

The complaint

Mr G has complained about an early repayment charge (“ERC”) he incurred upon redeeming his commercial loan with Cynergy Bank Plc. He said he’d previously been told that he would only incur an ERC if he refinanced, and not if he sold the property(s).

What happened

The details of this complaint are well-known to the parties, so I won’t repeat them again. Instead, I’ll focus on the reasons for 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.

In May 2025 Mr G contacted Cynergy as he wanted to repay the loan, and when he was told an ERC would apply (if the loan was repaid before September 2025) he raised a complaint. Our Investigator didn’t recommend the complaint be upheld. My review has determined the same. This is for the following key reasons.

Whilst a copy of a call recording would have resolved this situation, I can’t hold Cynergy liable for not having a copy of that as it only retains calls for three years and Mr G told it the call had taken place in 2020 (albeit he since told our service it took place “*Approximately three years ago*” which would have meant it took place in 2022).

Mr G has said “*You’ve heard one telephone conversation, which implies that calls are recorded, so why have Cynergy been unable to provide a copy of the call that is paramount to the core of this investigation. As I’m sure you’ll appreciate, this all seems extremely convenient.*” I’m taking from this that Mr G is alleging Cynergy has tampered with – or withheld – evidence. Whilst it’s unfortunate that Cynergy has been unable to locate any record of a conversation Mr G says he had with it in either 2020 or 2022 I’m satisfied there is nothing untoward in that. This is a serious allegation that has been made by Mr G and one for which I’ve found no evidence to support. If, as Mr G said originally, the call took place in 2020 then Cynergy has already explained why it no longer has a call recording, that is because it only retains those for three years.

A 2020 call recording will no longer be available therefore it doesn’t exist to be submitted to our service and it hasn’t been withheld. The May 2025 call can be provided because that took place in the last three years.

Whilst there is also no note of any such call taking place in Cynergy’s contact notes, I’ve not placed any weight on that either way. Instead, I’ve looked at what all the available evidence shows me.

Mr G signed the facility letter for the commercial loan in July 2020, and then an amendment to the facility letter was signed by Mr G in March 2021 when there was a transition from LIBOR to the Bank of England base rate. The loan was drawn down in September 2020.

The July 2020 facility letter says, about the ERC:

“An ERC will apply to the Facility.

Please see Condition 25 (Early Repayment Charge) of the Conditions for Commercial Facilities for further details.

The ERC will apply for a period of 5 Years from the initial Drawdown Date.

The ERC will be equal to 180 days' interest on the amount repaid and shall be payable, together with the repayment amount and all accrued interest and other fees on the amount repaid, on the repayment date by debit to the Current Account”.

Mr G signed that facility letter under the statement:

“The Facility detailed above is accepted on the terms contained in the Facility Letter and the Conditions for Commercial Facilities.”

The ERC clause wasn't amended in the March 2021 facility letter.

The 'Conditions for Commercial Facilities' document says:

“11.2 Unless we confirm otherwise in writing, you will promptly notify us of any of the following events occurring, and you will immediately prepay the Loans in full (in the case of paragraphs (a) or (b) below) or in part (to the extent of the cash proceeds received under paragraphs (c) or (d)):

[...]

(d) from the proceeds of disposal of any of the Property.

11.3 Any mandatory prepayment in accordance with Conditions 11.1 or 11.2 or a repayment in accordance with Condition 29.5 must be made together with the applicable ERC, break costs (if applicable) and all accrued interest and fees on the amount prepaid (each of which we will deduct from the amount prepaid).”

So, it can be seen from this that the contract Mr G entered was that the ERC was due if the property was sold.

The document also says:

“25.1 The provisions of Condition 25.2 below apply if, and only if, the Facility Letter states that an early repayment charge (“ERC”) applies to the Facility.

25.2 If a Facility, or part of a Facility, is repaid ahead of schedule, but within the period set out in the Facility Letter you must pay an ERC. This applies even if you are re-financing because an Event of Default or Potential Event of Default has occurred. The ERC will be calculated on the amount of the early repayment as set out in the Facility Letter.”

And:

“29.1 We may vary these Conditions for Commercial Facilities. However, we will only do so for reasons set out in Conditions 29.2 or 29.3 below and we will always give you prior notice except in the circumstances set out in Condition 29.4 below.

29.2 We may make changes to these Conditions for Commercial Facilities:

- (a) to meet legal, financial or regulatory requirements. This includes any court decisions or any changes to banking practices, industry recommendations, including but not limited to the adoption of any voluntary codes of practice, and any subsequent changes thereto, and any decisions or any guidelines given by relevant regulatory, trade or professional bodies;
- (b) to reflect a change in market conditions or the overall cost of providing Facilities to you;
- (c) to reflect a change in technology or to cover a development or change in our products or services;
- (d) to make them clearer.

29.3 If the interest rate under the Facility Letter is set by reference to the Cynergy Bank Base Rate, we may vary your interest rate by substituting another reference rate (for example, LIBOR or the Bank of England Bank Rate) for the Cynergy Bank Base Rate.

29.4 If the change is not to your disadvantage we may make it immediately, provided we shall notify you of the change, and provide all relevant details in respect thereof within 30 Business Days of making such change.

29.5 If the change is to your disadvantage we will give you at least 30 Business Days' notice. For a period of 60 Business Days after that notice has been served you may repay a Facility without penalty, except you will still have to pay any cost we incur in accordance with Conditions 17 (Costs and expenses) and 18 (Indemnity) of these Conditions for Commercial Facilities.

29.6 All variations, waivers, consents and approvals by us will have effect only if made in writing.

29.7 The provisions of this Condition 29 are without prejudice to the provisions of Conditions 6 (Interest) and 20 (Increasing our charges) above.

30 Remedies, waivers and consents

30.1 Any waiver of any right or consent given by us under the Facility Documents is only effective if it is in writing and signed by us. It shall apply only in the circumstances for which it is given and shall not prevent us from subsequently relying on the provision waived."

This was a commercial contract and Mr G shouldn't have signed to agree to enter into it if it didn't reflect what he thought the agreement was, that is he could sell the property(s) and not pay the ERC. It is clear from the Conditions for Commercial Facilities document that any alteration to the terms set out in the facility letter would only be effective if made in writing and signed by Cynergy. There is nothing in writing, and signed by Cynergy, to say it would waive the ERC requirement if Mr G sold the property(s).

In conclusion, I find Cynergy Bank Plc could charge the ERC that was set out in the contract, so I don't uphold the complaint.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 10 April 2026.

Julia Meadows
Ombudsman