

## **The complaint**

Mr W has complained about the early repayment charge (ERC) he paid when he redeemed his buy to let (BTL) mortgage with Clydesdale Bank Plc.

## **What happened**

Mr W held his BTL mortgage with Clydesdale. In March 2021 he received a mortgage offer to move his mortgage onto a new preferential rate following advice given by an independent mortgage broker. The interest rate was fixed at 2.79% until 31 May 2023, with an ERC for that same period.

In August 2022 Mr W started to look into remortgaging with his broker as he was concerned about rising interest rates. He said it was too early to be able to arrange a new rate with Clydesdale so he arranged a new mortgage with a different lender, aware the new mortgage would need to complete before the ERC period ended with Clydesdale.

Mr W has told us he delayed completion as long as he could, all the while keeping an eye on whether he was able to get an alternative competitive rate (either with Clydesdale or elsewhere) but finally had to complete on the new mortgage at the start of April 2023 as the new mortgage offer was due to expire. Mr W incurred an ERC of around £9,100 on his Clydesdale mortgage.

In the meantime, Mr W raised a complaint with Clydesdale, which wasn't upheld.

Our Investigator didn't think Clydesdale had done anything wrong. She said the ERC end date was clear in the mortgage offer and Mr W made a decision, having weighed up the costs of the ERC against the monthly payments, to pay the ERC to obtain the rate he wanted.

Mr W didn't agree, and so it was 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 conscious I've condensed the events of the complaint into rather less detail than the parties have presented them. If I don't comment on any specific point it's not because I've failed to consider it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

I recognise that Mr W feels very strongly about this, and I thank him for the thoroughness of his submissions. I won't detail everything that he's told us about his circumstances, however I can assure him that I've read and understood everything and taken it all into account.

The ERC wasn't a "penalty" as that has a distinct meaning in law; it's a contractual term that applies where there is a breach of contract. But when Mr W's mortgage was repaid, there

was no breach of contract. That's because the contract allowed for the mortgage to be repaid if Mr W paid an ERC.

I'm satisfied the terms of the ERC were set out in the mortgage offer in a way that should have been readily understandable to Mr W; certainly, the information about the ERC was set out in a manner that met the regulator's requirements. So I'm persuaded Mr W knew – or at least should have known – how much he'd have to pay if he repaid the mortgage on or before 31 May 2023.

That said, I need to decide what is fair and reasonable in the individual circumstances of the complaint. The rules we operate under say that in doing that I must take into account, amongst other things, the relevant rules and regulations. In this case that is the Financial Conduct Authority's Mortgages and Home Finance: Conduct of Business sourcebook (MCOB).

MCOB includes provisions about ERCs. In summary, they say that an ERC must be able to be expressed as a cash value, and must be a reasonable pre-estimate of the costs resulting from early termination of the mortgage. But a lender can choose how it calculates an ERC, and can calculate the same level of ERC across a group of mortgages of similar type, rather than for individual loans. Clydesdale is entitled to set an ERC based not on the actual cost to it of Mr W ending his own mortgage early, but on a reasonable pre-estimate of the costs of early termination of a group of mortgages of similar type.

Lenders generally raise money to offer preferential rates for their mortgage customers on the wholesale money markets. There's a cost to that, and it's generally fixed in advance. But the lender expects to receive a return to outweigh those costs. If a mortgage ends early, it doesn't get back all the returns it expected, and so doesn't make back the costs in raising the funds to offer that preferential rate.

I appreciate that Mr W was very near to the end of the tie-in period and that the amount of the ERC appears out of proportion to the number of payments that were remaining under the fixed rate. But I'm afraid that isn't a factor in how the ERC is calculated, nor is the actual cost to Clydesdale of this individual mortgage being repaid at the exact time it was.

It's complex and onerous for lenders to calculate individual losses as and when individual customers decide to terminate their contracts early. And it isn't possible to estimate, for any given individual, when or if they might do so. So Clydesdale is allowed to project how many customers, on average, are likely to terminate early and, on average, at what point they're likely to do so, and to apportion that cost across the mortgages in the group. For some individual mortgages that will end up being an over-calculation, and for others it will be an under-calculation. But that's allowed; Clydesdale doesn't have to refund the difference, but equally it doesn't tell a consumer to pay the difference if it goes the other way.

Mr W has told us he had no option but to remortgage due to his circumstances. I've a great deal of sympathy for the position Mr W found himself in, but his situation wasn't unusual. Many customers were concerned about the sudden and sustained rate increases and wanted to end their existing rates early (thus incurring an ERC) so they could obtain a new rate as soon as possible. It would be highly unfair for Clydesdale to treat Mr W any differently from how it would treat any other customer that wanted to remortgage whilst there is an ERC on their mortgage.

Mr W has highlighted something he's seen on our website that says, as part of our considerations, we look at how the lender has applied the ERC, taking into account the customer's personal situation, particularly if the customer has got money worries. But that is referring to a scenario such as perhaps a residential house sale where the borrower could

no longer afford their mortgage, and there being insufficient equity to cover the ERC once the mortgage debt was repaid, so it could be a barrier to the customer being able to sell a property they can no longer afford to live in. It wouldn't be a customer wanting to get a lower rate for a BTL mortgage as otherwise the letting situation would no longer be financially viable.

Mr W had the option to sell the property if the financial situation meant renting it out was no longer financially viable. So whilst there was obviously a financial impact on Mr W, he wasn't in the situation where this was his residential property and he was at risk of having his home repossessed, for example.

Having considered everything, I don't think Clydesdale acted unfairly or unreasonably in this matter, and there are no grounds for me to order Clydesdale to refund the ERC (either in full or in part).

### **My final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 15 September 2023.

Julia Meadows

**Ombudsman**