

The complaint

B, a limited company, complains that Aldermore Bank Plc charged an early repayment charge (ERC) unfairly on repayment of a buy-to-let mortgage.

Mr K is B's director and brings this complaint on the company's behalf.

What happened

B had a commercial buy-to-let mortgage with Aldermore. In early 2023 Mr K took a new interest rate product on the mortgage – a fixed rate of 5.99% for two years. An ERC was payable if the mortgage was repaid on or before 12 April 2025. The product provided for overpayments of up to 10% of the outstanding balance to be made each year without triggering an ERC.

In June 2024 Mr K asked for a settlement figure for the mortgage. Aldermore sent a letter with the details, which included an ERC of £1,087.59. The mortgage was repaid in full on 28 June 2024, including the ERC.

Mr K made a complaint. He considered the ERC unfair because there wasn't long left on the fixed rate term (he said six months although there were in fact more than nine months left on the fixed rate at redemption), and he wanted to see Aldermore's calculations to show that the ERC reflected its costs. He also said he understood that 10% of the mortgage balance could be repaid without incurring an ERC, and it was unfair that Aldermore hadn't taken account of that in working out the ERC.

Aldermore said it had done nothing wrong and it had applied the ERC in line with the terms of B's mortgage. It also said the 10% overpayment allowance doesn't apply on full repayment of the mortgage and that is set out in the mortgage terms.

Mr K referred the complaint to us. Our Investigator didn't recommend that the complaint should be upheld, and Mr K asked for an Ombudsman's review.

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.

B had an unregulated buy-to-let mortgage. This means that the rules of mortgage regulation which apply to residential mortgages don't apply to it. While the Financial Conduct Authority's Mortgages and Home Finance: Conduct of Business sourcebook (MCOB) doesn't apply to B's mortgage, it nevertheless provides a helpful indication of good industry practice for ERCs at MCOB 12.3.¹

In summary, an ERC on a regulated mortgage contract must be able to be expressed as a cash value and must be a reasonable pre-estimate of the costs resulting from early

¹ <https://www.handbook.fca.org.uk/handbook/MCOB/12/?view=chapter>

termination of the mortgage. But a lender can choose how it calculates an ERC and can calculate the same level of ERC across a group of mortgages of similar type, rather than for individual mortgages.

Aldermore set the ERC on B's mortgage at 2.5% of the amount repaid if repayment was on or before 12 April 2024 and at 2% of the amount repaid if repayment was on or before 12 April 2025. It has provided the Financial Ombudsman Service, in confidence, with details of the cost methodology it used in early 2023 to calculate its ERCs. These details include the methodology for two-year fixed rate mortgages like B's, and I've considered them carefully. I've also noted that Mr K wants to see these details. I can accept evidence in confidence where appropriate, and while I'm sorry to disappoint Mr K, I'm satisfied that the information Aldermore has provided is commercially sensitive and it's therefore appropriate to accept this evidence in confidence. I won't be sharing it with Mr K.

Aldermore has shown that it set its ERCs based on a pre-estimate of the costs of early termination of a group of mortgages of a similar type, and not on a pre-estimate of B ending its mortgage early. I think that was a reasonable approach for it to have taken, and it has shown the factors it considered in setting the ERC. They included lost interest, swap break costs, capital relief, and its costs in gaining another customer. Aldermore has also provided a breakdown of the figures it used. I consider that it has calculated the ERC it set on B's mortgage fairly.

Mr K has asked me to decide whether the exclusion of the 10% overpayment allowance on full repayment is clear in the mortgage contract. I'm satisfied that it is. The mortgage offer which Aldermore issued on 30 January 2023 incorporated the mortgage illustration. The illustration said, at section 9:

"Overpayments

Overpayments (which includes lump sum capital repayments) totalling up to 10% of the balance outstanding can be made each year, starting from the product switch completion date and using the balance outstanding on that date (in the first year) and at the latest product switch anniversary date (in every subsequent year), without incurring an early repayment charge. If you do make an overpayment, then the amount you owe and the interest you are charged will reduce from the date the overpayment is credited to your account.

Overpayments above 10% of the balance outstanding, or full mortgage repayment, will incur the early repayment charges detailed above. Please note that the 10% allowance does not apply on full early repayment."

This is clear, it is not misleading, and there was no obligation on Aldermore to remind Mr K about it when he asked for a settlement figure. I don't consider that it disproportionately benefited Aldermore, as Mr K has argued. The overpayment allowance gave B some flexibility in reducing the mortgage balance during the fixed interest rate period without incurring an ERC – so it was of benefit to B rather than to Aldermore. And from my knowledge of the mortgage industry I don't consider that in not applying the 10% allowance on full early repayment Aldermore was out of line with "accepted industry norms" as Mr K has argued. Many other lenders, where they offer an overpayment allowance at all, do not do so on full repayment – an overpayment and full repayment are not the same.

Mr K has also referred to unfair term provisions in the Consumer Rights Act 2015 and the Unfair Contract Terms Act 1977. The Consumer Rights Act 2015 doesn't apply to B's mortgage because it was a commercial contract. I have considered the relevant provisions of the Unfair Contract Terms Act 1977, and I don't find that this complaint should be upheld on

the basis that Aldermore failed to comply with those provisions. The ERC term in B's mortgage contract is clear, it's neither unusual nor unreasonable, and it's set out as a cash value which was a reasonable pre-estimate of Aldermore's losses across a group of mortgages of a similar type.

Mr K has also asked Aldermore for details of "precedent cases" where it has waived or reduced an ERC but it hasn't provided any. I don't require Aldermore to provide that information (if it has it) either to Mr K or to me. I don't consider it material or relevant to this complaint, which I must decide on its particular merits.

The ERC is there to cover the costs of a borrower paying their mortgage back early. It isn't meant to be a penalty to the borrower and I don't find the ERC Aldermore charged B was unfair. It was clear in the mortgage contract and in the breakdown of the settlement figure Aldermore provided before the mortgage was repaid.

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 B to accept or reject my decision before 8 August 2025.

Janet Millington
Ombudsman