

The complaint

Mr T and Miss O have complained about poor customer service from their mortgage broker, a representative of JLM Mortgage Network Ltd (referred to here as JLM).

In particular, Mr T and Miss O say that JLM failed to advise them that they needed to pay an early repayment charge (ERC) on redemption of their previous mortgage until after their mortgage offer had expired. As a result, Mr T and Miss O say they missed out on a preferential five-year fixed interest rate of 2.94% and instead had to take a rate of 4.29% over a three-year term, increasing their repayments.

To settle the complaint, Mr T and Miss O would like JLM to compensate them for their losses.

What happened

I won't 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 all the details here. In addition, our decisions are published, so it's important I don't include any information that might lead to Mr T and Miss O 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.

Briefly, Mr T and Miss O had a mortgage with a lender I will call HB take out in 2020. The mortgage was on a fixed rate of 1.99% until 31 December 2022. If the mortgage was redeemed during that period, an ERC would be payable.

In July 2022, through JLM, Mr T and Miss O applied for a new interest rate product, a rate of 2.94% fixed for five years. The product transfer offer had an original expiry date of 18 October 2022, later extended by HB until 17 November 2022.

The crux of this complaint is that HB required Mr T and Miss O to pay the ERC on their existing mortgage before they would be able to switch to the new product. HB says it contacted JLM by secure message through its broker portal on 5 October 2022 to inform JLM of this, and again on 17 November 2022. HB's records show the messages were read.

On 18 November 2022 JLM called HB to ask how much the ERC would be, but was told by HB that Mr T and Miss O would be given this information when they called to make the payment. HB told JLM that the offer had already expired.

Miss O spoke to HB on 22 November 2022 when she was told that the mortgage offer had expired.

The existing fixed rate expired on 31 December 2022, and the mortgage reverted to HB's Standard Variable Rate (SVR).

Mr T and Miss O complained to HB and then to our service. An Ombudsman issued a final decision on the complaint against HB on 15 December 2023.

Mr T and Miss O then raised a complaint against JLM. In response to the complaint, JLM didn't believe it was at fault. JLM said that HB had never made it aware of any deadline for the ERC to be paid, nor the consequences of failing to pay the ERC. JLM also said that HB had failed to inform them that the original expiry date for the offer of 18 October 2022 had been extended.

The complaint was brought to our service. The Investigator thought the complaint should be upheld. She was satisfied that HB had made it clear to JLM that the ERC needed to be paid before the new product could be taken up, but that JLM had failed to communicate this to Mr T and Miss O.

To settle the complaint, the Investigator thought JLM should do the following:

- calculate the difference between the payments Mr T and Miss O would have made at 2.94% and the payments they will actually make at 4.29%;
- refund the difference in the payments already made, with simple interest at 8% p.a.;
- pay the difference in the future repayments up to the expiry of the 4.29% fixed rate;
- pay compensation of £600 for distress and inconvenience.

Mr T and Miss O accepted this but JLM did not.

In summary, as well as repeating all its previous points, JLM said that, in a call with Mr T and Miss O in January 2024 (after the Ombudsman had issued a decision on the HB complaint), JLM said that it contacted HB to obtain the ERC figure on 18 October 2022, but HB told JLM that Mr T and Miss O would need to speak to HB to get this figure.

JLM said that the failure to pay the ERC was entirely the fault of Mr T and Miss O, as well as negligence by HB. JLM said that it had made Mr T and Miss O aware of the need to pay the ERC before the new product could take effect, and reinforced this in subsequent calls.

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 confirm I've also read the file on the complaint against HB, as this contains HB's own internal records of the transaction. Having reviewed the evidence in its entirety, I've reached the same conclusion as the Investigator, for broadly the same reasons.

As I said at the outset, the details of the complaint are in the correspondence between the parties, so I'm not going to refer to each and every issue. The crux of this complaint is that Mr T and Miss O say that they weren't made aware of the need to pay the ERC in advance of the product switch until after the product had expired.

First of all, JLM has said that it wasn't made aware by HB that the expiry date of the mortgage had been extended by a further 30 days from the original expiry date of 18 October 2022.

However, this information was published by HB on its intermediaries portal, and was also widely reported in the trade press in late August/early September 2022. It's up to JLM to stay

updated about product changes that are likely to affect its clients and I'm satisfied HB took steps to ensure this information was available to JLM.

I'm also satisfied that JLM was made aware by HB on two occasions – 5 October 2022 and 17 November 2022 – that the ERC would need to be paid first. Whilst I acknowledge that the message sent on 17 November 2022 was the expiry date for the mortgage, the email chain between JLM and HB shows that JLM was told by HB that it had kept the application open until 20 November 2022.

The email exchange between HB and JLM shows the following:

An email dated Wednesday, 23 November 2022 from JLM to HB saying:

"We had a message from [HB] a couple of days ago to say there is an ERC that the clients need to pay. She called to pay this yesterday but she was told it was cancelled?"

HB responded the same day to say:

"Unfortunately this will need to be a new app and new rate. Offer validity was only for 90 days when they original submitted 20/07 so offer was due to expire 18./10. We did extend the offer for a further month when the policy changed to 120 days but the ERC was still not paid so the app has been cancelled."

JLM responded (again on 23 November 2022) to say:

Can you not honour it as the first time we were asked for the clients to make the payment was this week so they hadn't contacted us or the client beforehand to chase which means they have missed the deadline. It would cost them over £200 extra per month for this not to complete on original rate!" [my emphasis added]

HB responded with screenshots of the two reminders HB had sent to JLM about the ERC dated 5 October 2022 and 17 November 2022, both of which were shown as read in HB's portal.

JLM responded to say:

"But the clients were not made aware of any deadline, the message does not say call by X date... Surely they can honour given the messages did not make a deadline clear to anyone."

HB also said that it had kept the case open until 20 November 2022, which was 123 days, but as the ERC hadn't been paid, a new rate would need to be selected.

I find the emails from JLM to be somewhat disingenuous. JLM says on 23 November 2022 that it had a message from HB "a couple of days ago", when it had, in fact been sent almost a week before.

JLM also claims that it had never had any previous reminder about the ERC, when it's clear from the contemporaneous screenshots from HB's intermediaries portal that this is not the case. This also contradicts JLM's later testimony – which is that it had informed Mr T and Miss O in October 2022 that they'd need to pay the ERC.

JLM also suggests that it was HB's responsibility to inform Mr T and Miss O of the expiry date of the mortgage. The actual position is quite the contrary; it was JLM, as the broker

acting for Mr T and Miss O, to be aware of the date of expiry of the mortgage offer and to inform Mr T and Miss O of this. And as I've stated above, I'm satisfied JLM knew, or ought to have known, of HB's policy change to allow a 120-day extension.

The call in January 2024 – after the Ombudsman's decision issued in the complaint against HB in December 2023 – is of no evidentiary value in relation to what happened at the time of the events complained of. The call was, in my opinion, set up in order to attempt to deflect JLM's responsibility for what happened, and to try to persuade Mr T and Miss O that JLM wasn't at fault. I note JLM suggests that it told Mr T and Miss O in October 2022 that they'd need to pay the ERC. But this is contrary to the emails sent by JLM on 23 November 2022, where JLM claimed (incorrectly) that the message on 17 November 2022 was the first JLM had heard about the need to pay the ERC.

Where the evidence is contradictory or inconsistent, I have to decide how much weight to attach to it. The inconsistencies in JLM's evidence leads me to conclude that JLM's account of what happened is less reliable than what Mr T and Miss O and HB have said about what happened.

In all the circumstances, the contemporaneous evidence from 2022 is persuasive that the only reason Mr T and Miss O weren't able to complete on their new product is because JLM failed to inform them in a timely fashion that they'd need to pay the ERC. I am therefore upholding this complaint.

Putting things right

I'm satisfied that if JLM had informed Mr T and Miss O in time that they'd need to pay the ERC they'd have done so. As a result of JLM's poor service, Mr T and Miss O lost out on the 2.94% five-year fixed rate they'd wanted and instead had to take a 4.29% three-year fixed rate.

To put things right I direct JLM Mortgage Network Ltd to do the following:

- calculate the difference between the payments Mr T and Miss O would have made at 2.94% and the payments they will actually make at 4.29%;
- refund the difference in the payments already made, with simple interest at 8% p.a*;
- pay the difference in the future repayments up to the expiry of the 4.29% fixed rate;
- pay compensation of £600 for distress and inconvenience.

* If JLM considers that it is required by HM Revenue & Customs to withhold income tax from any interest, it should tell Mr T and Miss O how much it has taken off. JLM should also give Mr T and Miss O a tax deduction certificate if requested, so the tax can be reclaimed from HM Revenue & Customs if appropriate.

My final decision

My final decision is that I uphold this complaint. I direct JLM Mortgage Network Ltd to settle the complaint as detailed 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 Mr T and Miss O to accept or reject my decision before 2 January 2025.

Jan O'Leary
Ombudsman