to repay the existing mortgage, and incur an ERC. They went with the latter, and that, of course, was their prerogative. But whilst I imply no criticism whatsoever of the decision Mr D and Mrs L made, and none should be inferred, it was their choice and they made it knowing what the consequences would be.

Other matters

The valuation fee met the cost of Virgin assessing the suitability of the proposed property as security for a mortgage. Mr D and Mrs L may have found the outcome of that assessment unwelcome, but the fact is they received the service the fee paid for. That being so, there's no basis for me to order Virgin to refund it.

Lastly, Mr D and Mrs L have referenced a provision in the mortgage offer, the inference being that Virgin has breached it, that allowed them to make lump sum part redemptions of up to 10% of the balance each year without incurring an ERC. That provision is there, but Mr D and Mrs L haven't used it. What they've done is pay all of the mortgage off in one single transaction, so the 10% allowance doesn't come into play.

My final decision

My final decision is that I don't uphold this complaint.

My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further consideration or discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D and Mrs L to accept or reject my decision before 19 March 2024.

Jeff Parrington

Ombudsman