

## The complaint

Mr J is unhappy that Lloyds Bank Plc declined his porting application in 2022 and feels this has worsened his current financial position.

He also feels that in November 2023 it placed barriers in the way of him making an overpayment to his mortgage without incurring an early repayment charge (ERC).

## What happened

On 29 July 2019, Lloyds agreed to lend Mr J £115,000 on an interest only basis. The interest rate was the Lloyds Bank standard variable mortgage rate, which was 2.75% at the time. This product carried no ERC.

Mr J would go on to apply for a product transfer, with Lloyds issuing a mortgage offer on 1 September 2021. This changed the interest rate product to a 1.65% fixed rate until 31 January 2024 after which it would revert to the Homeowner Variable Rate (HVR), which was 3.59% at the time.

This mortgage offer had a section setting out the ERC which said:

### ***“7. Early repayment***

*You have the right to repay this loan early, either fully or partially.*

*Early repayment charge:*

*2.00% of the amount repaid on or before 31/01/2023*

*1.00% of the amount repaid on or before 31/01/2024*

*The maximum early repayment charge you will pay is £2,312.12. Should you decide to repay this loan early, please contact us to ascertain the exact level of the early repayment charge at that moment.’*

The mortgage offer also said the following in a section entitled ‘Flexible features’:

### *‘Overpayments*

*You are able to make overpayments to this mortgage at any time subject to any early repayment charges detailed in the Early repayment section above.*

*Sometimes you may be offered the opportunity to make lump sum or regular overpayments without having to pay an early repayment charge. Details of any current offers, which can change from time to time, can be found in the ‘Information about your mortgage’ booklet issued with mortgage offers.’*

At the time Lloyds allowed 10% of the balance to be repaid each year before an ERC was incurred.

Mr J next spoke to Lloyds in September 2022, during a series of calls between the 17<sup>th</sup> and 20<sup>th</sup>. I understand Mr J's recollection of what was discussed during these calls differs significantly from what Lloyds has said in its call notes; but I've listened to all of the available recordings of these calls, and my summary of what was discussed below, reflects that.

Mr J had found a new property he was hoping to purchase by moving his existing mortgage to it and wanted to see if that was possible. Mr J also wanted to explore the possibility that his wife (Mrs J), could be added to the mortgage so he could use her income as well. Lloyds explained this would require a new application but there were no appointments that matched Mr J's availability – he was going on holiday in a few days' time. Instead, it said he can apply for an agreement in principle (AIP) online or call back at a convenient time and wait for a mortgage advisor to become available.

With Mr J doing both, starting by applying for an AIP online – which was declined – then he called back on 20 September 2022 to discuss why it was declined. Lloyds confirmed adding Mrs J to the mortgage wasn't possible due to her credit score, so this wasn't explored further.

After scrutinising the income and outgoings Mr J had provided as part of the online AIP application, some errors were discovered and put right; Mr J had unintentionally declared the contractual monthly payment on one of his buy to let mortgages as being much higher than it actually was, and he'd also not included some loans he planned to pay off.

However, even after these discrepancies were put right, the nature of Mr J's income – partly from a self-employed business and partly from rental income – still meant Lloyds felt the porting application didn't meet its affordability requirements. But Mr J was put through to a mortgage advisor, to discuss some possibilities. I've not listened to this last call as Lloyds don't have a copy of it, but it's clear Mr J's porting application progressed no further as Lloyds remained of the view that Mr J didn't meet its affordability criteria.

In September 2023, Mr J made an overpayment of £11,500 – meaning it was within the 10% limit allowed and so didn't incur an ERC.

Mr J called Lloyds on 29 November 2023, to discuss a product switch and to make an overpayment. Lloyds confirmed his existing product was due to end on 31 January 2024 and it gave him details of the products on offer now – which were significantly higher than the rate Mr J was already on. Mr J explained he wanted to reduce his balance to around £35,000 – £40,000 in order to keep his monthly payments similar to what they were under his existing fixed rate.

Lloyds gave Mr J some quotes for what his payments would be on a new product, if his balance was reduced, and he favoured a two-year fixed rate of 5.66% on a balance of £35,000 for a monthly payment of £168. Mr J noted this was still higher than what he was currently paying of around £158 a month on a balance of around £104,000.

Mr J asked about the ERC he would incur if he made an overpayment and so he was transferred to the payments team to discuss this. The payments team explained Mr J could pay 10% of his original loan amount, each year without incurring an ERC – but he'd already used this allowance in September 2023. He could, from 1 February 2024 when the mortgage reverted to Lloyds HVR, overpay by any amount.

Mr J asked if this meant that he would go on to the HVR for the whole month of February 2024. The payments team were unable to answer this question, so Mr J was transferred to the product transfer team – the team that he'd spoken to originally.

The product transfer team suggested a way forward for Mr J. They explain that by splitting his mortgage in to two sub accounts, then arranging a new fixed rate product for one (sub-account 1) to start from 1 February 2024 and allow the other (sub-account 2) to revert to the HVR. Then if the balance of sub-account 2 was equal to the amount Mr J intended to overpay, he could do so without incurring an ERC. And without delaying sub-account 1 getting his chosen fixed rate.

Mr J explained he would be selling one of his buy to let properties to source the overpayment and asked about what the next steps would be. He also asks about adding Mrs J to the mortgage again but decides against this when it explained this would require a full mortgage application.

While initially happy with the solution being offered, Mr J was concerned when Lloyds explained that, even if he cleared sub-account 2 on 1 February 2024, it wouldn't affect his payment also due that day. Lloyds explained any overpayment would be refunded, and also suggested Mr J could avoid this by moving his direct debit date – but he didn't want to do this. Although Lloyds said it will double check this and get back to Mr J.

It's at this time, that Mr J refers back to his September 2022 application, saying that he'd wanted to reduce his balance at that time as well and Lloyds had refused him. Had it not done this, he would now be in a position where the overpayment he was looking to make, would've been enough to clear the whole balance.

Later that day, Lloyd's called Mr J back and confirmed if he overpaid and didn't change his direct debit, he would still make the full monthly payment for February 2024. Lloyds agreed to consider a complaint about both issues – the decision to decline the port and it not being able to offer Mr J an acceptable way to avoid his February 2024 payment being unaffordable.

Mr J told Lloyds he had been struggling financially in September 2022. So, downsizing his home, was a way to reduce his mortgage and outgoings. Mr J would've only ported over £85,000 of the existing £115,000 to his new property by buying a cheaper property and using the excess equity to pay £30,000 off his mortgage balance. Had Lloyds agreed to this, he would now be in a position to clear his mortgage, rather than still owing around £104,000.

In response to Mr J's complaint, Lloyds agreed he'd not received the service he ought to have done in September 2022. It offered £72 to cover the cost of the calls and £50 for any trouble and upset caused. Lloyds also accepted in calls with Mr J, that his September 2022 application hadn't exhausted Lloyd's application process as Mr J hadn't been given the chance for an underwriter to review the application. But given Mr J's circumstances, they felt it likely an underwriter wouldn't have overturned the decision to decline the application.

On 18 December 2023, Lloyds agreed another product switch – but this time the outstanding balance (now £103,978) was split into two sub-accounts.

1. £35,056 fixed at 5.66% until 30 April 2026 after which the HVR would apply – now 8.74%
2. £68,922 would be on the HVR until the end of the term in six years and eight months.

To recap, sub-account 1 has an ERC of 2% up until 30 April 2025, and 1% from 1 May 2025 until 30 April 2026, with a maximum possible ERC of £701.12. This mortgage product comes with the same flexible features quoted above and I understand this was put in place from 1 February 2024, and that Mr J changed his direct debit that was due in February to avoid making the higher contractual monthly payment that was due on 1 February 2024.

When Mr J brought his complaint to our service, he reiterated that it had been his intention to downsize in September 2022. It was pointed out to Mr J that this would've incurred him an ERC – which he told us he would've accepted to achieve his goal to reduce the mortgage balance.

Our investigator noted that Lloyds accepted it hadn't progressed Mr J's application as far as it ought to have done, before declining it. But he wasn't persuaded by Lloyds comments that it likely would've gone on to be declined anyway. Rather, he felt that as Mr J was making no change to the mortgage, likely to be material to its affordability (at least a change likely to make it less affordable), Lloyds didn't need to carry out an affordability assessment anyway. So, it shouldn't have declined the application for this reason, meaning Mr J had missed out on his plan to reduce his mortgage by downsizing.

The investigator felt Lloyds should pay £350 compensation, and Lloyds should waive any ERC Mr J would incur, if he reduced his mortgage balance to £35,000 – which was his current plan.

Lloyds didn't agree because:

- It rejecting Mr J's porting application didn't prevent him from selling his property or finding a mortgage with a new lender; So there must be some other reason he didn't downsize at that time or since.
- If paying an ERC in September 2022 wasn't a barrier to Mr J's goal of reducing his mortgage in 2022, why was it in 2023/4?
- While it ought to have given Mr J the option of having an underwriter view the application, he hadn't sought an appeal or to complain about things at the time – even though the latter was offered to him.
- It remained of the opinion that declining the port would've remained its answer and so the correct one.

Having considered Lloyds' response and asked Mr J further questions about his plans and reviewed the information again, the investigator reached a different conclusion. The investigator now wasn't persuaded Mr J had ended up in a worse position. If he had downsized by £30,000 in 2022, he would've paid an ERC, which was no different to if he settled his outstanding balance now and neither had Lloyds been unfair to decline the porting application.

Unhappy with the investigator's new findings, Mr J requested an ombudsman review the complaint and so it was passed to me to decide.

### **What I've decided – and why**

I issued a provisional decision earlier this month, the findings of which said:

#### *'Lloyds' decision to reject Mr J's September 2022 porting application*

I'm satisfied that Lloyds declined Mr J's September 2022 porting application, because it had concerns about his income and outgoings – concluding the loan was unaffordable. The mortgage rules<sup>1</sup> allow a lender to forego an affordability assessment when a borrower is making no changes to the mortgage contract that are material to the loan's affordability.

Mr J wasn't changing his mortgage loan requirements (in the calls he said he wanted to borrow the same amount) so there were not going to be any changes to the mortgage contract that were material to the loan's affordability. Rather Mr J simply wanted to move it to a new property "as is".

I don't think Lloyds' ought to have declined Mr J's application when it did on affordability grounds and instead it should have referred it to an underwriter so it could be looked at under the guidelines set out in MCOB 11.6.3. That doesn't mean any application should automatically been accepted as there are other considerations, not just an affordability assessment.

Mr J has said it prevented him seeing through a plan to downsize both his property and reduce his mortgage. As I've set out in the background section above, Mr J never mentioned porting an amount less than he currently owed, he was quite clear he wanted to borrow the same amount, no more and no less. But I'd also said the last call he had with a mortgage advisor wasn't available for me to listen to, meaning I can't know for certain what was said and discussed in that call. So, I've considered the following.

During the calls I have listened to, the figures Mr J provided do suggest that he planned to sell his home for more than the price he intended to pay for the new one. So, I think it plausible that downsizing was something he was thinking about. But that doesn't mean he also planned to use any remaining proceeds from selling his home to reduce his mortgage balance. There also wasn't any certainty that a move would happen, with no offers having been made and accepted on either the sale or a potential purchase.

There was no mention in these calls of a need to reduce Mr J's mortgage – and by extension his monthly payments. Just that Mr J had found a new property and wanted to find out if porting was possible. On 17 September 2022 Mr J said he was looking to buy for £260,000 and on 20 September 2022 he said he was going to bid around £245,000 although he hadn't yet placed an offer. In that call on 20 September Mr J said he hadn't yet put his house on the market but was thinking of doing so at around £275,000 to £285,000.

Whilst there's no evidence to show Mr J discussed reducing his mortgage balance by £30,000, if he had done so he would have paid an ERC on that amount. And, this would likely had been at 2% of the amount overpaid (unless Mr J was able to delay completion until after 31 January 2023) not the 1% he would have paid by overpaying in 2023. Given

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<sup>1</sup> Mortgages and Home Finance: Conduct of Business Sourcebook (MCOB) 11.6.3  
[www.handbook.fca.org.uk/handbook/MCOB/11/6.html](http://www.handbook.fca.org.uk/handbook/MCOB/11/6.html)

the lengths Mr J went to – successfully – to avoid paying a 1% ERC in 2023, it's not obvious to me that he would've been happy to pay a 2% ERC in 2022, especially when his interest rate at the time was just 1.65%.

For these reasons, I'm not persuaded that, on the balance of probability, it was Mr J's plan in September 2022 to reduce his mortgage with Lloyds, using any proceeds he might have realised by downsizing. Instead I think it more likely than not that he wanted to keep the same level of borrowing upon moving, just as he said in the calls I've been able to listen to. So, while I think Lloyds should have referred an application to an underwriter in September 2022 so it could be fully considered, I can't say, with any certainty, this prevented Mr J from reducing his mortgage balance in September 2022 as I'm not persuaded this was even something he wanted to do at this time.

In any event, even if this had been Mr J's plan, I can't be certain he would have been able to achieve it in the way he has described. I can't know for certain that Mr J would've achieved the £275,000 to £285,000 he wanted for his current property – which was significantly more than the £169,000 he'd bought it for three years prior (in August 2019) and not a value supported by prices in the area for a property of that size, even with Mr J having done some work to it. Or that Mr J would have been successful in securing his chosen property and at what price he might have done so. And then Lloyds would have still needed to agree to lend against this new property or might have declined his porting application for some other reason – I've only said it was wrong to decline it on affordability grounds without it being looked at by an underwriter, not necessarily that it otherwise had to agree to porting his mortgage.

Having considered everything very carefully I'm not persuaded it is more likely than not that all the above would have been met such that I can say Mr J would have downsized in September 2022 and reduced his mortgage debt by £30,000 (and to be clear all of the following would have needed to have been met for me to uphold this part of the complaint):

- Mr J would have been able to sell his property for £275,000 or more.
- Mr J would have been able to buy a new property for £245,000 or less.
- Mr J had sufficient savings to cover all the costs involved with moving (such as estate agent fees, solicitor's costs, removal costs etc), or his sale would have realised sufficient funds such that all those costs could be paid and still have left £30,000 to reduce the mortgage debt.
- The new property would have met Lloyds's lending criteria, and not been subject to any down-valuation or retention upon survey.
- If any works were needed to the new property Mr J had sufficient funds in savings to pay for those, without needing to use any of the equity from his sale (as that would all be going to either pay the deposit for the new property, or to reduce the mortgage by £30,000).
- There was not any other reason why Lloyds would have been unable to lend to Mr J at that time.

There are too many variables there for me to say with any certainty that an application to port an amount £30,000 less than Mr J owed would have been successful and so would have allowed Mr J to downsize to the property he had found. Not least because, as I've

said, no offers had been accepted either on his current property he would have needed to sell nor on the property he was looking to purchase.

That said, it clearly caused Mr J a lot of frustration at the time, and he did receive poor service from Lloyds, being passed between departments and time wasted while his application was locked due to an advisor not exiting it correctly. I agree with the refund of the cost of calls Lloyds paid – £72 – but I think it ought to increase the £50 compensation it offered to £200 as Lloyds didn't take this application as far as it could, which means we now can't say for sure whether it would have been successful, albeit I don't think it is more likely than not (which is the test I must use) that it would have been successful.

If Mr J still wants to become mortgage-free then he could look again to downsize and find a property at a value that means he can redeem the entire mortgage. If he does so before 30 April 2025 then he will incur a 2% ERC (just as he would, had he downsized previously and completed on the sale and purchase on or before 31 January 2023). Alternatively if Mr J does so between 1 May 2025 and 30 April 2026 then he will incur a 1% ERC (just as he would had he downsized previously and completed on the sale and purchase between 1 February 2023 and 31 January 2024). I understand Mr J has said that his property has fallen in value, but that means (if Mr J is referring to general market changes) any property he would be looking to buy may also have reduced in value.

#### *Lloyds didn't do enough to assist Mr J make an overpayment in 2023/24*

In November 2023 Mr J wanted to make an overpayment on his mortgage. There was an allowance that any overpayments that exceeded 10% of the loan amount would incur an ERC, but as Mr J had already used his overpayment allowance any further overpayments at that time would have incurred an ERC. However, once a borrower is outside of a fixed rate product – such as when Mr J would revert to the HVR from 1 February 2024 – no ERC would apply.

Understandably, Mr J didn't want to miss out on securing a new interest rate product, or delay that product being put in place. Which is what would've happened if he allowed the mortgage to revert to the HVR before making the overpayment, then securing a new fixed deal to apply soon after.

Mr J asked if there was a way, he could both secure a new rate ahead of time and make his overpayment on 1 February 2024. This was important, as Mr J had concerned the contractual monthly payment wouldn't have been affordable at the rate the HVR was at the time (8.74%), nor was it affordable if the entire mortgage debt transferred to the new fixed rate (without the overpayment being made). Lloyds offered the solution of splitting his mortgage into two sub-accounts. Sub-account 1 would be the balance that would continue and would be transferred to the new fixed rate, and sub-account 2 would be set up for the amount Mr J intended to repay on 1 February 2024 and that would be left to revert to the HVR. Mr J could then pay sub-account 2 off on 1 February 2024 with no ERC being incurred, whilst also not delaying the transfer of the remaining balance onto the new fixed interest rate product.

However, Mr J's payment was due on the 1<sup>st</sup> of every month, so his 1 February 2024 payment would be calculated and collected based on the assumption that sub-account 2 would be continuing, rather than being repaid that same day as until a payment is actually made it can't be taken into account. So, while Mr J's payment would, from March 2024, be at the level he wanted, he'd still need to pay more than he said he could afford on 1 February 2024.

Lloyds said it would refund the overcharged amount after the event, but this wouldn't help Mr J make his 1 February 2024 payment in the first place. For that reason, Lloyds suggested that Mr J move his payment date for February 2024 to after the overpayment had been credited, that way the correct (lower) payment would be collected.

I understand Mr J was unhappy with this as he felt Lloyds were putting up barriers to him reducing his mortgage at a time where he would struggle to pay it. But all things considered, I don't agree.

There wasn't a straightforward way for Mr J to make the overpayment without incurring an ERC whilst not delaying the new rate taking effect. It simply wasn't possible without making changes to how Mr J's mortgage was set up at that time.

Lloyds put forward a credible solution that would allow Mr J to both secure his chosen fixed rate without delay and make his overpayment without incurring an ERC – which seems the reasonable thing for it to have done. I think it also worth noting that, Lloyds didn't require Mr J's payment to be taken on the 1<sup>st</sup> of the month and was happy for this date to be moved so Mr J avoided the higher payment that he said he couldn't afford – again that seems the reasonable thing for it to have done. I don't find anything about Lloyds' suggestion here to be unreasonable, and I don't find that Lloyds created a barrier to Mr J meeting his requirements.

I understand that ultimately, this issue was resolved by Mr J temporarily changing his payment, with Lloyds assisting him with the best way to do this. I'm satisfied Lloyds acted reasonably here and so don't uphold this part of the complaint. I appreciate Mr J also spent a lot of time on the phone trying to find a solution he was happy with. But as I think Lloyds offered a bespoke and reasonable solution, this extra time on the phone wasn't due to an error made by Lloyds.'

Lloyds accepted my provisional findings and proposed redress, and Mr J confirmed he had no further information to add.

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, and having considered the full file afresh, I see no reason to depart from the findings I reached in my provisional decision.

### **My final decision**

I uphold this complaint in part and require Lloyds Bank Plc to pay Mr J further compensation of £150, in addition to the £50 compensation and the £72 for the cost of calls that it has already paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 15 October 2024.

Julia Meadows  
**Ombudsman**