

complaint

Mr and Mr A complain that the Co-operative Bank Plc (Britannia) would unfairly ask them to pay an early repayment charge (ERC) if they switched their mortgage to a different product.

background

Mr and Mr A took out a fixed rate mortgage with Britannia in early 2013. Their mortgage product included an interest rate that was fixed for five years. The information they were given about the product said that they would have to pay an early repayment charge (ERC) if they didn't want the mortgage any more.

In 2015, Mr and Mr A contacted Britannia about changing to a different mortgage product. They were told that if they switched to a different product, they'd have to pay an ERC. Mr and Mr A complained that this wasn't clear in the documentation they'd received when they took out their mortgage. They couldn't see why it would be fair to pay an ERC in these circumstances and asked for the ERC to be waived.

Britannia rejected their complaint. Although it couldn't be sure Mr and Mr A had received the full terms and conditions of their mortgage when they took it out, the ERC was clearly set out in the key facts illustration and the mortgage offer they'd received. It explained that it prices products to take into account its costs over the life of the mortgage and that moving mortgage could lead to the business making a loss. This is why it includes an ERC in fixed rate products and makes this clear to consumers.

Mr and Mr A weren't happy with this and brought their complaint to this service. The adjudicator investigating the complaint thought the complaint shouldn't be upheld. She felt that the ERC was clear enough in the documentation Mr and Mr A had received and she didn't think it would be unfair for Britannia to apply an ERC if Mr and Mr A decided to change products early. They disagreed with her assessment and asked for the complaint to be considered by an ombudsman.

my findings

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

Having looked at the mortgage offer that Mr and Mr A received, I can see that the ERC is clearly set out at point 10:

"What happens if you do not want this mortgage any more?

An early repayment charge applies on this mortgage until 30th April 2018...."

I think this clause is written in simple terms and is wide enough to cover a number of different reasons why someone might not want this mortgage any more - including because they want to take out a product with a better rate. ERC's are common in fixed rate products. Businesses organise their pricing over the life of a mortgage and are able to source finance based on the long term commitment of fixed price products. If consumers leave those products early, this can mean losses for the business and ERC's are designed to protect the business against those losses.

Mr and Mr A have pointed out that mortgages are very complex products and it's difficult for a layman to understand the implications of what they're agreeing to. But I can see that Mr and Mr A took out the mortgage on a non-advised basis. If they'd felt they needed more information before deciding on such an important commitment, they could have asked for advice either from Britannia or from an independent adviser at the time.

When they did contact Britannia about the product switch, the adviser they spoke to was very clear that an ERC would be applied. As a result, it seems, Mr and Mr A have decided not to switch products at this stage and haven't incurred a loss.

Mr and Mr A have questioned whether Britannia's ERC really reflects its costs. I haven't seen anything to indicate that the ERC in question would be unfair. My role as an ombudsman is to look at individual complaints. In this case, Mr and Mr A haven't actually paid an ERC and I haven't seen anything on the face of it to make me question the ERC rate so I feel would be stepping beyond my remit to speculate on the fairness of Britannia's ERC's in general. That is a matter for the Financial Conduct Authority, which Mr and Mr A can contact on: <http://www.fca.org.uk/site-info/contact> if they wish.

In all the circumstances of this complaint, I don't think it's unfair for Britannia to refuse to waive the ERC if Mr and Mr A choose to switch products. I note that Mr and Mr A have mentioned that they've taken legal advice about their rights and I'd like to point out that, if Mr and Mr A reject my findings, there's nothing to prevent them from taking their complaint against Britannia to court separately.

my final decision

For the reasons given above, it's my final decision that this complaint is not upheld.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mr A to accept or reject my decision before 30 October 2015.

Susie Alegre
ombudsman