

The complaint

Mr C and Mrs L have complained that they incurred an early repayment charge (“ERC”) when they repaid their mortgage they held with Bank of Ireland (UK) Plc. They’ve said they were relocating for Mrs L’s work and whilst they were aware of the ERC they wanted to discuss options for closing their mortgage early as they were unable to port their mortgage due to Mrs L having not started her new job.

What happened

Mr C and Mrs L took out this mortgage in 2021 through an independent mortgage broker. The mortgage offer that was issued in January 2021 set out that the interest rate was fixed at 1.93% until 31 August 2025, and that Mr C and Mrs L would pay an ERC if they repaid the mortgage before that date. Mr C and Mrs L signed to accept the offer and the mortgage completed in March 2021.

A redemption statement was issued to Mr C and Mrs L on 6 May 2025 which showed an ERC would be incurred if the mortgage was repaid before 31 August 2025. At the time the redemption statement was issued the ERC was around £5,070.

On 29 May 2025 Mr C contacted Bank of Ireland as he and Mrs L were looking to move house and they were told an ERC would be incurred if the mortgage was repaid on or before 31 August 2025. Mr C asked whether it was possible to make the final mortgage payments early as they anticipated moving in June or July but were told the ERC would still be due if the mortgage account was closed on or before 31 August 2025. A complaint was raised.

Bank of Ireland responded to the complaint on 26 June 2025 and 16 July 2025. It explained how it sets the ERC on its products and said that was in accordance with the regulator’s rules. It said it was unable to waive the ERC if the mortgage was repaid before 1 September 2025 and the ERC is based on a specific end date not a payment amount, so Mr C and Mrs L couldn’t make the final monthly payment due on the fixed rate in lieu of the ERC.

The property was sold, and the mortgage was redeemed on 18 July 2025, with an ERC of around £5,040 being charged. Mr C and Mrs L say an independent mortgage broker told them they would be unable to port the mortgage with Bank of Ireland, and so the broker arranged them a new mortgage elsewhere for their purchase.

Mr C and Mrs L referred the complaint to the Financial Ombudsman Service where it was looked at by one of our Investigators. She didn’t uphold the complaint, saying the ERC in the contract was in line with the regulator’s rules and was clearly set out in the mortgage offer. She said the ERC wasn’t based on Mr C and Mrs L’s individual mortgage and time left, instead it was a reasonable pre-estimate based on a group of mortgages, and the Consumer Duty wasn’t applicable as the contract was agreed before that was introduced.

As Mr C and Mrs L didn’t agree, the complaint has been passed to me to decide.

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.

Mr C and Mrs L have referred to the regulator's Consumer Duty. The mortgage was entered into before the Consumer Duty came into place on 31 July 2023, and under the Duty an existing product held by a customer before that date does not require a firm to waive its vested rights. That includes contractual charges payable on termination of the contract. So I don't think the Consumer Duty prevented Bank of Ireland applying the ERC.

The ERC wasn't a "penalty" as that has a distinct meaning in law; it's a contractual term that applies where there is a breach of contract. But when Mr C and Mrs L's mortgage was repaid, there was no breach of contract. That's because the contract allowed for the mortgage to be repaid on or before 31 August 2025 if Mr C and Mrs L paid an ERC.

I'm satisfied the terms of the ERC were set out in the mortgage offer in a way that should have been readily understandable to Mr C and Mrs L; certainly, the information about the ERC was set out in a manner that met the regulator's requirements. So I'm persuaded Mr C and Mrs L knew – or at least should have known – how much they'd have to pay if they repaid the mortgage on or before 31 August 2025.

The mortgage offer explained that this was a fixed rate until a set end date of 31 August 2025 (with an ERC being due if the mortgage was repaid before that date), and that is the contract Mr C and Mrs L entered into. It wasn't a contract that Mr C and Mrs L would make a certain amount of payments at the fixed rate and, as soon as they made the last payment, then they were free to redeem the mortgage.

That said, I need to decide what is fair and reasonable in the individual circumstances of the complaint. The rules we operate under say that in doing that I must take into account, amongst other things, the relevant rules and regulations. In this case that is the Financial Conduct Authority's Mortgages and Home Finance: Conduct of Business sourcebook ("MCOB").

MCOB includes provisions about ERCs. In summary, they say that an ERC must be able to be expressed as a cash value and must be a reasonable pre-estimate of the costs resulting from early 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 loans. Bank of Ireland is entitled to set an ERC based not on the actual cost to it of Mr C and Mrs L ending their own mortgage early, but on a reasonable pre-estimate of the costs of early termination of a group of mortgages of similar type.

Lenders generally raise money to offer preferential rates for their mortgage customers on the wholesale money markets. There's a cost to that, and it's generally fixed in advance. But the lender expects to receive a return to outweigh those costs. If a mortgage ends early, it may not get back all the returns it expected, and so doesn't make back the costs in raising the funds to offer that preferential rate.

I appreciate that Mr C and Mrs L were very near to the end of the tie-in period (repaying their mortgage on 18 July 2025 when from 1 September 2025 they wouldn't incur an ERC), offered to make the August 2025 payment early and that the amount of the ERC appears out of proportion to that time remaining. But I'm afraid none of that is a factor in how the ERC is calculated, nor is the actual cost to Bank of Ireland of this individual mortgage being repaid at the exact time it was.

It's complex and onerous for lenders to calculate individual losses as and when individual customers decide to terminate their contracts early. And it isn't possible to estimate, for any given individual, when or if they might do so. So Bank of Ireland is allowed to project how many customers, on average, are likely to terminate early and, on average, at what point they're likely to do so, and to apportion that cost across the mortgages in the group. For some individual mortgages that will end up being an over-calculation, and for others it will be an under-calculation. But that's allowed; Bank of Ireland doesn't have to refund the difference, but equally it doesn't tell a consumer to pay the difference if it goes the other way. What matters is the average cost across the group of mortgages, not the cost on an individual basis.

Bank of Ireland issued redemption statements on 6 May and 15 July 2025, and both of those confirmed there would be an ERC of around £5,000. In addition, Mr C and Mrs L raised a complaint, and received a response from Bank of Ireland, before the mortgage was repaid so they were aware that they would incur an ERC if they decided to go ahead with the sale before 1 September 2025.

Mr C and Mrs L say they would have held off moving if they were able to, but a combination of factors meant they needed to move at that time, and they couldn't risk trying to wait six weeks to complete as it risked their sale and purchase falling through. Whilst I've a great deal of sympathy for the situation Mr C and Mrs L were in, unfortunately none of that means Bank of Ireland did anything wrong, and I can only uphold a complaint and order a business to do something to put things right (such as refund an ERC either in full or in part) if I first find a business has done something wrong.

So, in summary, while I understand Mr C and Mrs L think it was unfair that Bank of Ireland charged them an ERC larger than the interest they would have paid, I'm afraid I don't agree. An ERC isn't a penalty for breach of contract. It's the price paid for exercising the contractual right to end the mortgage early. The price is set not by reference to the individual cost of early exit for that mortgage on that day, but on a group basis estimated at the time Bank of Ireland lent to this group of borrowers. That's what the rules of mortgage regulation say should happen, and that's what Bank of Ireland did. Mr C and Mrs L chose to end their mortgage early, knowing the price they would pay for doing so. It's not unfair they were charged that price.

Whilst I've sympathy for Mr C and Mrs L's situation, there are no grounds for me to order Bank of Ireland to refund the ERC (either in full or in part).

My final decision

I don't uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C and Mrs L to accept or reject my decision before 5 May 2026.

Julia Meadows

Ombudsman