

## The complaint

Mr and Mrs M complain that Julian Hodge Bank Limited (trading as Hodge Lifetime) unfairly declined their porting application. As a result, they paid an early repayment charge (ERC) as well as costs and fees related to their porting application, which they'd like refunded.

## What happened

Mr and Mrs M had a mortgage with Hodge Lifetime. They took out a fixed interest rate product in early 2020. Mr M says they chose a product that was portable as they intended to move.

Mr and Mrs M made a porting application to Hodge Lifetime via a broker in late 2021. They expected their sale and purchase to take place on the same day. However, their purchase was delayed. Hodge Lifetime said it only allows porting when the sale and purchase is simultaneous. Mr and Mrs M paid an ERC of about £5,000.

Our investigator said Hodge Lifetime acted in accordance with its lending criteria. She didn't recommend that Hodge Lifetime should refund the ERC.

Mr and Mrs M didn't agree. Mr M said, in summary, he had no idea Hodge Lifetime required porting to be simultaneous, and it was unfair for Hodge Lifetime to rely on hidden terms.

## 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.

A mortgage is a charge on a property, which secures a loan. If the borrower sells the property they have to repay the loan. Like most fixed interest rate products, the product Mr and Mrs M took out in late 2020 had an ERC. The product offer says the ERC is a percentage of the amount repaid, which reduces over the five-year term of the product. So, if Mr and Mrs M sold the property and repaid the mortgage during this time they had to pay the ERC.

However, like many lenders, Hodge Lifetime allows borrowers to port. Porting means that the lender agrees to refund or waive the ERC if the borrower takes a new mortgage on a new property at the same interest rate as the old one, as long as certain conditions are met.

Mr and Mrs M's product offer says: *"You have the right to transfer this loan to another property. To benefit from this right we must be satisfied with your credit history, that you can continue to afford the mortgage, and that the loan to value ratio remains within our eligibility criteria. The new property must also be acceptable to us..."*

Mr M referred to the terms and conditions of the mortgage, and for completeness the relevant provision is: *"Your loan is portable and we will consent to the transfer of your loan to a new property if the following conditions are met..."* The conditions are that the new property is suitable security and they could afford the loan.

Mr M says it's unfair that the mortgage terms and conditions he agreed to don't say porting must be simultaneous, and so he didn't agree to this. He referred to a decision on our website about a lender declining to port a mortgage. Mr M says there's a distinction between their contract with Hodge Lifetime and Hodge Lifetime's internal policy and guidance. While I understand his point, I don't think it's fair to imply that this means Hodge Lifetime must allow non-simultaneous porting. Doing so would create further questions, such as what gap it would have to allow between the sale and purchase. Most importantly though, Hodge Lifetime didn't say Mr and Mrs M's product couldn't be ported. It said it allows porting where the sale and purchase are simultaneous.

Hodge Lifetime provided its internal policy, which says it will only port if the sale and purchase are simultaneous. Some lenders allow a grace period between a sale and purchase – in which case the borrower would pay the ERC but this would be refunded when they took out a mortgage for their purchase and ported the interest rate to it. But not all lenders offer a grace period, and they aren't required to do so. Hodge Lifetime applied its policy correctly here. I don't think Hodge Lifetime made an error when it told Mr and Mrs M it wouldn't allow them to port their mortgage if there was a gap between their sale and purchase.

Mr M says they weren't told this until the last minute. Lenders don't have to publish their policies or provide copies to customers. If Mr and Mrs M had told Hodge Lifetime their sale and purchase might not be simultaneous, or asked what would happen if this was the case I'd expect it to give them a clear answer. But based on the available evidence I don't think I can fairly find that Hodge Lifetime misled Mr and Mrs M about when it would allow porting.

Hodge Lifetime's porting application form asks whether the applicant intends to complete their sale and purchase on the same day. The application form asks that they contact the contract variations team at Hodge Lifetime if this isn't the case. The porting application submitted by Mr and Mrs M's broker in late 2021 confirmed that they intended to complete their sale and purchase on the same day. The application proceeded on this basis.

Mr M sent an email to Hodge Lifetime on 28 February 2022 saying there was a delay with the purchase for one or two weeks. He said they expected their sale to go ahead on 10 March 2022. Mr M asked Hodge Lifetime to confirm this short delay wouldn't result in it claiming any ERC.

Hodge Lifetime's responses effectively said the ERC would be waived if the mortgage was ported. I appreciate that Mr M found this unhelpful. What he wanted to know was if they could still port the mortgage if there was a gap between the sale and purchase. Mr M asked this specifically on 5 March 2022 and asked for a response by 7 March 2022.

Mr and Mrs M's broker also contacted Hodge Lifetime on 3 March 2022. He said his client had contacted him to say the mortgage would have to be redeemed and a new application submitted as there would be a gap of 4 to 6 weeks between the sale of their property and the purchase. He asked if anything could be done to avoid submitting a new application.

On 7 March 2022 Hodge Lifetime sent written confirmation to the broker that if the sale and purchase weren't simultaneous, the porting application couldn't proceed. It sent an email to Mr M saying this on 9 March 2022.

The framing of the broker's question on 3 March 2022 suggests Mr M was aware that porting wasn't available when there was a gap between the sale and purchase. But even if this wasn't the case, Hodge Lifetime confirmed this in writing two working days after the broker asked whether the porting application could proceed.

Mr M says he was told during a call that Hodge Lifetime would waive the ERC, but the member of staff then called back and said this wasn't the case. While this must have been disappointing, it doesn't seem to have had any significant impact on events.

The sale of Mr and Mrs M's property completed on 10 March 2022. Mr M said withdrawing from the sale would have had a devastating effect on the households in the chain, cost them all financially and risk them being unable to proceed with their purchase. It's not clear if Mr and Mrs M had exchanged contracts and agreed the completion date before they knew their purchase would be delayed. Or if they chose to proceed knowing they'd be a gap. Either way, I haven't seen anything to suggest that Hodge Lifetime gave Mr and Mrs M incorrect information about there being a porting grace period, or that they relied on incorrect information from Hodge Lifetime when they agreed a completion date for their sale.

Mr and Mrs M repaid their mortgage and paid the ERC. They'd hoped to avoid this by porting the mortgage and it must have been disappointing that this wasn't possible. But Hodge Lifetime was entitled to apply the ERC, in accordance with the terms of the product Mr and Mrs M agreed to. I can't fairly require Hodge Lifetime to refund the ERC.

Mr and Mrs M agreed to pay fees and costs related to the porting application. While I appreciate their frustration that the porting application didn't proceed, I don't think it's fair and reasonable to require Hodge Lifetime to refund or compensate them for these costs, which they agreed to pay.

### **My final decision**

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and Mrs M to accept or reject my decision before 30 August 2023.

Ruth Stevenson  
**Ombudsman**