

## **complaint**

Mr W complains that he should not have been charged an Early Repayment Charge ("ERC") when he redeemed his mortgage with The Mortgage Works (UK) Plc and is unhappy with the way it dealt with his complaint.

## **background**

Mr W had an existing mortgage with The Mortgage Works and the interest rate product he was then on ended in September 2013. He took out a further 2 year product through an online process. Mr W says that he was unaware that this product contained an ERC until his solicitor got a redemption statement in October 2014. Our adjudicator did not recommend that this complaint should be upheld as Mr W accepted The Mortgage Works' offer which contained an ERC. Mr W disagreed saying in summary that he did not contract with The Mortgage Works for an ERC and it should not be permitted to impose one after he told them about the sale of the property.

## **my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Mr W had an existing 2 year fixed interest rate product with The Mortgage Works which ended on 30 September 2013. He took out a further 2 year fixed rate product and says that this did not contain an ERC. Although the previous fixed rate product contained an ERC, Mr W says this expired when that product came to an end and he did not agree to a new one. Mr W completed an online application for the new product and received a letter dated 1 October 2013 which is headed "Details of the Change" but does not refer to an ERC. Mr W says that as the ERC had come to an end, if a new one was to be imposed, it should have been referred to here. Mr W says that the absence of a reference to an ERC reinforces his evidence that he was not told about the ERC in the online application process and he had not agreed to it.

The Mortgage Works says that during the online application process for a product switch, Mr W would have been made aware that an ERC attached to it and refers me to the Product Switch Mortgage Offer. But Mr W says he did not sign an agreement to the product switch which containing an ERC. I can see, from the online process which The Mortgage Works says Mr W went through, that in order to accept the product switch, Mr W is led through a sequence in which he confirms whether he accepts the terms of the new fixed rate offer. One of those terms is section 10 which clearly refers to the ERC. Mr W says that I am being referred to a generic on line mortgage switcher and questions whether I can rely on this as an accurate record of what he agreed to.

Although there is no signed agreement, it seems that Mr W wished to switch to a more favourable interest rate which The Mortgage Works were willing to provide subject to conditions.

Mr W says that he thought that he had just exited an ERC and didn't think it was being reintroduced. But the ERC was not a term of his mortgage. It was a condition attached to Mr W's previous fixed rate product and The Mortgage Works says it was a condition also attached to the new product. Indeed it is a very common condition attached to most fixed rate products. The Mortgage Works says effectively that this is a very common condition-the ERC applied to the new product offer as it did the previous one. This would be unsurprising and in support Mortgage Works has provided copies of the product switch options which

would have been available at that time which contain ERCs. I consider on balance that it is more likely than not that this common condition which formed part of The Mortgage Works offer was brought to Mr W's attention during the application process. As Mr W had an ERC with

his previous interest rate product, I don't think he should have been surprised that the new product also contained an ERC.

Given this background, I am unable to accept that Mr W should have been surprised when he found himself having to pay an ERC when he sold his property. The purpose of the letter of 1 October 2013 seems to have been to alert Mr W to changes in his monthly payments. I don't consider that it strongly supports Mr W's case that he should have been unaware of the ERC. Finally I consider that The Mortgage Works responded to Mr W's complaint in a timely manner. So, as a result of the above, I cannot fairly uphold this complaint.

### **my decision**

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr W to accept or reject my decision before 9 November 2015.

Gerard McManus  
**ombudsman**