

## **The complaint**

X complains The Mortgage Works (UK) Plc won't let them port their mortgages without paying early repayment charges.

X is represented by its two directors in bringing this complaint. We've mainly been corresponding with one of them. I'll refer to him as Mr M.

## **What happened**

X owns three properties that are subject to buy to let mortgages with The Mortgage Works (UK) Plc (TMW). Mr M was concerned about rising costs. He thought buying alternative properties would improve X's financial situation.

In January 2023 Mr M had found buyers for two of X's properties and approached TMW about porting the mortgages. TMW said X's plans brought its property portfolio outside TMW's criteria for loan to value (LTV) and interest cover ratio (ICR). And they wouldn't agree to porting on that basis. Mr M felt TMW should agree to porting even if X failed to meet current lending criteria. And he thought TMW should waive any early repayment charges (ERC) X became liable to pay under the existing mortgages.

TMW didn't agree. They said, in summary:

- A full lending assessment is always carried out where a porting application is made. That was clearly set out in the mortgage conditions. As a responsible lender TMW must make sure any changes to a customer's borrowing are sustainable taking into account their current circumstances.
- The porting applications X proposed didn't meet their current lending criteria relating to LTV and ICR.
- They were willing to consider formal applications if X made them. They couldn't guarantee any application X made would be accepted. But, broadly, they'd consider whether they could make an exception for X subject to reviewing financial and portfolio information and carrying out valuations of the properties X proposed to buy.
- If X decided to redeem the mortgages, the ERCs wouldn't be waived. They said ERCs weren't arbitrary penalties TMW charged customers who wanted to redeem their mortgages early. They were a cost TMW incur when the wholesale funding market agreement they enter into to provide a fixed rate mortgage is ended early.

TMW considered the complaint Mr M made on X's behalf. They didn't uphold it but apologised for mistakes they'd made in communications sent to Mr M and paid him some compensation.

Since Mr M was unhappy with TMW's response, he brought it to the Financial Ombudsman Service on X's behalf.

Our investigator came to the view TMW had acted fairly. He said the ERCs were payable under the terms and conditions of the mortgage, and it was reasonable for TMW to require them to be paid. Since Mr M didn't accept our investigator's view, X's complaint was passed to me to review afresh. I recently issued a provisional decision an extract of which follows:

**“What I've provisionally 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 sorry to hear of the impact the financial difficulties X has been experiencing is having on Mr M and his co-director. And I understand Mr M's unhappy with the way in which he feels TMW have been treating X – and Mr M and his co-director as individuals - in relation to their property portfolio. But I am only looking here at X's complaint about porting. So, I won't comment on the compensation TMW paid Mr M. I've come to the same outcome as our investigator. Since my reasons are different in part, I'm issuing a provisional decision to give the parties the chance to make further comments before I come to a final decision.

Broadly, porting involves transferring an existing fixed interest rate deal to a new mortgage on a new property. The existing mortgage is paid off and a new loan is made at the same rate as the redeemed mortgage for the remainder of the period of the fixed rate deal.

It's a common requirement for porting that the old mortgage is redeemed, and the new mortgage is taken out at the same time. Unless the new mortgage is for the same amount or more, an ERC, or part of it, is often payable. And if the old mortgage is redeemed, and no new mortgage is taken out, an ERC will usually be payable in full.

Porting will only be allowed if the application for the new mortgage is successful. And that will depend, amongst other things, on the applicant meeting lending criteria that exist at the time of the application and the new property being acceptable security for the loan.

The terms of X's mortgages on the three properties we're concerned with here reflect what I've explained above. The mortgage offers said the mortgages were “portable”; that meant that if X was selling its existing property and buying a new one at the same time and TMW were able to offer a mortgage on the new property, X would be able to transfer the mortgage on the same terms without paying an ERC; if the amount of the new mortgage was less than the existing mortgage, an ERC would be payable on the difference in value between the old mortgage and the new one; and whether or not TMW could offer a new mortgage depended on the circumstances at the time.

The offers set things out in terms that I consider were clear, fair and not misleading in line with Financial Conduct Authority principles. Given that, and as directors of a property investment company, I think Mr M and his co-director ought reasonably to have understood the success of any porting application would depend on meeting TMW's lending criteria at the time of any application - and that an application wasn't guaranteed to succeed.

Lenders change their criteria from time to time depending on commercial considerations such as changes in the economic climate or their appetite for risk. That's not unreasonable and we can't generally interfere with the criteria a lender may set. But we'd expect a lender to give fair consideration to an individual customer's application.

I think TMW gave fair consideration to X's situation. TMW said that subject to X providing information and evidence, carrying out credit scoring and valuations, and X selling the existing properties and purchasing new ones at the same time, they would consider whether they could waive the ERCs. TMW invited Mr M to let them know how he wanted to proceed.

Mr M responded and asked a number of questions. TMW explained again they'd formally consider any porting applications if they were made, and X complied with requests for information as part of any assessment they carried out. So, TMW gave X the chance to take things forward. I'm not aware X went ahead with any applications.

I'm aware Mr M thinks TMW should simply waive the ERCs. But I don't think it's fair to ask them to do that. When a lender offers a fixed rate mortgage product, both the lender and borrower are tied into that rate for the term of the deal. There's a cost to a lender in raising the funds to lend, which it recovers by charging interest on the loan. If interest rates rise while the deal is in place, the lender incurs a further cost since it can't raise the interest rate it is charging under the fixed rate deal. If the borrower repays the mortgage during the fixed rate period, the lender stops receiving interest each month, and there's a risk the lender won't recover its own costs of borrowing the funds to lend.

The ERC is there to cover the costs of a borrower paying the mortgage back early. It isn't meant to be a penalty to the borrower. We don't think ERCs are generally unfair. Since the ERCs were set out clearly in the mortgage offer, they were brought to X's attention before the mortgages were completed, and TMW has made their position clear on waiving them, I don't think it's unfair for TMW to decline to waive them in X's case.

Overall, I think TMW provided X with a reasonable service in relation to the issues I'm considering here. I can't see they caused any substantive delay or that they failed to explain their position clearly enough, for example. Mr M told them about offers received on two of the mortgaged properties and properties he wanted to port existing mortgages to in mid-January 2023. TMW told him quickly the proposals didn't meet their current criteria. Shortly afterwards they set out their position on porting and ERCs clearly and offered to consider things further subject to X providing more information. I think that was fair.

Bearing everything in mind, I don't think TMW treated X unfairly. Whilst I understand Mr M will be disappointed, based on what I know so far and for the reasons I've explained, I don't intend to uphold this complaint.

### **My provisional decision**

My provisional decision is that I don't uphold this complaint."

### **Developments**

Mr M was unhappy with my provisional decision but made no substantive comments on it. TMW had no comments to make. So, I'll go on to give my final decision.

### **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.

Since neither party has made any comments, there is no new information for me to consider. So, for the reasons I set out in my provisional decision, I don't uphold this complaint.

### **My final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask X to accept or reject my decision before 10 November 2023.

Julia Wilkinson  
**Ombudsman**