

## **The complaint**

Miss H complains that Clydesdale Bank Plc trading as Virgin Money unfairly applied an early repayment charge (ERC) when she ported her buy to let mortgage.

## **What happened**

Miss H took out a buy to let mortgage with Virgin Money in 2020. She had a fixed interest rate product which was due to expire in May 2025. The product terms included an ERC. The product was portable, which meant the product terms could be transferred to a new mortgage. Miss H could make overpayments of up to 10% without paying an ERC.

Miss H ported the product to a new mortgage. The amount of the borrowing was reduced. Virgin Money applied the ERC to the amount that was repaid (the difference between the original mortgage loan and the new mortgage loan).

Miss H says this is unfair and the terms of the ERC were unclear and misleading. She expected the amount repaid to be covered by the 10% overpayment allowance. Miss H says she had funds available and could have made an overpayment in advance if she'd known the 10% overpayment allowance wouldn't apply when she ported the product.

Our investigator said the terms of the mortgage offer were clear about how the ERC would apply. He said Virgin Money was entitled to apply the ERC to the difference between Miss H's new and previous mortgage loans.

Miss H didn't agree and asked that an ombudsman re-consider the complaint. Miss H explained her points clearly when she spoke to our investigator and I've responded to these in my decision.

## **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.

Miss H says she has concerns about the information, advice and service provided to her by Virgin Money, her broker and her solicitor. She said she didn't raise a formal complaint with the broker and the solicitor as she wanted to wait for the outcome of her complaint against Virgin Money. She recently asked if we could pause this complaint. Miss H is concerned that she will receive information from the broker or the solicitor that would be relevant here.

Our remit is to resolve complaints quickly and with minimum formality, and reach a decision about what's fair and reasonable in all the circumstances of a complaint. Having considered the information and evidence provided by both parties, I'm satisfied I can reach a fair decision.

Miss H took out a mortgage with Virgin Money in 2020. She chose a fixed rate product. The product terms, including the ERC, were set out in the mortgage offer. Miss H accepted the terms when she took out the mortgage.

The mortgage offer said an ERC of 4.5% of the outstanding loan balance would be due if Miss H did any of the following during the product term.

- repay the loan in full; or
- repay more than 10.00% of the outstanding balance in any calendar year; or
- transfer to a new mortgage product; or
- transfer your product to a new property and reduce the amount you owe to us whilst doing this, the early repayment charge will be charged on the difference between the two loans.

Miss H transferred the product to a new property and reduced the amount she owed. I think Virgin Money was entitled under the mortgage terms and conditions to apply the ERC to the difference between the two loans. I think the mortgage offer is clear about this.

Miss H says the following paragraph in the product offer changes this: "If part of the loan is repaid, the early repayment charge will only be payable on the amount repaid that is in excess of the 10.00% allowance."

I've considered Miss H's point. But I don't think this applies in the way she suggests. Miss H didn't repay part of the mortgage loan. She repaid all of it and redeemed the mortgage. I don't think the wording she refers to is relevant to her situation.

It would perhaps help if I set out what happens when a product is ported. The original mortgage loan is repaid in full. A new loan is created and this new loan is secured on the new property by a charge (the mortgage). The product terms (such as the interest rate) are then applied to the new mortgage. The lender waives or refunds all or part of the ERC that would otherwise be payable.

Miss H asked what the purpose of the further paragraph is, if it didn't apply to her situation. The second bullet point above says the ERC is payable if you "repay more than 10.00% of the outstanding balance in any calendar year". On its own, that would require the borrower to pay the ERC on all of an overpayment (if it's over 10% of the balance). The paragraph Miss H refers to says the ERC is only payable on the amount of the overpayment that is in excess of the 10% allowance.

Miss H benefitted from porting the product to the new mortgage. She only had to pay the ERC on the difference between the two loans. I think this was in accordance with the product terms and the information in the mortgage offer.

Miss H says she was told by her broker that the 10% ERC-free allowance would apply when she ported the product and reduced her borrowing. Miss H says her solicitor didn't tell her she'd have to pay an ERC and this wasn't included on the draft completion statement.

I can't look into the actions of the broker or the solicitor here. I can only consider whether Virgin Money made an error or treated Miss H unfairly.

Miss H says she's an accidental landlord of two buy to let properties. Nonetheless, letting property is a business. Arranging finance is part of running the business. There's less regulatory protection for buy to let mortgages, which reflect this.

I think the mortgage offer is clear, fair and not misleading. It sets out the circumstances in which the ERC applies. I don't think Virgin Money could reasonably have known that Miss H

would expect the 10% overpayment allowance to apply if she redeemed the mortgage, or if she ported the product to a new smaller mortgage.

Miss H didn't say she contacted Virgin Money and asked whether the 10% overpayment allowance would apply if she redeemed the mortgage and ported the product. Miss H said her discussions were with the broker. It's reasonable for Virgin Money to expect the broker to give Miss H correct information.

Miss H says Virgin Money's business development manager (BDM) told her broker he could see how they'd arrived at the misunderstanding. She said the BDM agreed with the broker's interpretation of the ERC. Miss H says this supports her view that the product terms are confusing. It seems the broker didn't provide a recording of this call to Miss H. Virgin Money said it had no record of this conversation.

Miss H says the discussion between her broker and the BDM took place in October 2024. This was some months after the porting completed. Even if the BDM said this to the broker (and I'm not saying this was the case), I don't think this would be sufficient for me to change the outcome of this complaint. I still need to decide whether I consider the mortgage offer to be clear, fair and not misleading. This discussion took place some months after the porting completed, so it doesn't evidence that Miss H acted on misinformation from Virgin Money. It's possible the BDM was simply expressing sympathy for the position Miss H is in.

Virgin Money provided an extract from its information for brokers. Under the heading "existing customers – porting" it says if the full balance isn't ported, the ERC will apply to the difference between the two loans. It does not say the 10% overpayment allowance will apply so as to reduce the ERC.

Miss H says the broker told her the 10% allowance would apply so that there would be no ERC due when she ported the product to the smaller loan. I haven't seen evidence that Virgin Money provided this incorrect information to the broker. I can't fairly find that Virgin Money was responsible if the broker did give Miss H this incorrect information (I can't make any findings here as to whether this was the case).

Virgin Money sent a redemption statement to the solicitor for redemption on 3 May 2024. This set out the ERC in full. It said the ERC would not be reduced until it had a certificate of title for the new property. It said the solicitor should contact Virgin Money for a revised redemption statement after providing this and it (Virgin Money) would amend the ERC. Virgin Money's records say it received the certificate of title on or about 21 May 2024. I haven't seen evidence that Virgin Money was asked for a further redemption statement or that it issued an incorrect redemption statement that didn't include an ERC.

Miss H says she was in a position to repay 10% of the loan in advance of the repayment and porting. The product terms would have allowed her to do so without paying an ERC. I can understand Miss H's frustration that she didn't do this. But based on the available evidence, I can't fairly find that this was due to an error by Virgin Money.

I don't think Virgin Money made an error or treated Miss H unfairly. It follows that I don't think it's fair and reasonable in the circumstances to require Virgin Money to waive or refund the ERC.

I understand the ERC wasn't paid to Virgin Money on completion and remains outstanding. I'd recommend that Miss H contacts Virgin Money about making the payment. If this is difficult for her, she can discuss with Virgin Money an affordable plan to pay the amount owed.

**My final decision**

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 25 February 2025.

Ruth Stevenson  
**Ombudsman**