DRN-4534352

The complaint

Mr and Mrs B complain that Lloyds Bank PLC trading as Scottish Widows Bank (Scottish Widows) gave them incorrect information about porting their mortgage which meant they were unable to port their fixed interest rate and incurred an early repayment charge (ERC).

What happened

In August 2022, Mr and Mrs B applied to Scottish Widows, through an independent mortgage broker, to port their existing mortgage to a new property. This mortgage had a 2.19% interest rate which was fixed until 31 January 2025. Scottish Widows provided an agreement in principle based on the information it was given by Mr and Mrs B's broker.

Mr and Mrs B sold their existing property and redeemed their mortgage on 14 September 2022. They were charged an ERC of £6,738.23. Scottish Widows policy at the time allowed a mortgage to be ported up to 90 days after it has been redeemed. Mr and Mrs B believed they would be entitled to a refund of the ERC and to have their old product rate reinstated for the remainder of its term as they intended to apply for a new mortgage with Scottish Widows to purchase their new property within 90 days. This porting concession was set out in their mortgage terms and conditions.

Mr and Mrs B applied for the mortgage to be ported to the new property. But there were some issues with obtaining a valuation for the new property due to structural concerns raised by the surveyor. This caused a delay with the new mortgage application and led to Mr and Mrs B purchasing their new property with cash on 11 November 2022.

On 17 November 2022, Mr and Mrs B's broker spoke to Scottish Widows on the phone and told it her clients had purchased the property using cash. The adviser she spoke to was uncertain but told the broker they thought that it shouldn't be an issue and that Mr and Mrs B should still be able to apply for the port and a refund of the ERC within the 90 days. However, when the broker called Scottish Widows again the following day and a second adviser told her that she thought Mr and Mrs B wouldn't be able to port as the property had been purchased in cash, so new lending criteria would apply.

This was then confirmed on 21 November 2022. Scottish Widows then told the broker that when a property is purchased outright, it becomes subject to a different lending criteria and the property needs to have been owned for at least six months before new borrowing can be applied for. This meant the porting timescale of 90 days could not be met so Mr and Mrs B couldn't keep their existing rate or apply for a refund of the ERC.

Mr and Mrs B complained to Scottish Widows. Scottish Widows paid Mr and Mrs B £100 for the incorrect information provided to the broker on 17 November 2022. But it said because Mr and Mrs B had already purchased the property in cash at this point, the incorrect information would not have changed the outcome.

Unhappy with Scottish Widows' response, Mr and Mrs B referred their complaint to our Service. One of our Investigators reviewed the complaint and felt Scottish Widows' offer was fair. He said Scottish Widows was entitled to decline the application to port the mortgage and there was no requirement for it to refund the ERC.

Mr and Mrs B disagreed with the Investigator's findings and asked that the complaint be referred to an Ombudsman. They said, in summary, that they felt Scottish Widows should have made its policy on porting to properties already owned clearer to them when they redeemed their mortgage in September 2022. They also said that Scottish Widows caused a delay with the valuation. They said that had they known they couldn't port the mortgage and obtain an ERC refund if they purchased the property with cash, they would not have gone ahead at that time and would have waited until they could complete using the mortgage.

The complaint has now been passed to me to make a final decision.

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.

Mr and Mrs B's mortgage terms and conditions set out that if a borrower repays their existing mortgage before they apply for a new mortgage, they may be eligible to take their existing product rate with them to the new property. It also states that, if they do so, they would be able to apply for a refund of the ERC. However, the new mortgage must complete within 90 days of the previous mortgage being redeemed for this to be possible. The terms also say that this concession may not always be available so a consumer should check before proceeding. The ability to port a mortgage is always a concession, rather than a contractual right. And subject to the lenders criteria at the time.

Therefore, by redeeming their mortgage without having a new offer in place meant they would always be at risk of not being able to complete in time on the new purchase using the ported mortgage.

When Mr and Mrs B purchased their new property for cash, this changed the type of application they would be eligible for as they now owned an unencumbered (mortgage free) property.

The Scottish Widows policy relating to applying for a new mortgage on an unencumbered property is different to when a consumer is applying to borrow in order to make the purchase. In this situation, a consumer needs to have owned the property for six months before they can apply for a new mortgage. This meant that porting and an ERC refund was no longer possible for Mr and Mrs B.

From the available evidence, I am satisfied that Mr and Mrs B did not check with Scottish Widows about what would happen if they purchased their new property in cash before they did it. Nor was Scottish Widows ever made aware of their intentions to do so. This was only brought up by their broker on 17 November 2022 once the purchase had already proceeded. Mr and Mrs B have argued that Scottish Widows should have told them about this possibility in September 2022 when they redeemed their mortgage, but I wouldn't expect Scottish Widows to do this unless it was aware of the possibility that Mr and Mrs B might purchase the new property in cash.

Until the broker called Scottish Widows, it thought Mr and Mrs B were planning to apply for a mortgage to purchase the property. So, I'm satisfied it did not have a reason to explain what would happen if they did something different, like purchasing the property in cash.

Furthermore, many lenders won't allow a mortgage to be ported to a property if it's already owned. So, I would've expected the broker to have checked and been aware of a lender's porting policy and any restrictions if they themselves were aware of Mr and Mrs B's plan to purchase the property using cash.

Mr and Mrs B have also said they wouldn't have proceeded with the sale so quickly had they known they wouldn't be eligible to port if they bought in cash. They've said there was no deadline on exchange and the property was chain free. However, having listened to the calls the broker had with Scottish Widows, she explains that the purchase went ahead in cash because there was a fixed deadline on exchange and completion that had to be met. I'm therefore not convinced, on balance, that Mr and Mrs B would not have gone ahead with the cash purchase on that date had they known.

During this call, it's also explained that the reason the valuer couldn't give a valuation on the property was because there was groundwork that needed to be done before the mortgage would be suitable for mortgage purposes. Mr and Mrs B were therefore always going to need to complete the remedial works before a revaluation would be possible. So, I can't say that that Scottish Widows caused delays with regards to the valuation.

Having listened to the calls, I am satisfied that Mr and Mrs B's broker was given incorrect information when she first called it about this situation on the 17 November 2022. And this was likely passed on to Mr and Mrs B. This was rectified by Scottish Widows the following day. But would've caused some minor upset to Mr and Mrs B. However, as Mr and Mrs B had already purchased the property in cash at this point, and I don't find that this would have changed their actions, so I'm satisfied that the £100 paid for this is fair and reasonable in the circumstances and I'm not going to ask it to pay anything further.

My final decision

Lloyds Bank PLC trading as Scottish Widows Bank offer of £100 compensation is fair and reasonable. I make no further award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs B to accept or reject my decision before 29 May 2024.

Rob Deadman
Ombudsman