

The complaint

Mrs F complains Hinckley and Rugby Building Society declined her application to transfer the mortgage she held jointly with her ex-partner into her sole name.

Mrs F is represented in this complaint. Where I refer to Mrs F, I include her representative.

What happened

In 2022 Mrs F took out a mortgage with her ex-partner (X) with Hinckley and Rugby Building Society (H&R) that was secured over their residential property. They had a fixed interest rate product for five years. Mrs F asked H&R to transfer the mortgage into her sole name following her separation from X. H&R said Mrs F wouldn't be able to afford the mortgage, but they'd lend to her if she made a capital repayment of around £13,000 to reduce the amount of the loan.

Mrs F complained. She said she was paying the mortgage on her own at the time; it was unfair H&R had taken into account a possible future increase in the cost of the mortgage; she was forced to sell the property at a time when house values were falling; she was losing a good interest rate deal, having to pay early repayment charges (ERCs) and incurring solicitors and other fees; her overall financial situation was affected and she was unable to buy another property.

H&R didn't uphold the complaint. They said they'd acted in line with Financial Conduct Authority (FCA) rules in carrying out the affordability assessment; she continued to benefit from the five-year fixed rate product she had with them; the terms and conditions of the mortgage continued to apply; she and her ex-partner had been advised on those by a broker; ERCs applied if the mortgage was redeemed early; and the decision to sell the property was Mrs F's – they were only saying they wouldn't remove X from the mortgage, not that Mrs F had to sell.

Since Mrs F was unhappy with the outcome she brought her complaint to the Financial Ombudsman Service. She felt H&R hadn't done all they could to help when she was in a vulnerable situation; the only option they'd offered was to reduce the capital balance of her mortgage; they'd failed to take into account she had a guaranteed bonus which would be available in January 2024 and the following year which she could have used to reduce the mortgage within the term of the fixed interest rate deal. Mrs F felt the rules H&R had followed were inflexible and ought to be changed as they had penalised her. And she was unhappy H&R had charged the ERC when the mortgage was redeemed. Mrs F said she was forced to sell at a time when property values were falling quickly, and interest rates were increasing. [REDACTED]

To put things right Mrs F said H&R should compensate her for the loss of profit on the property, refund her solicitors' and estate agents' fees, refund the ERC and allow her to transfer the mortgage onto a new property.

Our investigator didn't uphold Mrs F's complaint. In summary she said H&R had had to look

at her application in line with FCA rules which included stress testing the future affordability of the mortgage; we don't have the power to change the FCA rules, which Mrs F felt were unfair; H&R hadn't acted unfairly in ignoring her bonuses in assessing if the mortgage was affordable for her; and it wasn't fair to blame H&R for having to sell the property.

Since Mrs F didn't accept our investigator's view, her complaint's 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 may not mention in my decision all the points the parties have made in relation to this complaint. No discourtesy is intended by that. It simply reflects the informal nature of the service we provide. I'd like to reassure the parties I've considered everything they've said in coming to my decision, but I'll focus here on the points I consider key.

I'm sorry to hear about Mrs F's difficult personal circumstances at the time of her application to H&R and the ongoing impact on her. I appreciate her reasons for wanting to remove X from the mortgage. And I've borne that in mind when considering carefully whether H&R treated her unfairly in relation to her application.

I appreciate Mrs F's concerns about the way in which the FCA rules operated for her. I don't have the power to make changes to those and Mrs F would need to ask the FCA to look into those issues.

It's important to bear in mind that Mrs F's request to remove X from the mortgage involved a transfer of equity application (TOE). TOE requires legal ownership of the property to be transferred into the sole name of the person who remains on the mortgage.

Mrs F's referred to H&R's advertised commitment to providing tailored support to customers they understand to be vulnerable. She's told us that although she'd let H&R know her relationship had broken down, she didn't tell them about the particular circumstances that had led to that happening, and they hadn't asked her. But even if H&R had been fully aware of Mrs F's situation, on balance, I don't think they should have acted differently, as I'll explain.

H&R are obliged to comply with the rules set out by the FCA in the Mortgages and Home Finance: Conduct of Business sourcebook (MCOB). MCOB 11 requires lenders to lend responsibly and to treat customers fairly by assessing, where a change to the mortgage is likely to be material to its affordability, whether the customer will be able to afford it now and in the future. And the rules say, broadly, that a lender must treat removal of a borrower as being material to affordability.

H&R may also take account of their own lending criteria in deciding whether to lend or the basis on which they will lend. Those criteria will cover things like commercial considerations and their appetite for risk. And they may change from time to time. We don't generally interfere with a lender's commercial decisions. But we can consider whether a lender has treated its customers fairly and given fair consideration to any application they might make.

H&R therefore had to look at whether Mrs F would be able to afford the mortgage on her own to decide whether to agree to transfer the mortgage into her sole name. In assessing affordability, the rules require a lender to take account of a customer's net income and their expenditure, as well as the impact of likely interest rate increases in the future.

From the information they've provided, I'm satisfied H&R considered Mrs F's application fairly and in line with the rules. They gathered information about her income and expenditure, including bonuses she might receive. And they stress tested the mortgage – in line with MCOB – to see whether she'd be able to afford it if the interest rate increased once the fixed interest rate product had come to an end.

H&R required evidence of bonuses being paid over the past two years in order to factor them into their affordability calculations. Since Mrs F expected to receive bonuses in the future, she couldn't provide that evidence. I note Mrs F's career was progressing well and she felt her bonuses were guaranteed. However, the evidence suggested they were non-contractual and subject to certain conditions. In the circumstances, it was reasonable for H&R to discount them.

H&R were obliged to stress test the mortgage. MCOB 11.6.18 requires a lender to consider likely future interest rate rises over a minimum period of five years from the expected start of the variation of the mortgage unless the interest rate is fixed for a period of five years or more from then. Since the interest rate product Mrs F had was part way through a five-year fixed rate deal, H&R were right to look at potential interest rate increases over the next five years.

When Mrs F didn't meet their criteria initially H&R reviewed things. They were prepared to stretch their income criteria if Mrs F could make a lump sum payment to reduce the capital balance. I appreciate that wasn't affordable for her. And although she might have been able to make a lump sum payment in the future if she got her bonuses, H&R reasonably considered her financial situation at the time of her application – in line with MCOB and their lending criteria. I think H&R gave fair consideration to Mrs F's application and acted reasonably in offering an option to make the mortgage affordable for her.

I understand Mrs F felt she had no alternative but to sell the property when H&R declined her application. But I'm not persuaded it was H&R's actions that led to the sale. Mrs F could have continued to live in the property paying the mortgage as she had been, benefiting from the ongoing fixed interest rate deal.

In addition, Mrs F has told us X required their share of the property value as they planned to buy another property. I think the main reason for the sale was to release X's funds for that purpose. Mrs F told H&R she couldn't afford to make the lump sum payment they suggested to reduce the capital balance. So, it's unlikely she could have bought X out without selling.

Even if I'm wrong about that, and H&R had agreed to remove X from the mortgage, Mrs F's situation wouldn't have been substantively different. As I've mentioned, the TOE involved transferring the legal title in the property to Mrs F from joint names with X. So, I think Mrs F would have had to buy X out in any event for the TOE to go ahead. Mrs F's representative has mentioned she could have used her savings and bonus payments or that he may have been in a position to help her buy X out while she was waiting for her bonus payments to come through. But since that didn't happen when the property was sold to buy X out, I'm not persuaded it was a realistic option.

I understand Mrs F's accepted recently the ERC was payable since the mortgage was paid back within the term of the fixed interest rate deal. But she raised concerns about it when she initially complained. So, for completeness, I'll address that issue.

When a lender offers a fixed rate mortgage product, both the borrower and the lender are tied into the rate for the term of the deal. There's a cost to the lender in borrowing funds to lend which it recovers through the interest payments it gets from the borrower. There's the

possibility interest rates will go up before the deal comes to an end. The lender will incur costs if it does. And if the borrower repays the mortgage within the term of the fixed rate product, the lender stops receiving the interest and there's a risk the lender won't recover its own costs of borrowing. The ERC is designed to cover those potential costs.

We don't generally consider raising an ERC to be unfair. It was clear from the mortgage offer here that the ERC would be payable if the mortgage was repaid early. Given the circumstances of the sale, and since I don't think H&R are to blame, it wouldn't be reasonable to ask them to waive it.

I appreciate Mrs F's strength of feeling about what happened and I am sympathetic to her circumstances. However, bearing everything in mind, I don't think it's fair and reasonable to hold H&R responsible. For the reasons I've explained, I don't uphold her complaint.

My final decision

My final decision is that I don't uphold Mrs F's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs F to accept or reject my decision before 2 March 2024.

Julia Wilkinson
Ombudsman