

The complaint

Mr and Mrs B's complaint is about a mortgage they had with The Co-operative Bank Plc. When they wanted to move and reduce the amount of their borrowing, they were incorrectly told that they would not have to pay an early repayment charge. They have said that this has meant they have suffered a loss, as had they been given the correct information, they would have waited for a higher offer on the property they were selling.

What happened

Mr and Mrs B took out their re-mortgage with Co-op in 2023. They borrowed just over £361,000 (including fees) over a term of 30 years on a repayment basis. An interest rate product was attached to the mortgage which fixed the interest rate until 31 July 2028. If the mortgage was repaid, in full or in part, before that date an early repayment charge (ERC) would be payable. The mortgage offer set out how it would be calculated, and in the second year the ERC would be 4% of the amount paid off the mortgage.

Under the section for 'flexible features' in the mortgage offer, Co-op explained that the mortgage was portable to a new property, subject to some conditions. It stated:

'If we permit you to port this mortgage, you will pay an early repayment charge if you are within the period(s) defined in the 'Early repayment' section of this document and:

- (i) Your new mortgage is for a lower amount than the value of this mortgage at the time of porting, if this is the case, an early repayment charge will be payable on the difference between the two loans;'*

In 2024 Mr and Mrs B wanted to move home and significantly reduce the size of their mortgage. They asked Co-op about the ERC if they were to port the interest rate product to a new mortgage of a smaller amount. They were told in a telephone call of 15 May 2024 there would be no ERC if they ported.

Mr and Mrs B applied for a new mortgage and to port via an independent mortgage broker. The new mortgage was for £212,500 over a term of slightly over 21 years.

When the mortgage was repaid Co-op applied an ERC on the approximately £140,000 reduction in borrowing. Mr and Mrs B complained.

Co-op responded to the complaint in a letter of 15 October 2024. It acknowledged that Mr and Mrs B had been given incorrect information about there being no ERC payable if they ported the interest rate product to a smaller mortgage, and apologised. However, Co-op highlighted that it was clearly set out in the mortgage offer Mr and Mrs B accepted that an ERC would be payable on the amount of the reduction in borrowing if the product was ported. As such, Co-op didn't agree to refund the ERC, but it did offer Mr and Mrs B £200 compensation for the inconvenience and frustration it may have caused them. This was subsequently increased to £250 to apologise for an error in the complaint response letter.

Mr and Mrs B were not satisfied with the response and asked us to look into their complaint. They said that they had planned to sell their home for £425,000, but because they didn't need to pay an ERC, they sold it for £415,000. Mr and Mrs B said that had they known they had to pay an ERC, they would have waited for a better offer.

Co-op highlighted that the new mortgage application had been submitted via a broker, whose role would be expected to have made Mr and Mrs B aware of any ERC payable due to the advice it was giving.

One of our Investigators considered the complaint, but he didn't recommend that it be upheld.

Mr and Mrs B didn't accept the Investigator's conclusions. They accepted that there were a lot of variables and potentials in the situation, but the fact was that they were told they wouldn't have to pay an ERC and accepted an offer that was significantly lower than the asking price because of that. They didn't consider that £250 was fair when they had potentially lost £19,000 because of Co-op's mistake.

The Investigator considered what Mr and Mrs B said, but it didn't change his conclusions. As such, it was decided that the complaint should be passed to an Ombudsman for consideration.

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.

Co-op has accepted that its agent made a mistake in May 2024 when she told Mr and Mrs B that no ERC would be payable if they ported and also downsized, as such, I don't need to determine if a mistake was made. I will restrict my consideration to what Co-op needs to do to put things right. When we consider redress, we aim to place a consumer in as close a financial position to that which they would have been in had the mistake not occurred. In this case, that is difficult to determine.

Mr and Mrs B have said they are financially worse off by the amount of the ERC and the £10,000 less they accepted for their property. I would firstly confirm that Mr and Mrs B would always have had to pay the ERC and so they are not worse off by that amount. The only loss involved in this regard is one of expectation that they would not have to pay the charge.

The remaining loss Mr and Mrs B have asked to have reimbursed is linked to the amount they accepted for the sale of their previous property. They have told us that they wanted £425,000 for the property, but because they weren't having to pay an ERC, they accepted £10,000 less. While I accept that Mr and Mrs B genuinely believe they could have sold their home for more if they had waited, what a property can be sold for is entirely down to what a buyer in the market at the time is willing to pay for it. It is possible that Mr and Mrs B could have got more for their home if they'd waited, but it is equally possible that they would not and possibly could not even have achieved the price they did at a later date. It is also possible that they would have lost the property they were purchasing if they had waited. In order for me to make an award in this respect I need to be satisfied that it is more likely than not that Mr and Mrs B would have sold their home for more if they had waited, and I can't conclude that.

In the circumstances I can't make an award for Mr and Mrs B having suffered a financial loss as the evidence doesn't support that they did.

Having listened to the telephone call in which Co-op informed Mr B that an ERC was not payable, I am satisfied that Mr B went into the conversation knowing how the ERC worked. I am not persuaded that he was entirely convinced that he was being given the right information during that conversation. In addition, as Co-op pointed out, it would have been usual for Mr and Mrs B's broker to have confirmed the amount of the ERC and factored that into their advice. Overall, and I know that Mr and Mrs B won't agree, I consider the offer of compensation that Co-op made was appropriate in the circumstances to compensate them for the loss of expectations it caused them. I also consider that the additional £50 for the error it made when responding to the complaint, is appropriate.

My final decision

The Co-operative Bank Plc has already made an offer to pay Mr and Mrs B £250 to settle the complaint and I am satisfied this offer is fair in all the circumstances. As such, my final decision is that The Co-operative Bank Plc should pay £250 in full and final settlement of this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs B to accept or reject my decision before 18 March 2025.

Derry Baxter
Ombudsman