

## **complaint**

Mr and Mrs C complain that Leeds Building Society unfairly charged them an early repayment charge (ERC) on their mortgage.

## **background**

Mr and Mrs C had a repayment mortgage until Mr C was made redundant some years ago, when they switched it to interest only to keep the payments down. Since then, they have taken several new interest rate products.

They say that they went into their local branch to discuss converting the mortgage back to repayment terms. After discussing various options, they decided that they couldn't afford that unless they downsized, reducing their mortgage balance. So they put their house on the market. They say that when their latest product came to an end, they'd already told their branch that they were selling the property. And they told the mortgage centre that too – both reassured them that “all mortgages are portable”, and so they took a further new interest rate product.

When they got an offer on their house and were ready to buy a new one, they applied to port the mortgage, converting it to repayment terms. But the application was refused because of their credit history – they'd had some trouble with loans and credit cards following Mr C's redundancy, though that was some years before.

Another lender did offer them the mortgage they wanted, and Mr and Mrs C accepted that offer. But it meant that they had to pay an ERC to Leeds when they redeemed the old mortgage, and so they complained.

Our adjudicator recommended upholding the complaint. She said that Leeds was entitled to consider the porting application as an application for a new mortgage, and to refuse the application. But she thought that at the time of the latest product switch Leeds had known that they intended to move house soon afterwards and hadn't made the risk of an ERC clear enough. So she said that Leeds should refund the ERC, but deduct the amount Mr and Mrs C had saved through having a reduced payment in the meantime. She also said Leeds should pay compensation of £500 for their trouble and upset.

Leeds didn't agree with that. It said it had no record of any discussion in the branch so couldn't be sure what was said, but it accepts it took place. It also accepted that they were given limited information about porting when they later spoke to the mortgage centre to arrange the new product. But it says that the mortgage offer was clear and as it was a non-advised product sale it was for Mr and Mrs C to decide whether to take it. It was also entitled to refuse the porting application.

## **my findings**

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

I say at the outset that I accept that Leeds was entitled to reject Mr and Mrs C's application to port their mortgage. A porting application isn't simply an application to transfer a mortgage from one property to another. A mortgage is secured on the property it was lent against, and

when that property is sold the mortgage must be paid back. Buying another property involves applying for a new mortgage, which a lender must consider in the usual way.

“Porting” in this context doesn’t mean the transfer of the loan. The old loan ends and a new one must be applied for. What is “ported” is not the mortgage itself, but the interest rate product. That is transferred from the old mortgage agreement on the old property to the new mortgage agreement on the new property.

So Leeds had to consider whether to grant the new mortgage before it could consider whether to port the product across. If it didn’t grant the new mortgage, there was nothing to port the product across to. And it was entitled to refuse the new mortgage. Mr and Mrs C were making a material change in switching to repayment terms, which would have increased their monthly payments, so Leeds was right to take into account their finances and credit history in deciding the application.

Where Leeds went wrong in this case was the communication. I accept – as does Leeds – that Mr and Mrs C discussed their plans both with the branch and the mortgage centre. The information they were given about porting – especially about the need, often misunderstood – to apply for a new mortgage first – wasn’t good enough. I think Mr and Mrs C were left with the clear impression that they could move their mortgage to a new property with minimum formalities.

The product transfer offer said “What happens if you move house? All loans are portable – this means if you move house and wish to transfer the loan to your new property you can, subject to the Society’s underwriting procedures”.

This does say that porting is subject to underwriting. But it also says the loan can be transferred to a new property. I don’t think it’s sufficiently clear to override the misleading information Mr and Mrs C were given orally. This wasn’t an advised sale, which means it was for Mr and Mrs C to decide for themselves if the product switch was right for them. But for them to do that, Leeds had to give them information which was clear, fair and not misleading – and, in this particular case, I don’t think it did that.

Had they been given clearer information, I think Mr and Mrs C wouldn’t have taken the product. They’d have recognised that there was a risk that they might have been refused a new mortgage, given their history, and so had to have paid an ERC. As they had already decided to sell their house, they would have gone ahead with that without taking the new product.

That means that they wouldn’t have paid the ERC or have the new product – and so that is the position I will put them back in. Leeds should refund the ERC. But Mr and Mrs C had the benefit of lower payments on the new product than they would have done had they not taken it. So those savings should be offset from the ERC refund. I also agree with the adjudicator that they should be compensated for their trouble and upset, and I think £500 reasonable to do that.

### **my final decision**

For the reasons I’ve given, my final decision is that I uphold this complaint and direct Leeds Building Society to refund the ERC. It should add simple annual interest of 8% from the date the ERC was paid to date of settlement. But it can offset the savings Mr and Mrs C made by taking the new product. Leeds Building society should also pay £500 compensation.

If Leeds Building Society considers that it should deduct income tax from the interest element of my award it may do so but should give Mr and Mrs C the necessary certificate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs C to accept or reject my decision before 5 November 2015.

Simon Pugh  
**ombudsman**