

The complaint

Mr and Mrs C complain that they were unable to port the mortgage they held with The Royal Bank of Scotland Plc (RBS) to a property they purchased. They've incurred an early repayment charge (ERC) and further costs. Mr and Mrs C want RBS to refund these additional costs and the ERC.

What happened

Mr and Mrs C took a mortgage with RBS in 2013. In 2020 they entered into a new fixed rate deal with RBS which lasted until September 2025. This fixed rate had an ERC until September 2025 if the mortgage was repaid early. The fixed rate was portable to a new property, subject to RBS' lending criteria at the time of any application to port.

In 2022, Mr and Mrs C found a new property they wanted to purchase. Mr and Mrs C applied to RBS to port their existing mortgage to the property they were purchasing. A mortgage offer was issued by RBS on 26 August 2022 to port the existing fixed rate.

The sale of their existing property wasn't proceeding at the same rate as the purchase of the new property. Mr and Mrs C have said they were concerned about losing the property they were purchasing. And Mr and Mrs C decided it would be advantageous to complete some work on the new property before moving in. Mr C says he approached RBS to discuss the possibility of it providing a bridging loan. But RBS wasn't able to offer this. So, Mr and Mrs C decided to purchase it with a bridging loan obtained from another lender.

In November 2022, Mr and Mrs C's property sold and their solicitors tried to port their existing mortgage to the new property, but RBS declined to do so. It said its lending criteria didn't allow porting to a property which was already owned by the borrower. And Mr and Mrs C had already brought the property with the bridging loan.

Mr and Mrs C had to apply for a mortgage elsewhere. They complained to RBS saying they weren't made aware of the fact that they couldn't port their mortgage to a property they already owned. They said they'd had to pay more interest on the bridging loan and now been charged an ERC by RBS.

RBS didn't uphold the complaint, so Mr and Mrs C referred it to our Service. One of our Investigators looked into this complaint but didn't think it should be upheld. Mr and Mrs C didn't accept this and asked for the complaint to be considered by an Ombudsman. So, it's been passed to me to review and 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 C have responded to our Investigator in detail. I want to reassure them that I've considered everything they've said. I may not address each point they've raised. That's not because I haven't thought about it. It simply reflects the informal nature of this service.

Instead, I'll focus on what I consider to be the crux of this complaint.

It's generally standard practice in the industry that a mortgage cannot be ported to a property that a borrower already owns. This isn't unusual as it then becomes a remortgage rather than a new mortgage. And the typical purpose of porting is to allow the purchase of a new property whilst maintaining an existing mortgage rate and avoiding paying an ERC.

The mortgage offer provided to Mr and Mrs C in 2020 when they took the five-year fixed rate said:

'The mortgage must be ported to a new property which you are purchasing; you cannot port to a property you already own'.

This mortgage offer also set out that an ERC would be payable if the mortgage was repaid before September 2025.

Based on this, I'm satisfied that the mortgage offer allowed RBS to charge an ERC if the mortgage was redeemed before September 2025, which it was. And, that the mortgage was only portable to a property that wasn't already owned by Mr and Mrs C. Mr and Mrs C had already purchased the property using the bridging loan.

However, there's disagreement about what Mr C was told by RBS with regards to the porting restrictions of the mortgage Mr and Mrs C held when applying to port the mortgage. They say they weren't told by RBS that they couldn't port their mortgage if they proceeded with purchasing the new property using a bridging loan. RBS says it did make Mr and Mrs C aware of this.

In situations like this, where what's happened is in dispute, I need to decide what I think would've most likely happened on the balance of probabilities given the information that is available. That is, what I think most likely happened given the information I do have.

I've been provided with recordings of a number of calls between Mr C and RBS as well as the call notes made at the time the porting application was going through.

There isn't a call recording available for the conversation Mr and Mrs C had with the mortgage advisor. But the call notes from calls with the mortgage advisor suggest that Mr C was just making enquiries about taking a bridging loan. And the notes suggest Mr C was made aware by the mortgage advisor of the restrictions around the fact that they wouldn't be able to port the mortgage to a property they already owned. Mr C disputes this happened. Unfortunately, there is no recording for this call. Mr and Mrs C find this suspicious, but I don't agree. It's not unusual for mortgage advisor calls not to be recorded. Mortgage advisors are often branch based or use mobile phones for calls with borrowers – neither of which are typically recorded.

I accept that a call recording would be useful. But these call notes were made at the time of the call, and I think they are likely reflective of what Mr and Mrs C were told at the time. So I think it's more likely than not that Mr C was made aware that RBS wouldn't be able to port their mortgage if they purchased the new property using a bridging loan first.

Where I believe the confusion comes from, is the fact that Mr and Mrs C were enquiring about a bridging loan specifically from RBS. And they didn't realise that by taking a bridging loan with another lender, this same restriction would've applied.

Moving on to the calls I do have recordings of. These are Mr C calling to obtain agreement for a second charge - the bridging loan he had applied for. He had to chase this a number of

times as he wasn't satisfied with the speed at which things were progressing. So, it's clear Mr C had decided to proceed on the basis of using a bridging loan. At this time, he was speaking with a department responsible for the administration of the mortgage. This department wouldn't have been aware of Mr and Mrs C's plans to port the mortgage to a new property once it had already been purchased and couldn't have provided him with advice about it as it hadn't been involved in the arrangement of the porting application.

Mr C called a number of times. I can't see that he clearly set out his exact intentions in any of those calls. The priority for all of the calls was obtaining consent for the second charge bridging loan as he was worried about losing the property.

I've thought about whether RBS should've provided Mr and Mrs C with more information during these calls about any porting restrictions. I am not persuaded that, given the contents of each call, it did. But even if I thought it should have this wouldn't change the outcome of my decision. I say this as, I also need to consider what Mr and Mrs C could've done had they fully understood the information they'd been given. And having done so, I'm not persuaded Mr and Mrs C would've acted differently.

It's clear that Mr and Mrs C were set on purchasing this particular property. And from the calls I've listened to, Mr C is clearly very concerned about the need to move quickly and worried about the risk of losing the property.

Mr and Mrs C have told us that the delays were due to their property sale not progressing at the same pace as the new property they were purchasing. And the only way to guarantee that the purchase wouldn't fall through was to proceed with the bridging loan to purchase the property prior to selling theirs. The actions of taking a bridging loan (which most people wouldn't generally do) don't go hand in hand with someone who would've just taken the risk of losing a property. The fact that Mr and Mrs C decided to do this, suggests to me that the ultimate priority was to secure this property, even if it meant they would pay the ERC.

So, even if RBS had specifically told Mr C that by purchasing the property with a bridging loan, with any lender, he wouldn't be able to port his existing mortgage, I think they would've proceeded rather than risk losing the property.

In summary, I think it's more likely than not that Mr and Mrs C were made aware of the restrictions of porting to a property they already owned by the mortgage advisor, but mistakenly thought this only applied if they took a bridging loan through RBS. Furthermore, the mortgage offer from 2020 clearly set out that they could only port to a property they didn't already own. And, even if RBS could've provided more information on this in some of the conversations in 2022, I don't think Mr and Mrs C would've acted differently for the reasons I've set out above.

It follows that RBS was entitled to charge the ERC on redemption of the mortgage. And I'm not going to ask it to take any further action.

My final decision

Whilst I understand Mr and Mrs C feel very strongly about this matter, and I'm sorry to disappoint them, I don't uphold this complaint

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs C to accept or reject my decision before 25 April 2024.

Rob Deadman

Ombudsman