

The complaint

Mr R complains that he was charged a large Early Repayment Charge (“ERC”) when he bought his new home and paid off his mortgage with The Co-operative Bank Plc trading as Britannia. Mr R didn’t think that was fair, and he wanted this money back.

What happened

Mr R was planning to purchase a new home, and move. He wanted to reduce his existing mortgage borrowing with Britannia, but keep some lending, to help pay for renovations.

Mr R had some discussions with Britannia in early September 2022 about changing his mortgage borrowing at the time of his planned move. Towards the end of the call, Britannia expressed doubt about whether it could port Mr R’s existing borrowing in the time that was then available to it. Shortly after this, the call ended prematurely, and although Britannia tried repeatedly to ring back, it didn’t manage to speak to Mr R.

Mr R then took out a new, five year fixed rate mortgage deal with Britannia in late September 2022. He did this without any advice from Britannia. This new mortgage deal included an ERC if Mr R redeemed his mortgage within the first five years.

At the end of October, Mr R spoke to Britannia about his planned move, which was then only a couple of weeks away. Britannia said it didn’t have time to port his mortgage before he moved. And it said Mr R’s new mortgage deal had already started (because he’d opted to start it a little early) so he’d need to pay the ERC if he just wanted to repay.

Mr R redeemed his mortgage, paying the ERC, and complained. Britannia said it could allow Mr R to port now, if he wanted to, but Mr R said he just wanted the ERC back. Britannia wouldn’t do that, and Mr R asked us to look into things.

Our investigator didn’t think this complaint should be upheld. She said Britannia accepted it made a mistake in late October, and Mr R’s porting application could have begun then. But she thought it charged an ERC in line with its agreement with Mr R, reached when he took out a new mortgage deal in late September. And because Mr R no longer wanted this borrowing, she thought Britannia’s offer of £250 in compensation was fair.

Mr R didn’t agree. He said he’d tried to take mortgage advice before signing the new five year deal, but our investigator said she couldn’t see any record of this call. Mr R said he’d also asked about porting just before he moved, and was wrongly told it wasn’t possible to port after he’d moved. Britannia also refused to cancel his new five year mortgage deal, although he said it hadn’t yet taken effect, and Mr R said there should have been some sort of cooling off period. Mr R said all Britannia had offered him for this was £250 compensation and he would still have to pay the redemption charge. He didn’t think that was fair.

Because no agreement was reached, this case then came to me for a final decision. And I then reached my provisional decision on this case.

My provisional decision

I issued a provisional decision on this complaint and explained why I only proposed to uphold it in part. This is what I said then:

I listened to a call recording of a discussion Mr R had with Britannia in early September 2022 before he took out a new mortgage deal. He was in the fortunate position of needing only a reduced amount of borrowing for his new home, for renovation work he envisaged doing. I can hear that on this call, a number of options were discussed for his future lending needs, in his new property. The agent discussed porting his existing mortgage lending and made clear that he had a number of other options, including taking out a new mortgage, or other lending, for example through a personal loan or equity release.

Mr R was interested in keeping a mortgage with Britannia, and the discussions were around Mr R's then position, which was that his mortgage deal would have ended when he moved. Mr R was concerned that Britannia's lead-in time for moving his existing borrowing was longer than he had available before he was planning to move.

These discussions were ongoing, when the call unfortunately cut. I have listened to further call attempts, when Britannia tried repeatedly to call Mr R back, but it didn't manage to speak to him. I don't think that's Britannia's fault.

At the end of September, Mr R then took out a new five year fixed rate deal on his existing borrowing. I haven't been able to see that Mr R tried to discuss this change with Britannia.

I've seen the paperwork Mr R was given for the change to his mortgage, when he took out the new five year deal. And I can see Mr R was clearly warned about the implications of taking out a new mortgage deal without advice. I can also see that the offer Mr R received was clear that Mr R would need to pay an ERC if he redeemed this mortgage within the five year fixed interest rate period.

Mr R's old mortgage deal was due to end on 31 October 2022. When he took out the new five year fixed rate deal, at the end of September 2022, he chose to switch ten working days in advance of that, so he wouldn't risk having to pay a higher interest rate for one month.

Mr R next spoke to Britannia on 28 October. This was after his new mortgage deal had taken effect. And it was only two weeks before he was due to move.

I don't think it was unreasonable or unfair for Britannia to say that Mr R was committed to the new mortgage deal at this point. I don't think Britannia made a mistake about this.

I know Mr R says he's paid a lot of money, and he didn't get anything for that, because he only had this new mortgage deal in place for a couple of weeks. But the ERC is included in a deal like this, because when a lender offers a fixed rate mortgage, there are upfront costs to the lender, payments it has to make right away to set up the mortgage lending. Usually, the lender recovers those costs over the fixed term period. But if the borrower repays the whole mortgage right away, the lender might not recover the upfront costs it incurred in making the lending. That's one of the reasons an ERC is payable if someone takes out a fixed interest rate mortgage, and repays it right away.

So I think that when Mr R spoke to Britannia, it wasn't unfair or unreasonable for Britannia to say Mr R had an ERC on his existing lending. I don't think Britannia had to just let Mr R off paying his ERC then.

When Mr R spoke to Britannia at the end of October, I think he really only had two options -

- 1) just paying off his old mortgage, and paying the ERC, when he sold his house, and then seeking his new borrowing elsewhere, or
- 2) porting his mortgage.

Mr R was moving within a couple of weeks. Britannia wasn't able to fully complete Mr R's porting application in the time available before he was planning to move. I don't think it was unreasonable for Britannia to say that it would take a little longer than this to move his secured mortgage lending onto a new property.

It would, however, have been possible at this point for Mr R to redeem his mortgage (paying the ERC) then apply to port his (repaid) borrowing, to his new home, after he moved.

That's something Britannia, and other lenders, would usually do to help people who have sold their house before they buy a new one. But it could also have helped Mr R. So Britannia could have done that, and if Mr R's porting application was successful, his old borrowing would have been reinstated, on the new property. Importantly, his ERC would have been repaid to him by Britannia as part of this.

Unfortunately, Britannia didn't spell out this option to him on the call. The complaint handler Mr R was talking to repeatedly said she wasn't a porting specialist, and presumably just didn't know this was possible. Someone who did know about porting was supposed to call Mr R back after this, but there's no evidence that Britannia actually tried to make this call.

When Mr R complained to Britannia, he said he wanted either the mortgage to port now, or the ERC to be simply repaid to him.

Britannia listened to the call recordings, and said that it thought Mr R should have been told about the option to port after he'd moved. I agree. Mr R should have received a call back with further advice, and it doesn't appear that he got that call. I do think that's where Britannia did make a mistake.

It took Britannia some time to reply to Mr R's complaint. On 7 March 2023, Britannia said it would let Mr R port now. It would extend the porting period, so he could still make his application. Assuming the porting application was agreed, he could still move his lending from the old house to the new one. As part of that, Mr R would get back the ERC of around £3,500 that he'd paid, if he moved all of his old lending, or a pro rata amount if he only moved part of his lending. Britannia said it would waive its usual charge for this. And Britannia also said that it would pay £250 in compensation.

I think that was a reasonable offer from Britannia, which could have provided a fair and reasonable outcome to this complaint. But we know Mr R turned this down.

Mr R said he no longer wanted the borrowing. He just wanted Britannia to pay back the ERC he was charged. Britannia wouldn't do that, so Mr R asked our service to look into this.

As part of its discussions with our service, in early July 2023, Britannia said it would no longer offer to port Mr R's mortgage. Mr R redeemed his mortgage on 1 December 2022. Britannia usually allows porting up to six months after a mortgage is redeemed. It had offered to extend this period for Mr R in March 2023, and he'd turned it down.

Britannia said in July 2023 that it was now simply too long since the mortgage was redeemed, and its offer was both made and refused, for that old mortgage to be reinstated.

It's now rather longer since this offer was made, and, as Britannia pointed out, refused by Mr R. The mortgage market has changed during this time. I don't think it would be reasonable for me to require Britannia to offer to port Mr R's old mortgage now, over a year after it was redeemed, and almost a year since Mr R turned down Britannia's offer.

But I do think that Britannia made a mistake, and I note that it also then took several months to offer to put this right. I think it's unfortunate that Britannia took so long to make this offer. In this time, Mr R had decided he no longer wanted to do business with Britannia. I think this might have been avoided with a more prompt response.

With that in mind, I think Britannia should pay a little more than the £250 in compensation that it has offered. I think Britannia should pay Mr R a total of £500 in compensation. I know that Britannia previously offered Mr R £250, and it doesn't look like that has been paid, but just in case it has, I'll allow Britannia to count towards my award, any payment of compensation it has already made in this case.

I invited the parties to make any final points, if they wanted, before issuing my final decision. Only Mr R replied.

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 R said that by the time the first payment on his new mortgage deal was due, he had already discussed his options with Britannia. It had incorrectly told him that his mortgage could not be ported after the moving date and that he would have to pay the ERC at the time of moving.

Mr R said the problem was that Britannia, his trusted mortgage provider, was well aware that he was moving house, and when, but still allowed his new mortgage deal to be processed, only to tell him two weeks later that he would have to pay an ERC of £3,500, and that he couldn't continue with this mortgage either. Mr R said he then moved house at the start of December.

Mr R said the question was why would he apply for a five year fixed rate only for the Britannia to cancel his mortgage two weeks later? He said he used the easy switch option, taking out a new fixed rate deal himself, because he knew the product he was looking for.

Mr R said that it was about five months later that Britannia said it had made a mistake and porting was possible after a move.

Mr R said he understood there would be some minor labour costs involved in setting up the fixed rate for his new mortgage deal, and he wouldn't mind paying those. But he felt £3,500 really was extortionate. Mr R said he still hoped we could help him obtain a fair refund amount of the ERC payment.

Mr R also sent us the easy switch letter he got from Britannia, he said that showed just how easy it was to switch if you know the mortgage product you are looking for. Mr R said that unfortunately this was all that was stated on the easy switch letter, so he said that was in the very least, misleading and gives a false confidence that there will not be a problem.

I know that Mr R had told Britannia he was planning to move house. But I noted in my provisional decision that I did think the effect of taking out a new mortgage deal, including the payment of an ERC if he ended that deal early, had been fully explained to him when he switched his mortgage. I don't think Britannia had to refuse to process that request for a new mortgage deal, because Mr R had previously indicated he intended to move house.

Mr R then said Britannia wrongly told him he couldn't port his mortgage, and took several months to correct this. I do think this was a mistake, and I suggested that Britannia increase its compensation payment because of this.

However, Mr R did turn down the offer of porting that Britannia eventually made. He says he thinks the ERC Britannia applied was unfair. He thought that, because he thought the only costs Britannia had incurred were some manual costs of setting up his new mortgage deal. But I don't think that's right.

When Mr R took out a new mortgage deal with Britannia, what Britannia did was promise not to increase Mr R's mortgage interest rate for five years. That promise was binding on Britannia, and it has to keep charging Mr R the same interest rate, regardless of whether rates that Britannia itself pays to borrow money, or the rates it pays to its savers, change during that time.

For Britannia to be able to do that, it has to make those arrangements to support Mr R's five year mortgage deal right away, at the start of the five year period. Those arrangements are much more involved, and costly, than simply processing Mr R's application. And, as I explained in my provisional decision, Britannia usually recovers those costs throughout the five years of the deal it had entered into with Mr R.

That's why Britannia charges an ERC if someone ends their mortgage deal early. The ERC is in place to allow it to recover those costs, and that ERC must be a reasonable pre-estimate of those costs. I've not seen anything in this case to make me think what Britannia charged wasn't a reasonable pre-estimate of its costs. So I don't think the payment it asked Mr R to make was unreasonable or unfair.

For those reasons, I haven't changed my mind. I'll now make the decision I originally proposed.

My final decision

My final decision is that The Co-operative Bank Plc trading as Britannia must pay Mr R a total of £500 in compensation. The Co-operative Bank Plc trading as Britannia can count towards that amount any payment of compensation it has already made to Mr R for this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 5 March 2024.

Esther Absalom-Gough

Ombudsman