

## The complaint

Mr and Mrs R complain that Mortgage Intelligence Ltd have caused them a financial loss because they were mis-advised about the amount of the early repayment charge (ERC) they had to pay when they exited their mortgage early.

## What happened

Mr and Mrs R took out a mortgage with Halifax through a different broker in 2019. They borrowed £222,995 plus £999 product fee and took this out over a term of 40 years on a repayment basis. The mortgage was arranged on a fixed rate of 1.91% which expired on 31 December 2024.

Mr and Mrs R spoke to an adviser at Mortgage Intelligence in May 2024 to discuss their options as they wanted to purchase a new property, and an application was made. Mr and Mrs R wanted to borrow more than they originally had so the adviser carried out a decision in principle (DIP) with the existing lender – but they said it was declined. They said because of this, they didn't proceed with a mortgage application.

The adviser placed the new mortgage with a different lender and Mr and Mrs R said they were told that the ERC was going to be around 1%. They said they were told this would equate to approximately £2,000.

Mr and Mrs R exchanged on 22 October and soon after, it's at this point that they found out the ERC was in fact 1.5% which was going to cost around £1,000 more. Mr and Mrs R said this caused them a great deal of stress as they had to find the additional funds prior to completion, which took place on 31 October. They said had they of known from the start that the ERC was going to be 1.5% they would have delayed completion until January 2025 to avoid any ERC at all.

Mortgage Intelligence said that Mr and Mrs R were borrowing additional funds for the new property, and they said Halifax declined the application as they were not willing to increase the loan. Mortgage Intelligence said they didn't make a formal application to Halifax as it would have been declined.

Mr and Mrs R didn't agree with this, so they brought their complaint to the Financial Ombudsman Service where it was looked at by one of our investigators. The investigator upheld the complaint and thought that had Mr and Mrs R of known that the ERC was 1.5%, it was likely that they would have delayed exchange of contracts until the ERC repayment period had ended. He recommended that Mortgage Intelligence refund the entire ERC of £3,108.80 and award £100 for the distress and inconvenience caused.

Mr and Mrs R accepted this outcome, but Mortgage Intelligence didn't. In summary, they made the following comments:

- They agree that the adviser made an assumption that the ERC would be 1% and that lenders typically charge 1%.
- The adviser didn't arrange the previous mortgage and would not have access to any details regarding the mortgage product. They believe the adviser did take reasonable steps to obtain this information from Mr and Mrs R but information about the mortgage itself wasn't provided – so she gave them an estimated calculation based on her knowledge and experience of mortgage lenders.

- A recommendation was made initially for Mr and Mrs R to port the mortgage to the new property as this would avoid an ERC however this was declined. The adviser suggested Mr and Mrs R delay completion to avoid the ERC, but the adviser was told that Mr and Mrs R would like to complete before Christmas if possible.
- Mr and Mrs R were aware at the outset that an ERC would be chargeable if they exited the mortgage product early, which they were fully prepared for.
- There was an email exchange on 1 October where the adviser did ask Mr and Mrs R to wait until the ERC was no longer payable, but Mr and Mrs R confirmed they were happy to cover the shortfall and were aware of it.
- Mortgage Intelligence would agree to pay the difference between 1% and 1.5% ERC but do not agree to refund the entire ERC.

The investigator contacted Mr and Mrs R to let them know what Mortgage Intelligence said about paying the difference in the ERC but Mr and Mrs R said they were not happy to accept that.

They said although they initially just asked for the difference to be paid, they would have delayed exchange of contracts to avoid the ERC entirely.

As the case couldn't be resolved, it has been passed to me to decide.

After giving the case careful consideration, I contacted Mr and Mrs R and Mortgage Intelligence to give my initial thoughts on the matter. I explained that I did agree that the adviser shouldn't have assumed the ERC was 1% but I wasn't persuaded that the full ERC should be refunded. I said it was clear to me that Mr and Mrs R were both aware that an ERC was payable but didn't realise it would be as much as it was. And the email exchanges between Mr and Mrs R and the adviser showed they were happy to pay the 1% ERC of around £2,000. So I thought that the right thing to do here, was for Mortgage Intelligence to pay the difference in the ERC of 1% and 1.5%. I also thought that they should increase the award to £300 for the stress and pressure it caused Mr and Mrs R when they had to find an additional £1,000 in a short window.

Mortgage Intelligence agreed to pay the increased amount of compensation and the difference in the ERC payments. But Mr and Mrs R didn't agree.

They said the recommendation made by the investigator was a fair outcome. They said they would have delayed exchange of contracts until January 2025 at which point no ERC would have been payable. They said they had a budget for the £2,074 ERC which they thought was 1%. The additional £1,000 put them under a lot of pressure.

Mr and Mrs R said they now know that there was never a full mortgage application submitted to Halifax despite being told otherwise. They believe if an application had been submitted, it would have been accepted so they wouldn't have had to pay an ERC.

As this could not be resolved informally, I have given the case further 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.

I do appreciate how strongly Mr and Mrs R feel about this complaint but after giving it further consideration, I am not going to ask Mortgage Intelligence to refund the entire ERC.

There is no doubt here that Mortgage Intelligence assumed the ERC was going to be 1% which we know wasn't correct. It's clear from Mr and Mrs R's original mortgage offer from August 2019 that the ERC in the last year of the fixed rate is 1.5%.

I do agree that I would have expected more to be done to obtain the mortgage offer so that the adviser at Mortgage Intelligence could factor in the amount of the ERC. And from what they have told us, they estimated 1% based on knowledge and experience from other mortgage lenders. I'm not persuaded that this was the right approach as some lenders will charge more than 1% in the final year of a fixed rate. But like I said, this error as such, is not in question.

When we look at complaints, we have to think about what would have happened had the correct information of been given at the time. So here, it's what Mr and Mrs R would have done had they of been told that the ERC was in fact 1.5%. Mr and Mrs R have said they would have delayed completion until January 2025 to avoid the ERC. I don't think I'm persuaded by that entirely.

The reason I say this, is because I can see that they were aware that they were going to be paying around £2,000 of the ERC when they thought it was 1%. This is a large part of the ERC so I'm not totally persuaded that they would have delayed completion if they found out that the ERC was in fact 1.5%.

When they originally brought their complaint to our service, they accepted they were going to pay some of the ERC, but they didn't know they would have to pay an additional £1,000. All they wanted at the time was the difference in the ERC payments – so the difference between 1.5% and 1%. I appreciate that as the investigator recommended the entire amount, this is what they now would like as a resolution. But I don't agree with this.

It could easily be said that Mr and Mrs R may not have delayed completion had they of been given the correct information bearing in mind they were already going to pay just over £2,000 of the ERC – so you could argue that they would have accepted the additional £1,000. And had they of been given the correct information at the time, finding that money wouldn't have caused them as much pressure and stress as it did. In that scenario, we would only be looking at a distress and inconvenience payment for the impact this had on them.

I have also seen the email that the adviser sent to Mrs R on 1 October, which shows a breakdown of the costs – but with the incorrect ERC – where she gives Mr and Mrs R the option of exchanging in November and completing on 3 January to avoid the ERC entirely. Mrs R's response says they have the funds to cover the shortfall. She also asked if Halifax would still charge the ERC even if they exit a month early – and says she thinks she knows the answer. So this confirms to me that they always knew about the £2,000 ERC and were happy to pay it.

But I am going to be asking Mortgage Intelligence to refund the difference in the ERC's as I think this is a fair way to approach this complaint based on both parties arguments. This is based on the adviser consistently referring to the ERC as 1% and not doing enough to find out that it was in fact 1.5%. And also taking into account that the budget that Mr and Mrs R were working towards – didn't factor in the additional £1,000 they had to pay.

I have taken on board Mr and Mrs R's arguments that they still think it's possible that had the adviser of carried out a full application with Halifax, that they would have been able to port their mortgage without incurring an ERC. But based on the evidence I have been provided with, I don't think it's likely that it would have been the case.

Mr and Mrs R have said they were told an application was made. I haven't seen any evidence of that but I am not disputing what they may or may not have been told. The evidence I have shows that a DIP was carried out for the increased amount that Mr and Mrs R wanted to borrow and this was declined. In this situation, we wouldn't expect an adviser to continue with a mortgage application if they know that the DIP hasn't been accepted. This is

why an application was then submitted with a new lender who accepted it. I can't agree that Mortgage Intelligence have done anything wrong here.

I appreciate that Mr and Mrs R will be disappointed with my decision as they wanted the full ERC to be refunded to them. But I don't think that's a fair resolution here and I'm not persuaded like I said, that things would have been different. But I accept they were working to a tight budget and this has impacted them. Which is why I think refunding the additional 0.5% is the right thing to do here. I won't be awarding 8% simple interest on this amount as the full ERC was always due so it's not money that Mr and Mrs R have lost out on having.

I also understand this did cause them a lot of stress and additional pressure to find this money when they found out it was more than they thought and I think Mortgage Intelligence should recognise this. I think they should pay Mr and Mrs R £300 for the distress and inconvenience caused. I am pleased that they have already accepted to do this.

### **My final decision**

For the reasons given above, I uphold this complaint and direct Mortgage Intelligence Ltd to:

- Refund the difference in the ERC payment of 1.5% and 1% to Mr and Mrs R.
- Pay Mr and Mrs R £300 for the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R and Mrs R to accept or reject my decision before 13 October 2025.

Maria Drury  
**Ombudsman**