

The complaint

Ms L and Mr M complain that Clydesdale Bank Plc misinformed them that they would be able to recover their early repayment charge ("ERC") when they moved house.

What happened

Ms L and Mr M had a mortgage with Clydesdale that had a fixed rate mortgage product. In 2019, they planned to move house and relocate to another town. Ms L and Mr M say that they were told by the bank that they would have to pay an ERC on selling their house but could recover it if they took out a new mortgage on a new property within six months of the sale. They sold and Mr M found a new property. Mr M applied for a mortgage that was declined. Ms L and Mr M say that the bank never told them that it could decline a new mortgage as otherwise they would have made other financial choices.

Clydesdale said that it couldn't trace a call where, as Mr M says, he was told that he could have the ERC refunded but didn't mention that this was subject to a full application and offered £50 by way of apology. Our investigator didn't recommend that this complaint should be upheld as Clydesdale said that porting was subject to its lending criteria at the time and there was no guarantee that an application would be accepted. Mr M disagreed saying in summary that he was not told in his conversations with the bank's call agents that the new mortgage was at risk of being declined.

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.

Ms L and Mr M had to pay a substantial ERC that they were unable to recover because when Mr M applied for a new mortgage that mortgage was refused. Ms L and Mr M brought this complaint to the bank in 2022 although the circumstances giving rise to the complaint occurred in 2020. Ms L and Mr M took out the mortgage product in 2018. Under the terms of the mortgage product an ERC was payable if the mortgage was redeemed early, as it was in this case, and the ERC could be refunded if they took out a new mortgage and, as stated in the mortgage offer, *"if you meet all of our lending criteria when you ask to port"*. At that stage Ms L and Mr M had, I understand, separated and this was an application by Mr M alone.

Ms L and Mr M's complaint is that when Mr M discussed the situation with a Barclays adviser that the adviser didn't warn him that the application might be declined. Nor does Mr M say that he was told that the application would be accepted. I believe that in those circumstances, as is set out in the mortgage offer, that the application was subject to Clydesdale's lending criteria and, it's a reasonable assumption to make, that the application could be either accepted or declined. I don't consider that it was reasonable for Mr M to assume that, even though his circumstances changed, it would be accepted. Nor do I have any reason to believe that Clydesdale didn't fairly apply its lending criteria to the application. So, I can't fairly uphold this complaint.

My final decision

My decision is that I do not uphold his complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms L and Mr M to accept or reject my decision before 25 January 2024.

Gerard McManus
Ombudsman