

The complaint

Mr and Mrs E complain that Clydesdale Bank Plc wrongly advised them that they would be able to reclaim the early repayment charge (ERC) charged on their mortgage in full by porting it to a new property.

What happened

Mr and Mrs E had a mortgage – the lender was Yorkshire Bank Home Loans Limited (YBHL), a subsidiary of Clydesdale (but a separate firm), though Mr and Mrs E dealt with Clydesdale as the firm that gave them advice.

Mr and Mrs E wanted to downsize, so they bought another property and put their existing property on the market. They found a buyer, and contacted Clydesdale to discuss porting their mortgage to the new property. Clydesdale advised them that this would be possible. It said that if Mr and Mrs E repaid their existing mortgage on selling the old property before their application completed (which turned out to be the case), they would need to pay an ERC. But once their porting application was granted, the ERC would be refunded on completion of a new mortgage on the new property.

Mr and Mrs E therefore went ahead. They sold their old property and paid the ERC. YBHL considered their application for a new mortgage and to port their interest rate across to the new mortgage. It said that it would be willing to offer a new mortgage and allow them to port the rate – but that it would not offer the full amount of the old mortgage. YBHL said that this was because it didn't consider the full balance affordable and because the loan to value (LTV) would be increasing – from around 40% on the old property to 75% on the new property. YBHL said it would agree to allow the LTV to increase to 52% but no more.

This meant that Mr and Mrs E's mortgage balance would reduce from around £307,000 to around £210,000. The effect of this was that Mr and Mrs E would not get the full ERC they had paid refunded – YBHL would refund the ERC on the reduced balance, but the ERC charged on repaying the amount above £210,000 would not be refunded.

Mr and Mrs E complained. Their complaint has been split into two parts – they have complained that YBHL didn't act fairly in not refunding the full ERC; I am dealing with that complaint in a separate decision – though I am considering both cases at the same time so that I can consider all the circumstances in the round, I am issuing separate decisions dealing with the responsibilities of the separate firms. This complaint is that Clydesdale misled them when advising them on the porting process and advising them about the new mortgage, leading them to believe they would be entitled to a refund of the ERC in full.

Clydesdale accepted that it hadn't been clear enough that the ERC refund was subject to their application for the full amount of the mortgage being accepted by YBHL, and that it ought to have made sure they understood that there would be a risk that they would only get a partial refund if YBHL only agreed to lend a smaller amount on the new property. And it accepted that the application had taken longer than it needed to. It offered £250 compensation, but didn't agree that it should refund the remaining ERC.

Our investigator thought Clydesdale had made a fair offer, so Mr and Mrs E asked for an ombudsman to review their complaint.

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.

In my other decision, I've explained that YBHL made a fair and reasonable lending decision. While under the rules of mortgage regulation it wasn't required to carry out an affordability assessment where a mortgage is being ported with no further borrowing, it was reasonable to do so in this case where Mr and Mrs E were looking for a substantial increase in LTV – which increases the risk YBHL would be exposed to, and it therefore wanted to be sure that was a risk it wanted to take. I also explained that the outcome of the lending decision, whereby YBHL increased the amount it would have offered based on the outcome of the affordability assessment alone, to help Mr and Mrs E minimise the ERC they would have to pay, up to a level of LTV risk it was comfortable with, was fair and reasonable in all the circumstances. I didn't therefore uphold the complaint against YBHL.

In this case, I'm considering the advice given by Clydesdale leading up to YBHL's lending decision.

Mr and Mrs E's mortgage offer makes clear that they're entitled to apply to port their mortgage to a new property, thus avoiding an ERC (if the full amount is ported) – but they're only entitled to make an application; there's no guarantee it will be granted. Any application is subject to being assessed at the time it's made.

However, when Mr and Mrs E discussed their application with their relationship manager, he didn't manage their expectations about this sufficiently clearly – leading them to expect that the application would be a formality, and they'd be able to get the full ERC refunded, when that turned out not to be the case.

Clydesdale accepted that, and offered Mr and Mrs E £250 compensation for the distress and inconvenience caused by having their hopes raised and then disappointed – as well as the inconvenience caused by some delays in processing their application. I think that's a fair offer, recognising the impact of that disappointment and the inconvenience on them.

But I don't think it would be fair and reasonable to require Clydesdale to cover the part of the ERC that YBHL didn't refund. The fact is that the ERC was always at risk, subject to YBHL assessing their application. Given that YBHL made a reasonable lending decision – as I found in the other case – Mr and Mrs E were always going to have to pay a partial ERC.

What should have happened is that the relationship manager ought to have managed Mr and Mrs E's expectations, making clear that the ERC was at risk and subject to their application to port in full being accepted. Had nothing gone wrong, the outcome of their application to YBHL would have been the same – but Mr and Mrs E would have been better prepared for it.

It wouldn't be fair to require Clydesdale to refund that part of the ERC they weren't entitled to have refunded, and so there is no financial loss. But it's right that it compensates them for the upset caused, as it has done. I think that's a fair way to put things right.

My final decision

My final decision is that Clydesdale Bank Plc has made a fair and reasonable offer to settle

this complaint. As it has already paid £250 compensation to Mr and Mrs E, I don't require it to take any further action.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs E and Mr E to accept or reject my decision before 2 December 2024.

Simon Pugh
Ombudsman