

## **The complaint**

Mrs F and Mrs R complained that just before they moved house, Leeds Building Society told them it would be refunding the whole of the Early Repayment Charge (“ERC”) payable on their mortgage. But they only got a partial refund. They wanted Leeds to pay the rest.

## **What happened**

Mrs R and Mrs F told us they’d recently moved house, and ported their existing Leeds mortgage. They said they were reducing their existing lending by £50,000.

Mrs R said she knew they would need to pay an ERC on the amount of the mortgage they were redeeming. And she had spoken to Leeds a number of times to confirm how much that ERC would be.

Mrs R said that closer to exchange, on 22 June 2023, she rang Leeds again and this time, it said she and Mrs F would receive a refund of the whole ERC after they’d moved. So instead of being charged £7,499.15 and an exit fee of £199, then getting a refund of around £6,000, she and Mrs F would get back all that they’d paid. Mrs R said the agent checked this, confirmed it, and even sent her this in writing.

But after Mrs R and Mrs F moved house, they got a refund of only £5,949. Mrs R said she complained, and again was told they ought to have received a full refund. But when Leeds responded to her complaint, it said that the agent on the 22 June call was wrong, and the refund she’d received was correct.

Mrs R said she and Mrs F had relied on the money they released from their sale to pay for their move, and to reduce their mortgage so their monthly payments were more affordable. Mrs R told us about the effect this had on her. She wanted Leeds to pay what it had said it would pay on 22 June.

Leeds said it was sorry about what had gone wrong here. It said it would only refund the full ERC when someone’s porting a mortgage and borrowing either the same amount or more than their existing mortgage. That didn’t apply here, as Mrs R and Mrs F were reducing their borrowing when they moved.

Leeds said it had listened to the call on 22 June when Mrs R was wrongly advised. It understood that its agent had incorrectly confirmed that Mrs R and Mrs F would be due a refund of the entire ERC, and it was sorry about that.

Leeds said the refund it sent to Mrs R and Mrs F on 13 July was right, but it would like to make a payment of £200 to say sorry for what had gone wrong.

Our investigator didn’t think this complaint should be upheld. He said Mrs R had understood, before the call on 22 June, that she would need to pay an ERC on the portion of the mortgage she and Mrs F were redeeming, minus the 10% that they were allowed to repay without penalty.

He understood Leeds had then wrongly said that Mrs R and Mrs F would get a full refund. It had confirmed this was a mistake, and the refund they'd received of £5,949 was right.

Our investigator set out the calculations behind this figure for Mrs R and Mrs F, and said he thought this was the right amount. He said he wouldn't ask Leeds to pay more, just because it had made a mistake about this. He explained that our service works to put people back in the position they'd have been in if a mistake hadn't been made, not in the position they'd be if the incorrect information had been right.

Our investigator said he thought Leeds' payment of £200 provided a fair and reasonable outcome to this complaint.

Mrs R replied, to strongly disagree. She said a payment of £200 wasn't a fair outcome. She said Leeds had specialists to advise her, and two of them made a huge mistake, costing her a huge sum of money. Mrs R wanted her case looked at again. This case was then passed 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 did not propose to uphold it. This is what I said then:

Mrs R has told us that she understood an ERC would be payable for the part redemption of the mortgage, when she and Mrs F moved house and reduced their borrowing. She has also shown us how she expected that ERC to be calculated. And I can hear that when she spoke to Leeds on 22 June, she said she'd spent some time working this out.

Mrs R's understanding of how this works was right. At that time, Mrs R said she was waiting for her solicitors to receive an up to date redemption figure.

I don't know exactly when Mrs R and Mrs F moved house, but they received the refund of their ERC on 13 July. So it's clear that when Mrs R spoke to Leeds on 22 June, their move was imminent.

Mrs R said she'd previously understood that she would get a refund of part of the ERC, but she was then told she'd receive a refund of the full amount of the ERC on the existing mortgage she and Mrs F held. I've listened to this call and I can hear that Mrs R was given wrong information. Although it may not have been clear initially, later in the call she did make clear that she was paying off some of the mortgage, and I think this ought to have been a prompt for the agent to work out how the ERC would apply to her particular circumstances.

I understand that the wrong information she was given raised Mrs R's hopes about how much this move would cost. But because this happened so close to the time when Mrs R and Mrs F were moving, I don't think it's likely that Mrs R and Mrs F had planned this move on the basis of the incorrect information that Leeds gave.

Mrs R also said on this call that Leeds had previously correctly advised her, before she and Mrs F went ahead with their purchase. I think it's more likely that Mrs R and Mrs F had planned their move based on Mrs R's previous, quite correct, understanding of how the ERC would be calculated, which she had confirmed with Leeds earlier.

I know that Mrs R feels strongly that Leeds should do what it said it would do, and I

appreciate she and Mrs F would be disappointed when Leeds realised its mistake and didn't refund the whole of the ERC. But I don't think that means Leeds has to offer a full refund of the ERC Mrs R and Mrs F paid. I don't think that would be a fair and reasonable outcome for both sides, in this case. Instead, I think what Leeds ought to do here is to make a payment to recognise the disappointment that Mrs R and Mrs F felt, when Leeds did realise its mistake, and didn't refund the full amount mentioned on this call.

Our investigator said Leeds had offered £200 in compensation. I don't think that would have provided a fair and reasonable outcome to this complaint, given what Mrs R has told us about the impact of this mistake. But Mrs R has also shown us that Leeds then wrote to her again, offering a further £300 for what went wrong here. And I do think a total payment of £500 in compensation to Mrs R and Mrs F does provide a fair and reasonable outcome to this complaint.

I understand that these amounts have already been paid to Mrs R and Mrs F. And because of that, I don't think Leeds has to do any more now. So, although I know that Mrs R and Mrs F will be disappointed, I don't think this complaint should be upheld.

I invited the parties to make any final points, if they wanted, before issuing my final decision. Both sides 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.

Leeds didn't reply to my provisional decision. Mrs R replied, to strongly disagree.

Mrs R said she had worked out the figures, and questioned the advisors over and over. She said that three separate people insisted the figures were right, and Leeds put this in writing. Mrs R said there was no point in having experts to advise her, if they gave out wrong information about mortgages, probably the biggest expenditure in anyone's lifetime.

Mrs R said Leeds put in writing the figure that she would be owed, so Mrs R said that was a form of contract signed by Leeds. She said there was no point in asking for written confirmation of a figure if Leeds could just say it made a mistake, and our service would then also say there had been a mistake, but let's just forget it.

Mrs R said that because Leeds made a written statement with the amount she would be refunded, it should be liable for the full amount.

I recognise Mrs R's strength of feeling on this issue, and I accept that Leeds has let her down. But I don't agree that when Leeds wrote down the figure it had given Mrs R in error, and sent the email to her, that means it had issued Mrs R with a contract, which is binding on them both. I don't think Leeds has to pay that mistaken amount to Mrs R and Mrs F now, just because it wrote this down.

Mrs R also said that our service was just saying Leeds could forget about the serious mistake it had made. But that's not what my decision says. I recognised that Leeds made a mistake, and I sought to identify the impact that this mistake had, in this case.

That's why I also considered when this mistake was made. And I could see it was made very close to the time of sale and purchase. I could also see that Mrs R had, previously, worked out how much the ERC would be. And she'd got that right.

So I understood that when Mrs R and Mrs F made their detailed financial planning for their move, it was on the basis of correct information, which Mrs R said they'd previously been given by Leeds. And Mrs R and Mrs F haven't suggested they had otherwise relied on the mistaken figure that Leeds gave them.

That does, in my view, reduce the impact of this mistake somewhat, because Mrs R and Mrs F didn't make their decision to move house, thinking Leeds would refund over £7,500. They decided to move house, thinking it would refund around £6,000. And that's what Leeds eventually did.

I explained in my provisional decision, that I appreciated Mrs R and Mrs F would be very disappointed, when Leeds then realised its mistake, and paid only what it had originally said, not the larger amount of £7,500 it gave them by mistake.

I also said that I didn't think Leeds had originally offered enough compensation to make up for that. But after Mrs R brought this complaint to our service, she told us Leeds got in touch again, and paid a further £300 to her and Mrs F. And I did think that provided a fair and reasonable outcome to this complaint.

That's why I said this complaint wouldn't be upheld. Not because no one is taking this seriously, or because our service thinks Leeds can just forget about its mistake, but because I reached the decision that Leeds had taken this seriously, and had already offered and paid enough to provide that fair and reasonable outcome, in the circumstances of this complaint.

I recognise that, given Mrs R's strength of feeling on this issue, she is likely to continue to disagree. So I'm sorry to have to tell her that I haven't changed my mind. I'll now make the decision I originally proposed.

### **My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs F and Mrs R to accept or reject my decision before 4 June 2024.

Esther Absalom-Gough

**Ombudsman**