DRN-4862008

The complaint

Mr and Mrs U have complained about what happened when they applied to port their mortgage with Yorkshire Building Society trading as Chelsea Building Society to a new build property they wanted to buy.

What happened

Mr and Mrs U had a mortgage with Chelsea. In 2021 they transferred it onto a new fixed interest rate product. The mortgage offer dated 18 March 2021 set out the mortgage balance was just over £200,000 and it was held on an interest only basis with around three and a half years left to run on the mortgage term.

The new interest rate product was fixed at 1.52% until 31 July 2024, with an early repayment charge ("ERC") if the mortgage was repaid before that date. The ERC was 3% of the outstanding balance until 31 July 2022, 2.5% of the outstanding balance from then until 31 July 2023 and finally 1.5% of the outstanding balance between then and 31 July 2024.

The offer said:

> 'If you move home, in most cases, you can take your mortgage product with you - this is called portability. This is provided that you and the property that you are buying meet our lending criteria applicable at the time of your move.
>
> In all cases where all or part of your loan on a mortgage product is repaid before the end of the early repayment charge period specified in this Mortgage Offer, the applicable early repayment charges must be paid. However, if you take out your new mortgage with us and comply with the conditions below, all or some of these early repayment charges can be refunded to you.
>
> The conditions are that
> - We have a first legal charge over your replacement property
> - You complete your new mortgage within six months of repaying your existing mortgage
> - You buy a property in England, Scotland, Wales or Northern Ireland
> - You pay any costs associated with your move including valuation fees
> - You and the property you are buying must comply with our lending criteria applicable at the time.
>
> If you take a new mortgage with us for the same amount as your existing mortgage product, known as the portable amount, on the same product terms as your existing mortgage your early repayment charges will be refunded in full. Extra borrowing, known as top-up borrowing, may be available subject to our lending criteria.
>
> If however the loan amount on your new mortgage is less than your existing mortgage, you will only be refunded a proportion of the early repayment charges.'

In May 2023 Mr and Mrs U applied to port their mortgage to a new build property they wanted to buy. The agreement in principle dated 25 May 2023 said a mortgage of £50,000 would be available, subject to a satisfactory valuation and legal check of the property, the information provided being verified and that the application met its lending requirements and conditions of the product.

On 13 June Chelsea said the application had been reviewed and set out what information was needed from Mr and Mrs U, one of which was for Mr and Mrs U to pay the £200 valuation fee. That was paid and a valuation was instructed but the developer that was selling the property refused to allow the appointed surveyor onto the site.

After some back and forth between the parties involved the application was withdrawn as Chelsea wasn't willing to allow a different surveyor to be appointed, and the developer wasn't willing to allow the booked surveyor on site.

Mr and Mrs U still wanted to buy the property and so they did so without recourse to a mortgage from Chelsea. As that meant repaying their existing mortgage, in October 2023 they incurred the ERC.

In the meantime, unhappy with everything that had happened both with the valuation and the service Chelsea had provided overall, Mr and Mrs U raised a complaint.

Chelsea responded on 16 August 2023. It agreed that Mr and Mrs U hadn't received the standard of service it aims to provide in terms of the delays and errors and for that it offered a total of £180 compensation. In addition it said it had arranged for the £200 valuation fee to be refunded.

Mr and Mrs U responded to say they had some major issues with the content and quality of the complaint response letter, saying the wording was poor and ambiguous, with numerous issues such as typographical and grammatical mistakes as well as factual errors.

After some further back and forth with some more conflicting information being given, Chelsea sent a further response on 1 November 2023. It agreed its previous complaint response was of poor quality, being badly worded and in parts grammatically incorrect, however it said that it was confident Mr and Mrs U would have understood the content in its correct context. It said its offer of £180 compensation superseded the previously discussed £150, and that acceptance of that wouldn't affect Mr and Mrs U's rights to refer the matter to the Financial Ombudsman Service.

Our Investigator said the surveyor that was instructed was qualified and expected to perform according to the standards set by the Royal Institution of Chartered Surveyors, and it wasn't unreasonable for Chelsea to not agree to instruct a different surveyor. She said she wouldn't expect a lender to allow a party to dictate how the process works and which surveyor is instructed and that whilst Mr and Mrs U were impacted by that, she couldn't say Chelsea was at fault. In relation to the ERC she said Chelsea had acknowledged that incorrect information had been provided to Mr and Mrs U, but as they didn't port the mortgage it correctly charged the full ERC upon redemption. She said she felt Chelsea's offer of £180 compensation plus a refund of the £200 valuation fee was fair and reasonable.

Mr and Mrs U didn't accept our Investigator's findings and so it has been passed to me to decide.

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.

Having done so, I've reached the same conclusion as the Investigator, for largely the same reasons.

I trust Mr and Mrs U won't take it as a discourtesy that I've condensed their complaint in the way that I have. Although I've read and considered the whole file I'll keep my comments to what I think is relevant. If I don't comment on any specific point, it's not because I've not considered it but because I don't think I need to comment on it in order to reach the right outcome.

I appreciate Mr and Mrs U's points and can understand their frustration with what happened. However I think it's key to set out the purpose of the valuation.

While Mr and Mrs U paid Chelsea, it arranged for the valuation to be carried out so it could assess whether there was sufficient security in the property – and whether it met its lending criteria - for it to grant the mortgage requested. So the valuation would be carried out primarily for the benefit of Chelsea, not Mr and Mrs U.

Mr and Mrs U would have benefited from the valuation in the sense that having it potentially enables them to be granted the mortgage they'd requested, but the valuation would have been for Chelsea, not Mr and Mrs U. This means that it gets to decide whether or not a different surveyor should be instructed. Chelsea had a responsibility to ensure the valuation was carried out fairly and appropriately, and any interference with that by an interested party – which the developer was – would be incredibly inappropriate.

In order to find a surveyor for Mr and Mrs U's potential new property, Chelsea instructed the surveying service it uses for this type of work. It asked them to find a surveyor who was a member of the Royal Institution of Chartered Surveyors (RICS) to complete the valuation, and I'm satisfied the surveyor that was instructed met that requirement.

Where there is no irrefutable evidence, and there is a difference in testimony between the parties involved, my role is to decide what, on the balance of probabilities, is more likely to have happened.

It isn't in dispute that the developer wouldn't allow that specific surveyor on site so I can take that as fact. Where the difference occurs is the reason for that.

The developer said that was because the surveyor on a previous visit hadn't wanted to act within the developer's health and safety requirements by not wearing the required personal protective equipment ("PPE").

Whereas the surveying service said the only feedback it had received from the developer about that surveyor previously was that it wasn't happy with the valuation figure he attributed to one of its properties. It said there had been no mention of the surveyor previously not adhering to the PPE requirements.

The surveying service, in an email to the developer said:

> 'I note your comments regarding the valuers conduct when he last visited the site, surprised such feedback was not shared with [the surveying service] at the time, we have no record of the valuer failing to comply with your [health and safety] requirements.'

To which the developer responded thanking the surveying service for its reply and asking whether that means the valuation would definitely be allocated to the particular surveyor in

question if they moved forward.

If the surveying service was wrong in saying that no feedback had been given at the time the surveyor allegedly breached health and safety requirements previously then I would have expected the developer to have said as much in its response, but it didn't.

On balance I find the surveying service's version more persuasive as if a surveyor had breached something as important as the health and safety requirements on a building site then I would have expected the developer to have raised that at the time with his employer, and potentially even with RICS as that is a serious matter. And I also would have expected the developer to correct the surveying service in its response to the email had such a report been made.

In any event, even if the developer's version was correct, if the surveyor had attended site this time and refused to wear the required PPE then I would say it may have been appropriate for a different surveyor to be instructed. But that didn't happen with the developer refusing to give the surveyor a chance to meet the requirements this time that it claimed he hadn't previously. All the developer needed to do was to allow the visit to go ahead with that surveyor, but if at any time he refused to meet the health and safety PPE requirements then it could have stopped the visit and made a complaint about his conduct. Then a different surveyor could have been instructed without any issues.

Whilst the developer said it was not trying to dictate who carries out the valuation, that is exactly what it was doing. And it wasn't a disinterested party in this transaction, as it would have an interest in ensuring the value given to the property wasn't less than the purchase price it was asking for and that no other issues or faults were reported.

Had Chelsea instructed a different surveyor and that surveyor had then not reported on some potential issues and/or given the correct market value to the property, then Chelsea could have left itself open to a future claim from Mr and Mrs U that it colluded with the developer to select a certain surveyor.

I understand that Mr and Mrs U are unhappy that Chelsea didn't agree to let a different surveyor value the property but it didn't need to, and arguably it would have been entirely inappropriate if it had done so. A RICS certified surveyor was instructed and there is no evidence to support the developer's claim about a previous health and safety breach (to the degree the surveyor should be banned from the site permanently) so I think Chelsea arranged the valuation with due care and I can't say it was wrong to not instruct a different surveyor.

Chelsea instructed a suitably qualified surveyor, and it was entitled to rely on its commercial discretion to not instruct a different surveyor because the developer wanted to veto that one. Having considered everything I don't think Chelsea needed to do any more. So, while I can appreciate that the process may have been frustrating for Mr and Mrs U, I don't feel I can reasonably conclude that this was the fault of Chelsea.

Mr and Mrs U's mortgage offer was clear that if they redeemed the mortgage early they would have to pay an ERC. ERCs are intended to reflect the cost to the business of borrowers redeeming a particular mortgage early. So I don't think it would be fair to ask Chelsea to refund the ERC when I don't think it was wrong to not be able to proceed with the application to port the mortgage.

Chelsea hasn't disputed that its customer service fell short on occasion. Because Chelsea has accepted it was at fault, the only issue I need to decide is the level of compensation that's appropriate to put things right. To be clear that compensation is just for the customer

service elements as I'm satisfied Chelsea did nothing wrong in respect of the main thrust of this complaint - that is the request to instruct a different surveyor – so no compensation is due for that.

I'm glad to note Chelsea has acknowledged its customer service could have been better at times. I agree Chelsea could have done better. As it isn't in dispute what Chelsea got wrong here I won't set it all out again but I can reassure both sides I've read and understood everything about this part of the complaint.

For example, Mr and Mrs U were initially told that no ERC would apply if they ported their mortgage, but they were later (correctly) told that there would be a pro rata ERC as they were reducing their mortgage balance. In any event the conflicting information point here is moot as Mr and Mrs U didn't port at all, but I can confirm that as per the mortgage offer Mr and Mrs U would have been charged an ERC on the amount they repaid (so that would be all but the £50,000 they wanted to port). This means that Mr and Mrs U always would have been charged all but around £750 of the ERC even if they had ported their mortgage.

I'm satisfied a payment of compensation for trouble and upset is due to Mr and Mrs U. I've looked at the various mistakes Chelsea made, and any customer service failings. Having done so, I'm satisfied that the £180 it has already offered is fair and reasonable, and proportionate to the errors made by Chelsea. I'm also satisfied it is appropriate to refund the £200 valuation fee as a valuation never took place. That gives a total of £380.

My final decision

Yorkshire Building Society trading as Chelsea Building Society has already made an offer to pay £380 to settle the complaint and I think this offer is fair in all the circumstances.

So my decision is that Yorkshire Building Society trading as Chelsea Building Society should pay £380 (less any amounts already paid).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs U to accept or reject my decision before 21 October 2024.

Julia Meadows
Ombudsman