

## The complaint

Mr and Mrs G complain that HSBC Bank Plc trading as First Direct showed contradicting and confusing information regarding early repayment charges (ERC's) on two separate mortgage offers. They said that as the information was contradictory, they should not have had to pay any ERC.

## What happened

Mr and Mrs G have a mortgage with First Direct and in July 2020, they carried out an execution only rate change to a five-year fixed rate. They had two separate mortgage accounts (part one and part two) and they wanted to sell their property in 2025 and purchase a new one. Mr G says that when he looked at his mortgage details, he noticed that he had two separate mortgage offers both with contradicting and confusing information. He said the amounts showing under ERC's were different on both mortgage offers. Mr G said that on one offer it stated a three-month ERC period and on the other it stated five years, and vice versa on the other mortgage offer.

Mr and Mrs G complained to First Direct who said there was a staggered drawdown, so they sent two mortgage offers to cover both parts of the mortgage after a rate change happened in April 2020.

Mr and Mrs G were not happy as they said they may have completed on their new property sale before the end of the five-year fixed rate and they were not asking First Direct to cover the cost of the ERC but rather in light of the irreconcilable differences, they didn't think that an ERC should apply at all.

Mr and Mrs G remained unhappy, so they brought their complaint to the Financial Ombudsman Service where it was looked at by one of our investigators. She said that both mortgage offers showed both parts of Mr and Mrs G's mortgage along with the ERC which confirmed how much would need to be paid if either loan was repaid early. The investigator didn't uphold the complaint and didn't think that First Direct had made an error and they were entitled to charge an ERC in line with the mortgage terms and conditions.

Mr and Mrs G didn't agree and in summary, made the following comments:

- There are two conflicting mortgage offers both dated 30 April 2020, each setting out different and contradictory terms regarding the fixed rate period and ERC. Loan part one shows a five year rate and a five year ERC and the other mortgage offer shows these terms applying to loan part 2.
- Section 69 of the Consumer Rights Act 2015, requires contractual ambiguity to be interpreted in favour of the consumer, and the investigator's opinion does not do this.
- Consumer Rights Act 2015 and MCOB sections 62-69 and 2.26R require terms to be fair, transparent, and not misleading.
- One part of the mortgage offer being 'greyed out' or marked 'unchanged' does not resolve the contradiction. Both documents cover both parts and offer conflicting ERC

terms

- Even if one document were preferred, it would only support an ERC on one part of the loan but First Direct is seeking ERC's on both mortgage accounts.

As Mr and Mrs G didn't agree with the investigator, they asked for the complaint to be reviewed by an Ombudsman.

### **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.

I've given careful consideration to all the submissions made by both parties, but I won't address each and every point that has been raised. I'll focus on the matters that I consider most relevant to how I've reached a fair outcome – in keeping with the informal nature of our service.

Having done all that, I don't think this complaint should be upheld. I realise this will be disappointing for Mr and Mrs G. But I hope the reasons I have set out below will help them to understand why I have come to this conclusion.

Mr and Mrs G wanted to redeem their mortgage and purchase a new property. They said they noticed that the mortgage offers from April 2020 have conflicting information on them and because of this, no ERC should be payable. Mr and Mrs G have two mortgage accounts and for ease, I will refer to them as part one and part two. I have looked at the mortgage offers that Mr and Mrs G are referring to.

There are two mortgage offers dated 30 April 2020 which were issued as Mr and Mrs G have two mortgage accounts. One is their main mortgage (part one) and the other is a loan they took out for additional borrowing (part two). Both mortgage offers showed details of both loans.

The first mortgage offer for the main mortgage – part one – shows the following:

#### **Part one rate switch is as follows:**

Capital repayment mortgage for £260,150 over a term of 24 years and eight months with a fixed rate for five years from First Drawdown (the 'Fixed Rate Period'). The interest rate is fixed at 1.49% for five years.

#### **Part two unchanged loan is as follows:**

Capital repayment additional borrowing for £165,630 for a term of 24 years and eight months, with a fixed rate until 29/07/2020 from First Drawdown (the 'Fixed Rate Period'. The interest rate is fixed at 2.19% until 29 July 2020.

Under section early repayment charges, it confirms the following:

#### **Part one:**

*An Early Repayment Charge is payable if you repay this Mortgage Loan in full (which includes when you move to a different mortgage product or move to a different lender) within 5 years from the First Drawdown (this is called the Early Repayment Charge Period).*

*The Early Repayment Charge within one year of First Drawdown is 3% of the amount drawn down.*

*In subsequent years the Early Repayment Charge is 2% of the amount drawn down. The maximum Early Repayment Charge you could pay is £7,804.50, which is equivalent to 3% of the amount drawn down.*

**Part Two:**

*An Early Repayment Charge is payable if you repay this Mortgage Loan in full (which includes when you move to a different mortgage product or move to a different lender) within 3 months from First Drawdown (this is called the Early Repayment Charge period).*

*The Early Repayment Charge within one year of First Drawdown is 3% of the amount drawn.*

*In subsequent years the Early Repayment Charge is 2% of the amount drawn down. The maximum Early Repayment Charge you could pay is £3,490.80, which is equivalent to 2% of the amount drawn down.*

The second mortgage offer for the smaller loan – part two - shows the following:

**Part one unchanged loan**

Capital repayment mortgage for £260,150.00 for 24 years and eight months, with a fixed rate until 01/07/2020 from First Drawdown (the 'Fixed Rate Period'). The interest rate is fixed at 1.49% until 1 July 2020.

**Part Two rate switch loan**

Capital repayment additional borrowing for £165,630.00 for a term of 24 years and eight months, with a fixed rate for five years from First Drawdown (the 'Fixed Rate Period'). The interest rate is fixed at 1.49% for five years.

Under the section showing the early repayment charge it says the following:

**Part one:**

*An Early Repayment Charge is payable if you repay this Mortgage Loan in full (which includes when you move to a different mortgage product or move to a different lender) within 3 months from First Drawdown (this is called the Early Repayment Charge period).*

*The Early Repayment Charge within one year of First Drawdown is 3% of the amount drawn down.*

*In subsequent years the Early Repayment Charge is 2% of the amount drawn down.*

*The maximum Early Repayment Charge you could pay is £5,509.20, which is equivalent to 2% of the amount drawn down.*

**Part two:**

*An Early Repayment Charge is payable if you repay this Mortgage Loan in full (which includes when you move to a different mortgage product or move to a different lender) within 5 years from First Drawdown (this is called the Early Repayment Charge period).*

*The Early Repayment Charge within one year of First Drawdown is 3% of the amount drawn down.*

*In subsequent years the Early Repayment Charge is 2% of the amount drawn down.*

*The maximum Early Repayment Charge you could pay is £4,960.90, which is equivalent to 3% of the amount drawn down.*

I can see why Mr and Mrs G have said they found these confusing because there are two offers with different terms on each. However, I think First Direct have explained why they differ.

I have listened to the telephone call that Mr G had with the mortgage adviser on 16 April 2020 when he wanted to switch the interest rate on his mortgage.

The adviser explains that the interest rate on part one of the mortgage (the main mortgage) was due to expire on 1 July 2020. She said the interest rate on part two, was due to expire on 29 July 2020. They discussed switching both mortgage accounts to save Mr and Mrs G paying more than one booking fee and this would mean they would have the same fixed rate of 1.49% for five years on both accounts – but they would start at different times.

The confusion here is that the mortgage offers showed what the ERC would be on both parts of the loan but gave differing ERC periods. I'll go on to explain this further.

Mr G then had a call with the adviser again on 30 April 2020 to put the new five year fixed rate of 1.49% in place.

The adviser explains again that the first part of the loan has a fixed rate currently ending on 1 July 2020 and part two had an interest rate ending 29 July 2020.

The adviser said that she would send Mr G a link which would show the mortgage offers and what he had chosen as it was an execution only rate switch. She also asked Mr G if he wanted her to go through the ERC's and he said no.

The adviser then went on to explain that when Mr G was going to look at the mortgage offers that he was going to be sent two links which would have one offer for each part of the loan. And she said the way they have to do it, is to show the rate switch for each mortgage account but because the current rates were ending at different times, each offer would show one part of the mortgage as 'unchanged'.

So in the information I gave above about how the mortgage offers worked, for part one, the information containing to that specific mortgage was correct but because there was a separate mortgage offer for part two – part two on the first mortgage offer was showing as 'unchanged'. The reverse happened on the second mortgage offer. On the mortgage offer for part two, part one of the mortgage details were showing as 'unchanged'.

The adviser said she didn't want to overcomplicate things, but she explained what the offers would show and she said she thought it was helpful to explain that as both offers were independent of the other one, they were separate propositions.

On the letters that were sent with both mortgage offers it said:

*'Each part of the mortgage set out in this offer and the Mortgage Illustration will continue to be subject to the Repayment Mortgage Loan Terms and Conditions that applied at the time of your original offer for that part (the conditions). Please note,*

*any parts or part of the mortgage that are to remain unchanged will also be included in this offer.'*

So having looked at the mortgage offers and listening to the original call that Mr G had with the adviser, I do think it was explained why the offers were showing the information as they were. I do accept that Mr G looked at these offers five years later and thought they were contradictory – and I can see why he thought they were. That's because the offers did give different information on them but you had to focus on one part of the mortgage at a time, and disregard the parts of the mortgage that were unchanged. So I do understand why this may have been confusing to read after all of that time and be concerned about what they showed.

But even putting that to one side, the offers are clear and do have the correct ERC's showing on them but had to be laid out in that way because Mr and Mrs G had two mortgage accounts that had original fixed rates ending at different times.

Mr and Mrs G believe that because the mortgage offers were contradictory as one said they had to pay an ERC within five years of redeeming the mortgage and the other one said three months, that it means no ERC should be payable. I don't agree with that. Mr and Mrs G were always going to have to pay an ERC if they redeemed their mortgage – both parts – within the five year fixed rate period and the mortgage offers do say that.

Mr and Mrs G redeemed their mortgage on 30 July 2025, so they didn't pay an ERC, but they're arguing that the mortgage offers were unclear. And it seems that at the time that Mr G called First Direct in April 2025, he didn't know whether they would in fact redeem their mortgage before or after the ERC period as there was a chain involved and he wasn't sure when completion would be. It so happened that Mr and Mrs G completed after the ERC period so there is no financial loss here. Even if they had completed prior to 30 July 2025, we would not be in a position to ask First Direct to refund the ERC as they have not done anything wrong as any ERC would have been charged in line with the mortgage terms and conditions.

I appreciate that Mr and Mrs G will be disappointed with my decision, but I hope I have managed to explain things a bit clearer for them. But based on what I have seen, I am satisfied that First Direct haven't done anything wrong here.

### **My final decision**

For the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G and Mr G to accept or reject my decision before 15 December 2025.

Maria Drury  
**Ombudsman**