

The complaint

Mr F, Mrs F and Mr P complain that Clydesdale Bank Plc trading as Virgin Money over charged them for the early repayment charge (ERC) when they repaid their buy to let mortgage.

Mr P has dealt with the complaint. He asks that Virgin Money refunds part of the ERC or explains where in the mortgage terms and conditions it was entitled to charge this amount.

What happened

Mr F, Mrs F and Mr P repaid their buy to let mortgage in 2021. They paid an ERC.

Mr P says he's recently discovered Virgin Money didn't reduce the ERC to take account of the 10% ERC free overpayment allowance.

Virgin Money said the 10% overpayment allowance doesn't apply at redemption. It said the mortgage terms and conditions were clear about this.

Mr P says any reasonable person would understand from the terms and conditions that the overpayment allowance applies at any time. He said the terms and conditions don't say he needed to make a separate payment to benefit from the 10% overpayment allowance.

Our investigator said Virgin Money had applied the ERC correctly and given Mr F, Mrs F and Mr P clear information about how the ERC would be calculated.

Mr P didn't agree. He said the words in the mortgage offer "The Early Repayment Charge is calculated as 5.00% of the outstanding loan balance at the date...the loan is repaid..." relate to how the ERC is calculated in relation to interest. He said the mortgage terms don't explain that he wasn't entitled to an overpayment allowance on the date of redemption. He said a reasonable person couldn't have known this.

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.

Virgin Money sent a mortgage offer to Mr F, Mrs F and Mr P in 2017. The interest rate product taken out by Mr F, Mrs F and Mr P included an ERC. The section of the mortgage offer headed "What happens if you don't want this mortgage anymore?" says an ERC applies if the mortgage is repaid before July 2022 (as was the case here). It goes on to say:

The Early Repayment Charge is calculated as 5.00% of the outstanding loan balance at the date...the loan is repaid...

There's a table below this which sets out examples of the amount of the ERC based on the estimated balance at three future dates. In each case the ERC in the example is 5% of the outstanding balance.

The mortgage terms and conditions don't say the 10% ERC free overpayment allowance will be applied to reduce the ERC when the mortgage is repaid. I don't think it's reasonable to imply that it would. That would be inconsistent with the statement in the mortgage offer – that the ERC is calculated as 5% of the outstanding loan balance – and with the example calculations.

Mr F, Mrs F and Mr P repaid the mortgage during the product term and Virgin Money applied the ERC, as it was entitled to do under the mortgage terms and conditions.

The ERC applied by Virgin Money was 5% of the outstanding loan balance at the date the loan was repaid. I think this was correct and in accordance with the mortgage terms and conditions. The amount of the ERC was set out in the redemption statement sent to Mr F, Mrs F and Mr P's solicitors in early 2021.

I haven't seen evidence that Virgin Money misled Mr F, Mrs F and Mr P about the amount of the ERC and the overpayment allowance or gave them incorrect information about this. When it was asked about this in mid-2020 it said the ERC "on redemption is based on your outstanding balance at the time of redemption. So you can pay your 10% allowance before hand will result in the early repayment charge being lower." I think this is clear that the overpayment needed to be made before hand in order to reduce the balance and therefore the amount of the ERC.

Mr F, Mrs F and Mr P could have made an overpayment before the date they repaid the mortgage. This would have reduced the outstanding balance and, therefore, the amount of the ERC. They could have used the 10% ERC free overpayment allowance when making the overpayment. However, Mr F, Mrs F and Mr P didn't do that. They (or their solicitor on their behalf) made a single payment to redeem the mortgage.

I'm not sure why Mr P says the wording regarding how the ERC is calculated is in relation to interest. I can't see that the mortgage terms or mortgage offer suggest this at all. Mr P says he – or a reasonable person – couldn't have known the overpayment allowance didn't apply on the redemption date. I can't fairly agree with that. I think this is clear from the statement in the mortgage offer that the ERC is 5% of the outstanding loan balance on the date the loan is repaid, the example calculations in the mortgage offer and the redemption statement sent to Mr F, Mrs F and Mr P's solicitors in early 2021, and previous redemption statements.

I don't think Virgin Money made an error with the ERC or misled Mr F, Mrs F and Mr P about the amount of the ERC. I don't think it's fair and reasonable in the circumstances to require it to refund part of the ERC or take further steps regarding this complaint.

Mr P says it is not legally binding for absent terms and conditions to be post-contractually improvised to the convenience of Virgin Money, and to the detriment of the customer. And he didn't sign a contract agreeing to forfeit the overpayment allowance. Only a court can determine whether a contract is legally binding and enforceable. If Mr F, Mrs F and Mr P don't accept my decision they will be free to raise this issue in a court if they want to do so.

My final decision

My decision is that I do not uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F, Mrs F and Mr P to accept or reject my decision before 20 December 2024.

Ruth Stevenson

Ombudsman