

The complaint

Mrs H's complaint is that she was incorrectly told – twice – by more 2 life Ltd trading as Standard Life Home Finance (and referred to here as SLHF) that she would not have to pay an early repayment charge (ERC) on a partial redemption of an equity release lifetime mortgage.

To settle the complaint Mrs H wants SLHF to keep the balance of the mortgage at £160,076.07 (the amount outstanding on 5 April 2023). Mrs H would then pay £105,000, and wants no interest to be added until the situation is resolved. Thereafter, Mrs H would then be content for interest to accrue against the remaining £55,076.07 balance.

What happened

I do not need to set out the full background to the complaint. This is because the history of the matter is set out in the correspondence between the parties and our service, so there is no need for me to repeat the details here. In addition, SLHF has acknowledged it made an error, so I don't need to analyse what happened in depth in order to determine whether SLHF is at fault; all I need to decide is whether the compensation already offered by SLHF for its admitted errors is sufficient, or if there is anything further SLHF needs to do to put things right.

Finally, our decisions are published, so it's important I don't include any information that might lead to Mrs H being identified. So for these reasons, I will instead concentrate on giving a brief summary of the complaint, followed by the reasons for my decision. If I don't mention something, it won't be because I've ignored it; rather, it'll be because I didn't think it was material to the outcome of the complaint.

This complaint arises out of unhappy circumstances – the death of Mrs H's husband in March 2023.

Mr and Mrs H had a lifetime equity release mortgage with SLHF. After Mr H passed away, Mrs H wanted to retain the mortgage, and pay off a lump sum. Mrs H spoke to SLHF on 5 April 2023 when she was told (incorrectly) that there would be no ERC on a partial redemption of the mortgage. Mrs H wanted to pay £110,000 from the balance of £160,000. Mrs H was referred to the mortgage terms and conditions.

On 9 May 2023 Mrs H spoke to SLHF again and once again was told that there'd be no ERC on a partial redemption. Mrs H was also asked to refer to the terms and conditions.

On 11 May 2023 Mrs H emailed SLHF advising of her intention to pay a lump sum off the mortgage, and confirmed her understanding that no ERCs would be payable.

On 12 May 2023 SLHF spoke to Mrs H and explained that she'd previously been misinformed, and that an ERC would be payable on a partial redemption, but not if the account was to be redeemed in full.

Mrs H was able to pay £105,000, and SLHF confirmed that there would be an ERC of £6,275.15, which meant that the mortgage balance would be reduced by £98,724.85. Mrs H raised a complaint and initially SLHF offered her £250 compensation for the incorrect information. However, SLHF wasn't able to waive the ERC.

In its final response letter dated 29 June 2023 SLHF acknowledged Mrs H had been given incorrect information, but explained that it wasn't able to waive the ERC. SLHF increased its offer of compensation to £500.

Mrs H didn't accept this and in November 2023 asked our service to look into her complaint. An Investigator looked at what had happened. Overall, she was satisfied that the offer of £500 was fair and reasonable.

Mrs H said that she'd made a financial decision to pay for her husband's funeral and interment on 13 April 2023, after she'd been told there'd be no ERC. The Investigator asked Mrs H what she would have done differently in relation to these specific expenses if she'd been told on 5 April 2023 that there'd be an ERC to pay.

Mrs H also raised another point – that she'd not received the original final response letter sent in the post by SLHF on 29 June 2023. Mrs H had asked SLHF to send another copy, which it did, by email. However, Mrs H complained that this was sent as a .pdf attachment which wasn't on headed paper, or signed.

The Investigator reviewed the points Mrs H had made. She remained of the opinion that the compensation offered of £500 was fair in all the circumstances. The Investigator also asked SLHF to print off a copy of the final response letter on headed paper, sign it and post it to Mrs H.

Mrs H didn't accept this and asked for an Ombudsman to review the complaint. Mrs H has repeated all the points she's previously made, but has provided no new evidence or arguments. She says she is ready to pay the £105,000 off the mortgage, but with no ERC.

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.

I would first of all like to pass on my condolences to Mrs H on the loss of her husband after a very long marriage. I have no doubt these events have been very stressful for her. But I am required to decide a case on the basis of the evidence, rather than being swayed by emotion, and so I have to put aside my natural feelings of empathy for Mrs H.

The ERC: Where a business does something wrong, the role of this service is to put the consumer back in the position they would have been in if the mistake hadn't happened. The mistake here – repeated twice by SLHF – was that Mrs H was told there'd be no ERC on a partial redemption, when, in fact, an ERC was payable.

If Mrs H had been given the correct information on 5 April 2023 and 9 May 2023, she'd have been aware, prior to 12 May 2023, that there'd be an ERC on a partial redemption.

Mrs H said that, on the assumption no ERC would be payable, she'd paid for Mr H's funeral and interment on 13 April 2023. Although the Investigator asked Mrs H what she'd have done differently in relation to these expenses if she'd been told there'd be an ERC, Mrs H doesn't appear to have provided any explanation.

I also note that Mrs H didn't say to SLHF during the phone call on 5 April 2023 that she was intending to pay these expenses, based on the assertion there would be no ERC payable on a partial redemption. I'm therefore not persuaded that it could have been reasonably foreseeable by SLHF that Mrs H was intending to incur expenses if it wasn't told about this during the call on 5 April 2023. In addition, these are expenses that would have been payable in any event, and are not usually ones that can be deferred. So on balance, I'm not persuaded that SLHF can be held responsible for Mrs H's decision to incur these expenses.

Therefore what Mrs H has suffered is not an actual financial loss; rather, it is a loss of expectation, as she was under the mistaken impression (as a result of SLHF's error) between 5 April 2023 and 12 May 2023 (when SLHF corrected the position) that there'd be no ERC.

That doesn't mean that SLHF is required to waive the ERC, or freeze interest on the account as Mrs H would like it to do. Mrs H knew the correct position on 12 May 2023, and so could have proceeded with a partial redemption at that date. She could then have raised her complaint and, if upheld, any adjustment could be made to the account at a later date.

However, in all the circumstances, whilst I don't underestimate Mrs H's strength of feeling, I'm satisfied that SLHF is entitled to charge the ERC in line with the contract terms and conditions. As these were set out in the Investigator's correspondence, I won't repeat them here. But I'm satisfied that the terms and conditions do not provide for a waiver of the ERC on a partial redemption of the mortgage.

The final response letter: SLHF sent its final response letter by post on 29 June 2023. I note Mrs H didn't receive it, but there is nothing in SLHF's contact notes to show it was returned as undelivered. Post goes astray from time to time, but once SLHF had sent it, it was the responsibility of Royal Mail to deliver the letter.

When SLHF was alerted by Mrs H by email to the fact she'd not received it, SLHF replied by email with two .pdf attachments – one being the final response letter and the other being a form for her to sign if she wanted to accept the £500 compensation. Mrs H was offended that the final response wasn't printed on headed paper or signed. Because it was a .pdf attachment, I wouldn't have expected either of those things.

However, as Mrs H wants a signed copy of the final response letter on headed paper for her records, I would ask SLHF to attend to this for her.

Putting things right

As a result of its error in misleading Mrs H in relation to a waiver of the ERC between 5 April 2023 and 12 May 2023, SLHF caused Mrs H distress and inconvenience. To settle the complaint, I direct more 2 life Ltd trading as Standard Life Home Finance to pay Mrs H compensation of £500. In all the circumstances, I am satisfied this is fair, reasonable and proportionate to the errors made by SLHF.

I would also ask more 2 life Ltd trading as Standard Life Home Finance to print off a copy of the final response letter dated 29 June 2023 on headed paper, sign it, and send it to Mrs H, preferably by recorded delivery to ensure she receives it.

My final decision

My decision is that I partly uphold this complaint. I direct more 2 life Ltd trading as Standard Life Home Finance to settle the complaint as set out above.

This final decision concludes the Financial Ombudsman Service's review of this complaint. This means that we are unable to consider the complaint any further, nor enter into any discussion about it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 9 September 2024.

Jan O'Leary
Ombudsman