

The complaint

B complains that the interest rates on its loans are higher than what other lenders are offering but Allica Bank Limited requires it to pay an early repayment or exit fee should it wish to consolidate its loans with them or refinance elsewhere.

B is represented in bringing this complaint to us by one of its directors, Mr H.

What happened

In July 2022, B's bank of almost 20 years, transferred B's loans and services to Allica Bank as part of its exit from the SME market. B was made aware of this impending change in late 2021 but wasn't given the name of the bank its accounts would be moving to.

Mr H has told us that B has had a number of issues with Allica Bank since the transfer. He said:

- There have been communication issues caused by Allica Bank failing to respond to B's correspondence.
- B wanted to consolidate its lending but thought the refinance offers from Allica Bank were unfair and have gotten more expensive as time has gone on.
- Allica Bank will not waive the fee to exit the agreements early on the loans that were transferred from B's previous bank to them as part of the sale.

Mr H complained to Allica Bank on B's behalf in April 2023. Allica Bank said they were unable to waive these fees and that the fees were part of the terms and conditions of the original lending agreements. Allica Bank also acknowledged that Mr H felt there was no choice other than for B to move its banking from them due to poor service, but they said this was not a valid reason for them to waive the early repayment fees.

Mr H was unhappy with this response, so he brought B's complaint to our service. One of our investigators looked into the matter. Although she said she understood that B could refinance elsewhere on a better interest rate, she didn't think Allica Bank had done anything wrong in not waiving the early repayment fees, as those terms were part of the original agreement B entered into.

She also considered what Mr H had said about the customer service B had received from Allica Bank but noted that Mr H hadn't provided any specific examples other than Allica Bank being unable to offer satisfactory refinancing options and refusing to waive the early repayment fees. So, she didn't ask Allica Bank to take any further action on these points.

Mr H remained didn't agree. He responded to our investigator noting:

- Allica Bank had made four refinancing offers however B hasn't been able to follow through with any of them due to a lack of communication and delays caused by Allica Bank.

- B didn't know it would be getting transferred to another bank when it took out the loans, so it didn't challenge the early repayment fees in the terms and conditions when it accepted them and entered into the lending agreements.
- B had no choice but to take on additional borrowing due to the impact the pandemic had on its business operations.
- Mr H understands that B can refinance elsewhere but says the only reason for the move is due to the poor service provided by Allica Bank, so B would never have had to pay the early repayment fee had its original bank not sold its loans to Allica Bank.

Our investigator considered these points and asked Allica Bank for some more information before answering Mr H. She responded explaining:

- Our service could only consider the complaint about the early repayment fees as the refinancing offers weren't part of the original complaint Allica Bank responded to. Our investigator explained that B would need to raise a new complaint with Allica Bank for these points to be considered.
- It's impossible to know if B would've wanted to leave the original bank and if they had, it's likely the original bank would've also charged B to exit its agreements. So, this isn't reason enough for B not to have to pay the early repayment fees.
- The terms of the contracts that B entered into with its original bank clearly stated that these fees would be applicable should B chose to exit the agreement early for any reason.

Mr H said he would complain to Allica Bank about the refinancing issues in due course. However, he didn't agree with our investigator's view of the rest of the matter, so he asked for the case to be passed to an ombudsman 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'm sorry to disappoint Mr H, but I agree with our investigator's view of the matter.

Transfer to Allica Bank

When B's directors entered into the lending agreements with the original bank, they signed to confirm they accepted the terms and conditions set out in the facility letter and the Business Lending Terms and Conditions for Variable Rate Loans and Overdraft Facilities.

Clause 6.15 of those terms and conditions states that the bank reserves the right to transfer all of its rights under the facility to any third party without the prior consent of the borrower.

When a loan is sold by a lender, as it has been in this case to Allica Bank, the original repayments and terms and conditions of the loan agreement remain the same and still apply.

Mr H told us that B was made aware of the impending transfer almost a year before it happened. So, if B was unhappy with the proposed transfer, its directors could've looked to refinance elsewhere before the transfer took place. However, B's transfer to Allica Bank went ahead as planned.

The effect of the pandemic and the consolidation of the loans

I'm sorry to hear how much of a detrimental effect the pandemic had on B, and I understand that its directors were left with little choice but to take on additional borrowing to get them through that difficult period.

Mr H told us B found itself in a position where it needed to look at consolidating its loans to make the repayments more straightforward. This happened after B was transferred to Allica Bank, but I think this is just as likely to have happened had B still been with its original bank as the effects of the pandemic on B's business would've been the same. So, I can't say that Allica Bank were responsible for the fact that B needed to consolidate its loans.

Mr H said the rates offered weren't competitive and B wouldn't have been in that position had the account not transferred. However, there's no way for us to be sure of what would've happened if B hadn't been moved from its original bank. The interest rates offered by them may well have been the same as what Allica Bank were offering, or they may not have agreed to consolidating the loans at all.

I understand Mr H intends to raise another complaint about the refinancing offers so I won't make any finding on that aspect of the complaint in this decision.

The early repayment fees

The crux of this complaint is whether it was fair for Allica Bank to refuse to waive the early repayment fees.

Having reviewed the relevant loan agreements, I can see that the payment of an early redemption fee was a condition of the lending. Clause 3.6.3 'Early Repayment' states:

"In the event that the loan facility is prepaid in full or in part, a fee equivalent to three months additional interest at the then current rate calculated to the amount prepaid will be payable on the date of prepayment".

When B's directors signed and accepted the loan facilities they agreed to be bound by these terms and conditions. And these terms and conditions remained the same when the loans were transferred to Allica Bank.

Early repayment fees are a common condition of lending and on the balance of probabilities, I think it's likely the original bank would've also enforced this condition had B looked to refinance while it was still their customer. As such, I can't see that Allica Bank have done anything wrong here.

Summary

I appreciate that Mr H thinks B wouldn't be in this position had the account not transferred to Allica Bank. However, there's no way for us to be sure of what would've happened if B was still with the original bank.

The interest rates offered by the original bank may well have been the same as what Allica Bank offered to B, or the original bank may not have agreed to consolidating the loans at all. Regardless, I've not found any evidence that Allica Bank acted unreasonably in not agreeing to waive the early repayment fees which were a condition of the original loan agreements that B entered into.

My final decision

For the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask B to accept or reject my decision before 19 July 2024.

Tara Richardson
Ombudsman