

The complaint

This complaint is about advice Mr H received from Mortgage Required Ltd (MRL) about moving house and porting his interest rate product to a new mortgage on the new property. He was turned down by the lender (a business I'll call "N") which meant the early repayment charge (ERC) of over £15,000 he'd incurred on selling the old house and repaying the existing mortgage wouldn't be refunded.

Mr H says this was the result of mistaken advice from MRL about N's porting criteria, and he is seeking reimbursement of the ERC he paid to N. MRL accepts it gave him wrong information and has offered Mr H £500 compensation. But it has declined his claim for reimbursement of the ERC, on the basis that this would have happened anyway, regardless of its mistake.

What I've decided – and why

The broad circumstances of this complaint are known to Mr H and MRL. I'm also aware that the investigator issued a detailed response to the complaint, a copy of which has been sent to all parties, and so I don't need to repeat the details here.

Our decisions are published, and it's important that I don't include any information that might result in Mr H being identified. Instead I'll focus on giving the reasons for my decision. If I don't mention something, it won't be because I've ignored it. It'll be because I didn't think it was material to the outcome of the complaint.

I'll start with some general observations. We're not the regulator of financial businesses, and we don't "police" their internal processes or how they operate generally. That's the job of the Financial Conduct Authority (FCA). We deal with individual disputes between businesses and their customers. In doing that, we don't replicate the work of the courts.

We're impartial, and we don't take either side's instructions on how we investigate a complaint. We conduct our investigations and reach our conclusions without interference from anyone else. But in doing so, we have to work within the rules of the ombudsman service, and the remit those rules give us. It's for me to decide what the material issues are that will affect the eventual outcome. It's also my judgement on what evidence I need to see and consider, in order to reach a fair decision.

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

This isn't a complaint where I have to decide fault; MRL admits it made mistakes and has apologised and offered compensation. All that leaves for me to decide is whether MRL's response provides a fair settlement or not.

MRL's mistake was not to tell Mr H that one of H's porting criteria was that the application had to have been received by N before the existing property had been sold and the existing mortgage redeemed. That's not disputed by MRL but it says that even if it had been submitted before the sale, the porting application would have been rejected by N in any

event. MRL also rejects Mr H's assertion that if he'd been correctly advised, he'd wouldn't have gone ahead with the sale.

As he is the party bringing the complaint, Mr H's version of events has to be *more likely* than the alternative, not just simply *as likely* if I am to uphold the complaint. Having taken everything into account, I'm not persuaded that, but for MRL's error, Mr H would be in a materially different position from the one he is on now. I'll explain why.

First of all, I'm persuaded that Mr H's application for a new mortgage with N, whether that involved porting his existing rate product or taking out a new one, was always destined to be declined. I've reached that conclusion on the basis of information we've received from N. The information was submitted in confidence, which our rules allow.

The information in question is sensitive, and so it's appropriate that it remain confidential. By the same token, it is also material to the outcome of the case, so it's fair and reasonable that I exercise the discretion our rules give me to rely on it when reaching my determination. What that means is that the only way Mr H could only have avoided incurring the ERC was by not selling his existing home and repaying his existing mortgage. He's argued a strong case for why someone of his business acumen wouldn't knowingly incur such a cost, but I've also seen his early exchanges with MRL, in May 2022, some three months before he sold and redeemed.

From those exchanges, it seems clear that Mr H was already looking to sever his connection with N by taking a mortgage with a different lender – which would have meant paying the ERC – and that it was MRL who suggested he explore the porting option first. Mr H has explained the reasons for wishing to end his association with N. I won't disclose them here, in order to preserve his privacy, but his strength of feeling does come across quite emphatically. He'd already ended other financial arrangements with N; the mortgage was the last remaining connection.

Ultimately, MRL wrongly raised Mr H's expectations by having him think he might be able to port his interest product to a new mortgage with N. Had it not done that, I think it more likely than not that Mr H would have proceeded with his original plan of selling his home, repaying the mortgage with N (ERC included) thus completing his severance from N, and taking a mortgage with a different lender to fund his new home.

For having mistakenly raised Mr H's expectations, it's fair that MRL should compensate Mr H for his time, trouble and upset. Its existing offer of £500 is higher than I would have awarded if no offer had been made. I've explained above why I don't find MRL is liable for the ERC Mr N paid when redeeming his mortgage with N. Put all of this together, and I don't find that MRL needs to do more to settle this complaint than it has already offered to do.

Mr H doesn't have to accept my final decision, and if he doesn't then neither he nor MRL will be bound by it. If that happens, then subject to any time limits or other restrictions a court might impose, Mr H's recourse to a legal remedy of his own against MRL over the subject matter of this complaint won't have been prejudiced by our consideration of it. But of course he will need to weigh up the likelihood of a successful outcome and the potential costs he'll face if not successful.

My final decision

My final decision is that this complaint should be fairly and reasonably determined by Mortgage Required Ltd paying Mr H the £500 compensation it has offered him. I make no other order or award.

My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 24 October 2023.

Jeff Parrington

Ombudsman