

## **The complaint**

Mr P complains that Morrison Wealth Management LLP – an appointed representative of St. James's Place Wealth Management Plc (SJP) – incorrectly led him to believe that he would not have to pay an early repayment charge (ERC) if he repaid his mortgage.

## **What happened**

Mr P had a mortgage with lender A. An ERC applied if the mortgage was repaid before 30 June 2023.

Mr P wanted to move home. He sought mortgage advice from Morrison Wealth Management – although I'll refer to SJP in my decision as the principal firm. SJP made an application to lender A to port Mr P's mortgage to the new property. But lender A declined the application.

SJP then recommended that Mr P should take a mortgage with another lender, lender B. But Mr P wanted to avoid paying the ERC on his existing mortgage. SJP told Mr P that he would be able to repay his existing mortgage and take the mortgage with lender B without having to pay an ERC. He said SJP told him that he would only have to pay around £2,800 – that being the interest due over the remainder of the fixed rate period.

Mr P said after he'd exchanged contracts to buy his new home, his solicitor received a redemption statement from lender A, which said that an ERC of £14,465.65 was payable. Mr P redeemed the mortgage with lender A on 24 March 2024 and incurred the ERC.

Mr P complains that SJP incorrectly led him to believe that there would be no ERC payable if he repaid his mortgage with lender A. He said if he'd been given the correct information – that he would need to pay an ERC – he would have waited until after 30 June 2023 when the ERC had expired to buy his new home. He wants SJP to refund the ERC he paid.

SJP accepted that it had led Mr P to believe that lender A would waive the ERC and instead allow him to pay daily interest until the end of the fixed rate period – around £2,800. It offered Mr P a total of £550 for the distress and inconvenience caused by that and the time taken to respond to the complaint.

An investigator thought the complaint should be upheld. He said if Mr P had been given the correct information he would have taken that up with lender A – and if it would not agree to waive the ERC he would have waited until the fixed rate period ended. The investigator said that SJP should refund the ERC – less the £2,870 he was expecting to pay – with interest at 8% simple for the time Mr P has been without those funds. He thought SJP's offer of £550 in recognition of Mr P's distress and inconvenience was "suitable". SJP did not agree with the investigator's conclusions so the complaint was referred to me for an independent review.

I asked Mr P for more evidence around his sale and purchase. After reviewing the information he gave us, I emailed Mr P and said the evidence we had showed that he had exchanged contracts for the sale of his property on 6 March 2023 at 2.55pm but SJP did not give him the incorrect information about the ERC until 7 March 2023. So it appeared that Mr

P entered into a contract to sell his home before SJP gave him any incorrect information.

Mr P responded to say that he was in “constant communication” with SJP and that he’d been given the incorrect information about the ERC before the 6 March. He said he would not have exchanged until he was comfortable that he would not incur an ERC.

I said the evidence we had did not support that Mr P had received a definitive answer from SJP about the ERC until 7 March. But in any event, I was not persuaded that had Mr P been given the correct information about the ERC, that he would have done anything differently. I said there was insufficient evidence to support that delaying exchange on the sale or purchase, or negotiating a reduction on the purchase was realistic. There was also no contemporaneous evidence to show that Mr P would not have proceeded if he knew the ERC would be applied – although I accepted that he would rather have avoided it. I said that SJP made a valid point when it highlighted the ERC was relatively small in relation to the total value of the overall transaction. I considered that SJP’s offer of £550 was fair.

Mr P responded to make a number of points, including:

- He did not discuss the ERC with his solicitor or estate agent as they were not involved with it. It would not have been helpful to bring other into that issue and complicate or confuse the sales process. His only discussions about the ERC were with his wife and SJP.
- It would not have been a problem to delay exchange or completion. The buyer did not need the property until September and the seller did not live there and was not in a chain.
- He would not have said anything about wishing to avoid the ERC to the solicitor or estate agents. Avoiding the ERC was very important to him hence the constant communication with SJP and why he did not exchange until he was given a positive update. He can’t definitely say that he would not have proceeded, but he definitely would have tried to find a solution either by price change, delay or complaint to Accord.
- It was “offensive” to put forward that in relation to the overall value of the transaction the ERC was relatively small. The ERC was objectively a lot of money and not an amount he would ever think lightly of. The fact he is pursuing this complaint supports that. The compensation of £550 is inadequate in the context of the harm SJP’s advice has caused.
- He would not have asked for a reduction in the price of the property he was buying because of the ERC. Rather he would have based any negotiation on the fact that his existing lender deemed the property “unmortgageable” and had to look for another mortgage with a higher interest rate. That affects the future saleability of the property.
- He’d never had any contact with Accord and relied solely on SJP to give him accurate information.
- The wrongdoing was clearly by SJP and he does not hold the lender accountable. He relied on the information given by SJP. It was unfair that SJP received a fee from the lender while he has lost money. At least, SJP should refund the fee it earned from the transaction.

### **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.

We have SJP's records of contact with Mr P. On 6 March 2023, SJP emailed Mr P and said *"Are you free tomorrow morning to run through the ERC elements? How's 8am or 9am?"* Mr P replied *"Sounds good, 8am works well for me I can also do now quickly if that's better."* The next record is on 7 March 2023 where SJP emailed Mr P: *"Great to talk to you earlier, thanks for your time. [SJP] kindly contacted [lender A] to check what the ERC would be if the mortgage was redeemed earlier. The response was as follows: [lender A] have confirmed the daily interest will be roughly £31.89. Therefore, for the 90 days would be roughly £2,870."*

It is not in dispute that SJP gave Mr P incorrect information. It told Mr P that no ERC would apply if he repaid his mortgage with lender A and that he would only have to pay the daily interest due until the end of the fixed rate period. The evidence we have would appear to support that Mr P was not given confirmation of that until 7 March 2023. But we also know that Mr P exchanged contracts on 6 March 2023 at 2.55pm – before he'd apparently received confirmation from SJP. On that basis, I could not say that the decision to proceed was based on the incorrect information from SJP.

I accept that Mr P was waiting for confirmation from SJP about the ERC. But the evidence we have does not support that he was given the incorrect information before he exchanged contracts. I also consider that if the ERC was a significant factor in deciding to exchange there was a degree of responsibility on Mr P and/or his solicitor to obtain confirmation of the redemption amount from the lender before exchanging bearing in mind they had previously received a redemption statement from lender A showing the ERC.

Mr P said the above records do not give an accurate reflection of what happened. He said there were earlier phone calls with SJP where it led him to believe that the ERC would not be applied. But even if I accept that, I don't consider I could fairly say that SJP should pay Mr P the amount of the ERC. I will explain why.

Where a business has given incorrect information, I would usually look for it to put the affected party back in the position they would have been in had they been given the correct information in the first place. I will need to consider what Mr P would likely have done had he been given the correct information. I would not ask SJP to honour the incorrect information.

So I am unable to tell SJP to do what the investigator recommended. Mr P could never have avoided the ERC if he paid the daily interest that was due to be paid to lender A until the end of the fixed rate period. While Mr P could have complained to the lender about the application of the ERC, it is not clear that complaint had any prospect of success. And the option of complaining to the lender about the application of the ERC is still open to Mr P.

I accept that if Mr P knew there was an ERC there were several options open to him including delaying the sale and purchase, negotiating the purchase price and/or raising a complaint to the lender. I also accept that Mr P was deprived of the opportunity of doing those things.

The difficulty I have is that there is no evidence from the time in question that supports that any of those things were likely to succeed. I acknowledge that anyone involved in a property transaction would not want to do anything to jeopardise it. But there is no evidence in any of the communications with any of the parties that the ERC was a deal breaker or that there was any real scope to negotiate on price or the timescales for completion.

After considering very carefully everything that Mr P and SJP have said and provided, I am not sufficiently persuaded that if Mr P had been given the correct information that it was

more likely than not that he could have negotiated a delay. For example, the memorandum of sale for the sale was dated 29 November 2022 with an anticipated date to exchange contracts of 23 December 2022. The memorandum of sale for the purchase said a condition of sale was “*Aim to exchange contracts as soon as possible. Assuming legal side progress at the anticipated pace, completion for mid-February 2023*”. So both the sale and purchase already completed later than originally envisaged by the parties. There is no other evidence from the time that supports that any of the parties would have agreed to a further delay.

Nor am I persuaded that negotiation on price was likely to succeed. It is speculative that the seller would have agreed a reduction in price. There is no evidence to support that the seller would have agreed to a reduction. And it was always open to Mr P to negotiate on price. The reasons he set out regarding the “mortgageability” of the property were the same whether the ERC applied or not.

Overall – putting aside that it is not clear if Mr P exchanged on the sale before he received the incorrect information and whether it was reasonable for him and his representatives to proceed without confirmation directly from the lender – while I appreciate what Mr P has said about the value of the ERC to him personally, I am not persuaded that it was more likely than not that he could successfully avoid the ERC had he been given the correct information. Other than Mr P’s belief about his bargaining position, there is insufficient evidence for me to be able to reasonably conclude that he would have been able to avoid the ERC.

I accept the importance of trying to avoid paying the ERC to Mr P. And I have noted his reasons why the amount of money was important to him. But the amount of the ERC in relation to the overall value of the transaction is relevant. It seems less likely to me that Mr P would have abandoned the sale and purchase if he’d been unable to negotiate on price or timescales. They were both at a relatively advanced stage by that point.

It follows, that in all the circumstances, I don’t consider it would be fair or reasonable for SJP to pay Mr P the amount of the ERC. That is not to downplay the seriousness of SJP’s mistake. Rather I do not consider the evidence I have supports if Mr P had been given the correct information that it was more likely than not Mr P could have done anything differently to avoid the ERC.

I understand the importance of this matter to Mr P. I’ve thought very carefully about what he’s told us. But I do not see how I could reasonably uphold this complaint in the circumstances and in view of the evidence that is available to me.

I must still consider what is a fair amount to recognise the distress and inconvenience caused by SJP’s mistake. Mr P had the unexpected surprise and disappointment of finding out at a late stage that an ERC would apply. He has been deprived of the opportunity of taking other steps to try to avoid the ERC. He’s also had the inconvenience of dealing with this matter. But looking at our guidelines about how we award compensation, in the circumstances I consider £550 is a fair amount to reflect the impact on Mr P.

I understand why Mr P considers that SJP should pay him any fees or commission it received in respect of arranging a mortgage for him. But I can’t see how I could make such an award here. Under our rules I can only make awards for certain things including financial loss and/or compensation for distress and inconvenience. The fees and commission are not a financial loss Mr P has incurred. And I’ve already explained why I consider £550 is a fair amount of compensation for the distress and inconvenience caused by what happened. There is no basis for me to award to Mr P any fees and commission SJP received.

**My final decision**

My final decision is that St. James's Place Wealth Management Plc should pay Mr P £550,

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 6 September 2024.

Ken Rose  
**Ombudsman**