

## **complaint**

Miss M complained about the amount Yorkshire Building Society ("YBS") charged her when she moved her mortgage.

## **background**

Miss M's mortgage was for 25 years, with a fixed interest rate of 1.14% up to 31 January 2018. The mortgage offer explained that an early repayment charge (ERC) was payable if before 31 January 2018 Miss M repaid more than the overpayment limit, repaid the loan in full or transferred to a different product with YBS. The mortgage offer further explained how much the ERC was.

During 2017 Miss M took out a mortgage with another bank and the YBS mortgage was repaid in full. YBS charged just over £6,000 for the ERC.

Miss M complained to YBS about the ERC. She'd calculated that the interest YBS had lost on the remaining repayments up to 31 January 2018 was just under £4,000. So she thought the ERC was excessive and unfair.

YBS told Miss M that rather than setting an ERC for each individual customer based on the loss incurred as a result of that customer repaying their mortgage early, it calculated it on a pooled basis for each product type and applied that same charge to all mortgages. It said this approach was recognised as acceptable practice. YBS said it wasn't required to explain on an individual basis how an ERC had been calculated. It wasn't prepared to refund any of the ERC.

Miss M remained unhappy and complained to us. Given the mortgage interest rate, she felt an ERC of 2% in year one and 1% in year two didn't represent a reasonable pre-estimate of costs that would be incurred by YBS for any customer with a similar mortgage where the charge was applicable, and would result in a windfall to YBS.

## **my provisional findings**

I explained in a provisional decision why I didn't think the complaint should be upheld. In summary, I said:

- The ERC was set out clearly in the mortgage offer, it was brought to Miss M's attention before she entered into the agreement, and YBS didn't give any incorrect or misleading information about it.
- It's a requirement of the *Conduct of Business* rules that the ERC represents a reasonable pre-estimate of the cost to YBS of the mortgage being repaid early.
- YBS didn't have to make calculations for each individual borrower – it was entitled to make the calculation on the product as a whole and it was entitled to apply the same ERC to each borrower that took out that product. That might lead to a situation where one borrower has 11 months left on their fixed rate deal and another has one month left, but they're charged the same if they repay the mortgage. Or it might be that the ERC was more than the loss of interest the mortgage provider will suffer. But neither of those situations automatically made a lender's decision to fix the ERC at a certain amount

unfair. It would only be unfair if the charge wasn't a reasonable pre-estimate of the costs the lender would face if account holders repaid their mortgage early.

- YBS had sent me information (on a confidential basis) on how its pre-estimate of loss on mortgages of the type Miss M had was calculated. Having studied what YBS had sent, I was satisfied that the ERC it included in the mortgage contract was a reasonable pre-estimate of the loss it would incur if the mortgage was repaid early.

I was therefore satisfied the amount YBS charged Miss M reflected its reasonable pre-estimate of loss; and that YBS hadn't treated Miss M unfairly by charging it.

### **responses to my provisional decision**

YBS confirmed it had nothing further to add. Miss M made various points:

- she feels the ERC calculations should only be for her particular product
- she feels YBS's actual experience at the point where customers break their fixed rate period should be factored into the calculations
- she feels that any "windfalls" YBS receive as a result of the fixed rate period coming to an end early should be taken into account and offset against any costs it incurs or losses it suffers
- she noted ERCs charged by YBS (and by the market as a whole) were similar, so she questioned whether it was likely that the reasonable pre-estimate of loss for all of these products is so similar
- she felt it was unfair if the actual pre-estimate of loss was less than 1% but was rounded up to 1%.

### **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The relevant rules say the ERC should be a reasonable pre-estimate of the cost to the lender of the mortgage being repaid early. That can be across a tranche of mortgages, such as a particular interest rate. It doesn't have to be calculated for each individual mortgage. I've taken these rules into account in deciding what's fair and reasonable in the individual circumstances of this complaint. I note the rules give lenders some latitude in how they estimate the ERC – as long as they're able to demonstrate that the ERC (and each of the elements it took into account in setting it) was reasonable.

The ERC was set out clearly and prominently in the mortgage offer that Miss M accepted when she took out the mortgage – and the ERC has been applied in line with that. It is difficult for me to say that Miss M would not have understood that an ERC was payable if she repaid the mortgage within the tie-in period or that YBS has acted unfairly in applying the ERC in line with the offer Miss M accepted.

Miss M has challenged whether the way the ERC was calculated was fair – and I have addressed those points with YBS directly. The nature of the information YBS has given us is

commercially sensitive. I have therefore accepted it in confidence as I am allowed to under our rules. That means I can't address some of the points that Miss M has made in very much detail. But I have considered everything both she and YBS have provided very carefully before reaching my decision.

While I agree the rules give an example that the ERC should be set for a particular interest rate, it doesn't necessarily follow that ERCs which are calculated on a different basis aren't fair or reasonable. I'm satisfied that the method used by YBS in calculating the ERC doesn't result in an unfair outcome for Miss M taking into account the interest rate she was paying.

I note Miss M's expectation that lenders should consider the past behaviour of its customers in repaying their mortgage early when setting the ERC and take into account that the money that is paid back can be re-lent, amongst other things. I agree they are things a lender *could* use to demonstrate that its ERC is reasonable. And it might be necessary in some cases for those things to be considered for the lender to be able to show the ERC is reasonable. But it doesn't follow that an ERC that doesn't include consideration of those things would necessarily be unfair – and I haven't commented on whether YBS's estimate included those elements or not because that is commercially sensitive. The question here is whether YBS has acted fairly and reasonably in setting the ERC, and I'm satisfied that it has.

There's no requirement in the rules for a lender to consider what the cost is if an individual mortgage is actually repaid early. It only has to carry out a reasonable pre-estimate across a portfolio of mortgages beforehand. Looking at the information YBS has given me, I think it has shown that the way it calculated the ERC was reasonable in the individual circumstances of this case.

Miss M points out that the ERCs charged by many lenders are similar. I accept this. But it isn't necessarily unreasonable for a lender to consider what other lenders are charging as one of a number of elements it takes into account in setting an ERC. I agree that it may not be fair in an individual case if that were the only thing a lender took into account or if it placed too much weight on this factor. But that isn't what YBS has done here. Looking at the information showing each of the elements it has taken into account, I consider YBS has set the ERC fairly in the circumstances of this case.

I also agree with Miss M that it may be difficult for a lender to justify the reasonableness of an ERC that has been rounded up to more than the estimated cost. But the information presented by YBS shows that it hasn't done this.

Overall, after carefully considering the information provided by YBS, I'm satisfied it has demonstrated that the ERC was set reasonably in the circumstances of this case.

So, for all the reasons outlined above, I'm satisfied that YBS treated Miss M fairly by charging the ERC it did. I'm satisfied the ERC represented a reasonable pre-estimate of the loss YBS would suffer if the mortgage was repaid early.

### **my final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 27 January 2019.

Paul Daniel  
**ombudsman**