

## **The complaint**

C says Cumberland Building Society agreed to repay the early repayment charges it would incur on redeeming a mortgage. C complains Cumberland Building Society's actions stopped it from recovering those charges.

C is represented by its director. I'll refer to him as Mr O.

## **What happened**

C owned a property, Property A. Mr O wanted to take out a new commercial mortgage over Property A on C's behalf with Cumberland Building Society (CBS). It was possible Property A might be sold in the near future. Before going ahead with the mortgage Mr O discussed with CBS the possibility of porting any mortgage interest rate products and avoiding early repayment charges (ERCs) later on.

In June 2019 CBS told Mr O the terms of the mortgage over Property A didn't allow for porting. But it said it would support C with porting and avoiding any ERCs. When Mr O asked for CBS to commit to that, it said it would allow the mortgage products to be ported and the ERCs to be waived, subject to C taking new borrowing with CBS, for the same or greater amount, at the same time as it redeemed the existing mortgage.

In December 2019 C went ahead with the mortgage over Property A. The mortgage was in two parts, which I'll refer to as Part 1 and Part 2. Each part was for a different amount and was subject to different repayment terms, fixed interest rates and ERCs.

In February 2020 Mr O's contact at CBS said he would support an application for a loan on a new property, Property B, which would benefit from the same fixed interest rate product as Part 1 of the mortgage over Property A. The application didn't go ahead.

In July 2020 C redeemed the mortgage over Property A and incurred ERCs of around £42,000.

In October 2020 CBS considered an application from C to buy another, cheaper property, Property C. Mr O's contact at CBS said he would support a proposal to transfer the unexpired interest rate product on Part 1 of the mortgage over Property A and refund part of the ERCs, subject to the loan being approved and completing within six months of the mortgage over Property A being redeemed. C withdrew from buying Property C and the application didn't go ahead.

In mid-December 2020 Mr O approached CBS again about a loan to purchase Property B. Negotiations had restarted in November 2020, C's solicitors had carried out work and C was in a position to go ahead. Mr O said he understood an ERC refund usually took place within six months of a mortgage being redeemed. He asked if that period could be extended. CBS said any new loan application would need to complete within six months of the sale of Property A. And it didn't think that would be possible in the current circumstances. The application didn't go ahead.

Mr O complained on behalf of C about the actions of CBS. He said it had committed to porting the mortgage over Property A with the ERCs being refunded. C had relied on CBS's assurance about that in deciding to take the mortgage over Property A. It was unreasonable for CBS to refuse to extend the six-month deadline for completing a porting application given the difficulties the coronavirus pandemic had brought, and the level of work CBS had in processing mortgage applications before the related stamp duty holiday came to an end the following March. And CBS had refused to co-operate with getting the application through in the six weeks remaining of the six-month deadline.

CBS didn't uphold the complaint. It said C had no contractual right to port the mortgage products. It hadn't guaranteed porting or repaying the ERCs. And C hadn't gone ahead with an application in any event.

Since Mr O didn't agree, he brought C's complaint to the Financial Ombudsman Service. Our investigator didn't think CBS had acted unreasonably. She said, in summary, there was no contractual obligation for CBS to agree to port C's mortgage or any part of it. Although CBS considered requests C made to transfer its mortgage to new properties it was hoping to buy, it didn't give any guarantee they would be agreed. C didn't go ahead with an application for borrowing in any event. So, there was no basis on which to ask CBS to repay the ERCs.

Since Mr O didn't agree, C's complaint's been passed to me to decide.

### **What I've decided – and why**

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

I'm grateful to the parties for the information they've provided. I won't mention everything they've said here. No discourtesy is intended by that. It simply reflects the informal nature of the service we provide. I'll focus on what I consider key to coming to my decision.

I appreciate Mr O's strength of feeling about C's complaint. I understand he'd carried out work and incurred expense in getting to the stage where C could buy Property B in December 2020. However, I've come to the same outcome as our investigator for broadly the same reasons, as I'll explain.

Mr O was clearly aware that under the terms of the mortgage C planned to take out with CBS, C would be subject to significant ERCs if the loan was repaid early. His exchanges with CBS in mid-2019 show he understood the mortgage wouldn't allow porting. And he sought a commitment from CBS to allow porting and waiver of the ERCs despite the mortgage terms.

I'm not persuaded C wouldn't have gone ahead with the borrowing in December 2019 without CBS's agreement on porting. Mr O was managing a property portfolio and in the process of restructuring its finances. And he later asked CBS to allow repayment of the ERCs if he went ahead with porting within six months. That wasn't part of what CBS had agreed, as I'll explain. His request showed an understanding of terms relating to ERCs that are sometimes found in mortgage agreements. He's told us C had exchanged contracts to buy Property B in December 2020 without CBS's agreement to porting the mortgage then, which suggests he was taking commercial decisions. I understand C had a buyer lined up for Property A but wasn't able to sell before refinancing existing borrowing in December 2019. I think the decision to take the mortgage in December 2019 was a commercial one and that C would have gone ahead whether or not CBS had provided the commitment Mr O was asking for.

The commitment CBS gave was limited in any event. The mortgage interest rate products could only be ported and the ERCs waived if C took new borrowing with CBS, for the same or greater amount, at the same time as it redeemed the existing mortgage. I'm satisfied Mr O understood that.

CBS has said, and I agree, that the plan to buy Property B in February 2020 didn't amount to porting the mortgage product on Property A in line with what CBS had agreed. The transaction wasn't happening at the same time as the mortgage on Property A was being redeemed. And the amount of borrowing C was asking for wasn't the same or greater than the mortgage on Property A had been. CBS were looking at lending the same amount on the same terms as Part 1 of the Property A mortgage only. It didn't proceed at the time in any event.

CBS did agree C could port part of a Property A mortgage product to a mortgage on Property C and that it would refund part of the ERCs if the application was accepted. But C withdrew from the deal and the application didn't go ahead.

CBS had made it a requirement of lending on Property C that the transaction complete within six months of the mortgage on Property A being redeemed. So, I can understand why Mr O thought it was reasonable to request the same terms should apply when he went back to CBS about progressing the purchase of Property B in mid-December 2020.

I appreciate the effort Mr O had continued to put into trying to progress the purchase of Property B despite the difficulties brought about by the coronavirus pandemic. He's told us searches and surveys had been done. I note Mr O's point that all the work that had been carried out meant there was little for CBS to do to complete the mortgage before the six-month period ran out. Even if that's right, I don't think CBS acted unreasonably in December 2020.

It wasn't part of CBS's original agreement that porting could take place within six months of the Property A mortgage being redeemed. That was a further concession CBS had allowed in relation to Property C. It reasonably agreed to that again in December. But it wasn't unreasonable that it didn't agree to extend the time further. There was no allowance for porting in the mortgage contract, CBS had agreed to porting on limited terms and it had already allowed C more time than it had originally agreed to. I think CBS had acted fairly in relation to C as an existing customer. And, as Mr O has explained, it had undertaken a lot of work with him to try and facilitate the transactions C was involved in.

CBS says C didn't make the application in any event. Mr O says he didn't go ahead because of the refusal of his CBS contact to cooperate. And without his help, C's application wouldn't have been considered by CBS's board as required.

I've considered the email exchanges Mr O's referred us to. But I'm not persuaded CBS refused to cooperate with Mr O or that it deliberately avoided repaying the ERCs as Mr O believes. It had already offered to repay part of the ERCs when C was planning to buy Property C at less than the amount of the Property A mortgage, which suggests it was willing to help. And CBS explained it was busy trying to process mortgage applications before the pandemic related stamp duty holiday came to an end the following March, so didn't think it would be realistic to complete in time.

In common with other lenders, CBS was under pressure to help customers during the pandemic, working in difficult conditions, often remotely and differently, and having to manage a higher volume of work due to the stamp duty holiday. We wouldn't ordinarily think it was fair to prioritise one customer over another without good reason, such as a vulnerability.

Even if it was reasonable to say CBS should have prioritised C as an existing customer over new customers, I'm not persuaded CBS would have repaid the ERCs. If C was looking to borrow the same amount against Property B as it had wanted earlier in the year, the terms on which CBS had agreed to port and repay the ERCs wouldn't have been met, as I've explained. Even if they had been met, there's no guarantee CBS would have agreed to lend. An application required board approval as Mr O's explained. It's too speculative to say it would have been approved or that it would have completed within the six-month window.

Bearing everything in mind I don't think CBS acted in breach of any agreement with C or unreasonably. And, whilst I understand Mr O will be disappointed, for the reasons I've explained, I don't uphold C's complaint.

### **My final decision**

My final decision is that I don't uphold C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask C to accept or reject my decision before 19 October 2023.

Julia Wilkinson  
**Ombudsman**