DRN-5087354

The complaint

Mr and Mrs E complain that Yorkshire Bank Home Loans Limited wouldn't allow them to port their mortgage in full to a new property, leading to them incurring an early repayment charge (ERC).

What happened

Mr and Mrs E took out a mortgage through Clydesdale Bank Plc – although they dealt with Clydesdale throughout, the actual lender was a subsidiary firm, Yorkshire Bank Home Loans Limited (YBHL).

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 offering to lend the full amount and refund the full ERC; I am dealing with that complaint in this decision. Their related complaint 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, is being dealt with 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.

YBHL didn't think it had acted unfairly. It had considered Mr and Mrs E's application against its lending criteria, and it didn't think that a loan of more than around £164,000 would be affordable (an LTV of around 40%). But the application was reviewed by a senior underwriter, who agreed to increase the offer of lending to £210,000, an LTV of 52%, to allow Mr and Mrs E to recover more of the ERC on the basis that they were existing customers with a mortgage that had recently been repaid.

Our investigator thought YBHL had acted fairly in assessing Mr and Mrs E's application in line with its lending criteria, so he didn't think it ought to be required to refund the full ERC. 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.

Porting a mortgage doesn't involve simply moving the same mortgage from one property to another; it involves paying off the old mortgage and taking out a new one, and transferring (porting) the interest rate from the old mortgage to the new. In this way, an ERC can be avoided – because while the old mortgage comes to an end, the interest rate product doesn't.

In this case, Mr and Mrs E had an offset mortgage with YBHL. In 2022 they took a variable discount rate, which had an ERC if it ended before 2025. So, when a year later they decided to move house, they applied to port their interest rate.

As I say, this involves paying off the old mortgage and applying for a new one. The rules of mortgage regulation, set by the Financial Conduct Authority (the regulator of financial services) say that lenders must carry out an affordability assessment when either varying an existing mortgage or offering a new one – and must only lend where the mortgage is affordable.

However, there is an exception in the rules to allow changes to be made for existing customers. This rule allows the need for an affordability assessment to be set aside where the application does not involve further borrowing, or any other contractual change likely to be material to affordability.

In this case, Mr and Mrs E were applying to borrow the same amount as their existing mortgage – so there was no further borrowing – and YBS could therefore use the rule which allowed it to set aside the need for an affordability assessment.

However, that rule doesn't say that a lender must not carry out or rely on an affordability assessment, it just gives the lender the option to do that.

Where the new mortgage is essentially the same as the old, and nothing is changing, it's not likely to be fair to use an affordability assessment to refuse an application when doing so isn't necessary, especially where the result would be to leave the borrower facing an ERC.

However, that wasn't the situation here. Mr and Mrs E were applying to borrow the same amount – but doing so secured on a property with a much lower value. That meant that, if their application was successful, the LTV would increase from around 40% to around 75%.

This is significant, because a higher LTV means that both borrower and lender face a higher risk. If something were to go wrong and the property needed to be sold, or even repossessed, a higher LTV means a higher risk that the sale price is not enough to repay the mortgage, leaving a shortfall – or, even if there is no shortfall, insufficient equity for the borrower to be able to move on.

In this case, therefore, YBHL wasn't being asked to essentially replicate the existing mortgage – it was being asked to significantly increase the LTV risk. I don't think it was unreasonable, in those circumstances, for it to have carried out an affordability assessment to help it decide whether it was comfortable with that increased risk. As I say, the relevant rule doesn't require an affordability assessment where there's no further borrowing – but it doesn't forbid one. I'm satisfied that affordability was relevant to the increased LTV risk, and therefore it wasn't unfair that YBHL did an affordability assessment.

The result of the assessment was that the full amount Mr and Mrs E wanted to borrow, replicating their existing mortgage, didn't meet YBHL's affordability criteria.

Mr and Mrs E say that can't be right, because their circumstances hadn't changed since the year before. But in 2022 they didn't port to a new property, they just changed the interest rate – which doesn't require an affordability assessment. And in any case, even if Mr and Mrs E's circumstances hadn't changed in the years leading up to this application in 2023, the wider environment had – interest rates had substantially increased, making mortgages more expensive and therefore less borrowing available for the same amount of income than previously.

I also appreciate that this was an offset mortgage, and Mr and Mrs E intended to fully offset the balance using the proceeds of the sale of their old property. But that's not something that could be taken into account, because they weren't obliged to do that and could withdraw the funds at any time. Affordability has to be based on the amount borrowed, not the net amount after what the customer proposes to offset.

Mr and Mrs E also point out that when they took the old mortgage out, in 2018, the LTV was 75% - it had only reduced in the meantime because of increased property prices and in particular the amount they'd invested in the property themselves. They don't see why YBHL couldn't replicate that original lending by offering them the amount they wanted, again at 75% LTV, in 2023. I do see the point they make here. But the comparison is not between the LTV at inception in 2018 and the LTV on the new property, it's between the LTV at redemption and the LTV on the new property. It's to be expected that a property increases in value, and therefore reduces in LTV, over the term of a mortgage, and that's something a lender factors in when deciding to lend. And 75% LTV in a low interest rate, low monthly payment environment – as was the situation in 2018 – is a different proposition to 75% LTV in the higher interest rate environment of 2023. It wasn't unreasonable that YBHL wasn't comfortable with increasing the LTV on the new property compared to its current exposure on the old.

In the particular circumstances of this complaint, therefore, I don't think YBHL acted unfairly. Although it wasn't compelled to carry out an affordability assessment, I'm satisfied it was reasonable to do so to help YBHL decide whether it wanted to take on the additional risk of an increased LTV. And although Mr and Mrs E failed the affordability assessment, YBS set it aside in part – agreeing to lend up to 52% LTV rather than the 40% that would represent a like-for-like replacement of the new mortgage with the old. This was a compromise – lending as much as possible to minimise the ERC Mr and Mrs E would have to pay, while not exceeding the risk levels YBHL was comfortable with.

I think that was a fair and reasonable approach. It did mean that Mr and Mrs E would only be refunded part of the ERC they'd paid on the redemption of their old mortgage, not the full amount. But that was in accordance with the terms and conditions of their mortgage – which made clear that porting, or porting the full amount, was subject to application and that an ERC would be payable on any balance reduction.

I'm therefore satisfied that YBHL made a fair decision, and it wouldn't be fair and reasonable to require it to refund the rest of the ERC when the ERC was properly charged and Mr and Mrs E weren't entitled to a full refund. The separate question of whether they were misled into believing they would get a full refund is something I'll deal with in the other decision, about the advice they were given by Clydesdale.

My final decision

My final decision is that I don't uphold this complaint.

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