

The complaint

Miss N and Mr R complain that Paragon Bank Plc didn't agree to waive the early repayment charge (ERC) when they sold their buy to let property following diagnosis of a terminal illness.

What happened

Miss N and Mr R had a buy to let mortgage with Paragon. They took out a five-year fixed interest rate product in April 2022. This had an ERC.

Miss N was diagnosed with a terminal illness. Miss N and Mr R decided to sell the property. In mid-2023 they asked Paragon about the ERC and porting and were told that the mortgage wasn't portable. Miss N says they wouldn't have taken out the product if they'd known it wasn't portable.

Paragon reviewed the ERC in light of Miss N's circumstances. It said it hadn't sent Miss N and Mr R a mortgage illustration when they switched product. Initially it agreed to waive about £3,000 of the ERC and later increased this to about £6,000 (half of the ERC).

Our investigator said given their circumstances and plans, Miss N and Mr R wouldn't have taken out a product with an ERC. She thought they'd have opted to stay on the standard variable rate (SVR) and said Paragon should put Miss N and Mr R into the position they would have been in if they hadn't taken out the product.

Our investigator said Paragon should calculate the difference in the amount of interest Miss N and Mr R paid while on the product rate as compared to being on the SVR. Our investigator said Paragon should refund the full amount of the ERC less the difference in the interest.

Paragon said Miss N and Mr R would have paid about £26,000 in interest if they'd been on the SVR. It said they paid interest of about £12,000 while on the product rate. This was a difference of about £14,000 – more than the ERC. On that basis, it said no further refund was due.

Miss N and Mr R didn't agree. Miss N said they didn't have an issue with the amount of interest. The problem was that the product couldn't be ported and they had to pay a large ERC. Miss N said if she'd known that at the outset they wouldn't have taken out that product.

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.

Paragon made an error when it didn't send the mortgage illustration to Miss N and Mr R when they took out the product. It didn't make them aware of the terms of the product before they agreed to those terms.

Miss N and Mr R were upset to discover in mid-2023 that the product wasn't portable. And

this was at a time when they were dealing with a diagnosis of a terminal illness and were trying to put plans in place for the future.

However, I don't think it's fair and reasonable to require Paragon to refund all of the ERC or pay compensation. That's not because it didn't make an error – it did. And it's not because I'm not sympathetic to Miss N's situation. It's because Miss N and Mr R are not worse off for having taken out the product.

From what Miss N has said they would have acted differently if they'd been fully informed about the terms of the product. She says they wouldn't have taken out the product. This might well have been the case – Miss N and Mr R wouldn't have known at the time how much interest rates would increase. But interest rates did increase and quite significantly – Paragon's SVR increased from 5.60% in April 2022 to 9.35% in August 2023.

If their mortgage had been on the SVR between April 2022 and August 2023 Miss N and Mr R would have paid more interest – about £14,000 more – than they did while on the product rate. Miss N and Mr R didn't pay a product fee. Even if Miss N and Mr R had paid the £12,000 ERC in full they would still have been better off for taking out the product. In addition, Paragon refunded about £6,000 of the ERC. This means Miss N and Mr R are now about £8,000 better off for having taken out the product, rather than remain on the SVR.

I've considered what else Miss N and Mr R might have done, other than remain on the SVR, if they'd been sent the mortgage illustration and seen that the product wasn't portable.

Paragon doesn't offer portable products. So taking out a portable product with Paragon wasn't an option. Paragon sent information about the products available in April 2022 – it says this is the same information Miss N and Mr R would have seen when they chose the five-year fixed rate product.

Given what Miss N has said about not taking out the product if they'd known it wasn't portable, I don't think they'd have taken out a product with an ERC. Paragon offered a discounted SVR product that didn't have an ERC. However, the interest rate was higher than for the product Miss N and Mr R chose. And the rate increased with the SVR. I don't know if Miss N and Mr R would have chosen this product, if they'd been told the products weren't portable. But if they had, I don't think they'd be better off now. That's because the amount of additional interest they'd have paid would have been more than the £6,000 ERC they've paid.

Paragon made an error, and I expect it to put matters right. This could include compensation for financial loss or for distress and inconvenience which resulted from its error.

But I can't fairly require Paragon to pay compensation for financial loss – the unexpected cost of the ERC – when overall Miss N and Mr R haven't suffered a loss. They had the benefit of the fixed interest rate during a period when interest rates increased quite significantly. They were better off as a result of taking out the product – even with the cost of the ERC.

Miss N was diagnosed with a terminal illness. I'd expect Paragon to be sympathetic and supportive. But this in itself didn't mean it had to waive or refund the ERC.

Paragon waived or refunded half of the ERC. This put Miss N and Mr R into a better position than they'd have been in had they stayed on the SVR, or even if they'd taken out the discounted SVR product. I think this is fair compensation for the upset caused to Miss N and Mr R when they found out the product wasn't portable. I think Paragon has done enough to put matters right. I don't think it's fair and reasonable in the circumstances to require it to

refund the remainder of the ERC or pay compensation.

My final decision

My decision is that the steps already taken by Paragon Bank Plc to resolve the complaint are fair and reasonable in the circumstances and it doesn't need to do more.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss N and Mr R to accept or reject my decision before 25 June 2024.

Ruth Stevenson
Ombudsman