

The complaint

Miss R complains that she was mis-sold a mortgage with an early repayment charge (ERC) by Clydesdale Bank Plc (Clydesdale).

What happened

Miss R took out a fixed rate mortgage with Clydesdale in April 2021. The fixed rate was due to end on 31 January 2023. Shortly before this, Miss R received a letter about the term ending and contacted Clydesdale on 11 November 2022 to ask about her options. Miss R says that she then asked for a variable rate mortgage as she intended to re-mortgage a few months later, so didn't want to be tied into another fixed rate mortgage.

Miss R has said in her submissions to this service that Clydesdale sold her a two-year fixed rate which she didn't sign up for and says that, as the mortgage is called offset variable, she made a human error and did not identify this as being a fixed rate due to the wording on the website not being clear.

Miss R has also said there was a clause in her new mortgage contract which permitted her to change her mind and cancel before the first payment date. However, she says that Clydesdale hasn't allowed her to do this and is falsely claiming that she didn't cancel the product when she did, as she cancelled it immediately as soon as she was told that the product was fixed.

In fact, the new mortgage Miss R took out was a two-year discounted variable rate deal with an ERC (and not a fixed rate as Miss R suggests). It appears that Miss R was under a misapprehension that only fixed rate mortgages come with an ERC. Clydesdale is now asking for an ERC of £7,000 for her to get out of the deal early.

Miss R says this issue has had a huge mental and financial strain on her as her mortgage has gone from £850 to £1,550 a month, which she cannot afford. Miss R says that she should have been allowed to cancel the product in line with the terms and conditions. She would like Clydesdale to waive the ERC and allow her to re-mortgage to a fixed rate product where she doesn't have to worry about interest rates moving every month. She would also like Clydesdale to compensate her for the interest rate rises which have increased her mortgage payment since January 2023.

Clydesdale says that it did not advise Miss R on an appropriate mortgage and that she applied for the mortgage herself online without advice. It says it provided information about the features of certain products but did not advise whether these would be suitable for her. Clydesdale says that Miss R is tied into the new product and is liable to pay the ERC if she breaks the deal.

Our Investigator looked into Miss R's complaint and didn't think Clydesdale had treated her unfairly. She was satisfied that Miss R had applied for the product online in November 2022 and that Clydesdale hadn't provided any advice or recommended that it was suitable for her. She was also satisfied that the documents provided to Miss R made it clear that an ERC would apply from 1 February 2023 if Miss R was to cancel.

Miss R disagrees with this so the case has come to me to make a 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.

I can see that Miss R's fixed rate deal ended on 31 January 2023 and that she applied for a discounted offset variable mortgage to start as of 1 February 2023.

The first issue which I need to determine is whether Clydesdale advised Miss R to take the mortgage or whether this was an execution-only sale.

The documentation provided by Clydesdale shows that the mortgage was applied for and self-selected online by Miss R on 11 November 2022. However, Miss R says that she was advised about which mortgage to take over the phone.

Clydesdale has provided a list of all calls between it and Miss R. I've listened to a call from Miss R to Clydesdale on 11 November 2022 and Miss R mentions that she has received the letter about her deal coming to an end in January and asks about her options. So I'm satisfied that the first call of relevance to this application is the call from Miss R on 11 November 2022.

The agent confirmed that if Miss R didn't re-mortgage then she would go onto the standard variable rate (SVR) after January, which was 6.49% at the time. Miss R swore at this point.

Miss R told the agent that she didn't want to be stuck on a fixed rate as she wanted to buy another property and she couldn't do that if she went on a fixed rate as she wanted to be able to re-mortgage to get the deposit for the other property. There was a discussion about borrowing more and the agent told her that she could still borrow more on a two or five-year fixed rate as long as it fit the income criteria, but that this would mean having a separate part to the mortgage. Miss R was told that if she wanted to break the deal then there would be an ERC payable but that if she was OK with having two separate parts to the mortgage then she could avoid the ERC. Miss R confirmed her understanding of this and that she would be fine with having two parts to her mortgage. She said that she wished she had got a five-year fixed rate on her current mortgage now she knew that she could have got a further advance without breaking the deal and paying an ERC.

Miss R also asked about the offset rate and she was told by the agent that this was a variable rate and given some information about the product. She was also told that if she wasn't changing anything then she could apply online on a self-select service. The agent made Miss R aware that if she needed advice then she would need to go through a full application but that if she was happy to pick her own rate it would take a few minutes for her to do online.

Miss R told the agent that she was online at the time and the agent provided her with some assistance in using the website. She asked if she had to do the application now as she was hopeful rates might go down, or whether she could do it in January. The agent told Miss R that rates could change so she could do the application now and then if rates went down then as long as the new rate was not in place she could cancel. Miss R said that she would apply online.

As set out above, Miss R has said in her submissions to this service that Clydesdale sold her a two-year fixed rate which she didn't sign up for and says that, as the mortgage is called offset variable, she made a human error and did not identify this as being a fixed rate due to the wording on the website not being clear. It appears that Miss R was under a misapprehension that only fixed rate mortgages come with an ERC. However, I'm satisfied that the mortgage she applied for was a variable rate mortgage which came with an ERC. The agent also made it clear during the call that the offset mortgage was a variable rate.

I have seen screenshots from Clydesdale's internal systems which show that Miss R made her product switch application online on 11 November 2022. Whilst I appreciate that Miss R

spoke to Clydesdale on the phone that day, I've listened to the calls and I am satisfied that the agent only provided information and didn't provide any advice or recommend any product to Miss R. In fact, the agent specifically told Miss R that if she wanted advice then she would need to go through the full application.

So I'm satisfied that Miss R applied for the product online without any recommendation from Clydesdale.

An offer letter and mortgage illustration was sent to Miss R dated 17 November 2022. Under the heading "*Your Right To Withdraw*" in the offer letter it states "*Should you decide not to proceed with this offer you will lose any fees that you have paid to us. Once the mortgage has completed, you cannot withdraw but you can repay it at any time in accordance with the terms and conditions of your mortgage (please refer to the "Early Repayment" section within the mortgage illustration provided with this offer for any early repayment charges which may apply).*"

I've also looked at the mortgage illustration and this sets out that the product was a two-year discounted offset mortgage, with a variable rate discounted by 2.31%. The Early Repayment section sets out that Miss R had the right to repay the loan early, either partially or fully. It states "*If you repay all or part of your loan or switch to another Clydesdale Bank product within your Concessionary Rate Period you will have to pay an early repayment charge*". There is then a table illustrating that there would be an ERC of 3% until 31 January 2024 and then of 2% until 31 January 2025.

So I'm satisfied that the offer documents (and the agent) made it clear that Miss R could cancel her application until the mortgage had completed (on 1 February 2023). I'm also satisfied that the documentation made it clear that an ERC would be applied if she did so after this.

The next time Miss R called Clydesdale after 11 November 2022 was on 23 December 2022. She asked about her options if she wanted to buy another property as she wanted to sell a buy to let property and put down money as a deposit on a property upstairs from her residential property. She asked the agent if rates were likely to go up or down and he said he couldn't say.

Around 20 minutes into the call, the agent pointed out to Miss R that her current rate expired in January so, as long as she was re-mortgaging from February, there wouldn't be any charge to apply for additional funds under her current deal. Miss R said that she was aware her rate was coming to an end and that she had just signed up to Clydesdale's discounted rate. The agent said that if she wanted to release additional funds then the loan to value (LTV) would be too high to get the discounted rate.

Miss R asked about an exit fee and the agent said that she had mentioned that she had applied for a discounted rate. Miss R confirmed that she had but that it wasn't a fixed rate. The agent confirmed that, if it was the discounted rate Miss R had applied for then that was not fixed but there was still a penalty if she exited the deal. He said that it will show her on the documents. The agent said that Miss R could cancel the deal at any time before it went into place but that, if she went into the discounted deal, rather than charge an ERC Clydesdale would just open up a separate part of the mortgage so that she would have two payments. Miss R said that was not what she wanted ideally but confirmed that this made sense and she understood.

I'm satisfied from listening to the call on 23 December 2022 that Miss R was told that there would be an ERC on the discounted rate mortgage which she had applied for and she was directed to the offer documents. She was also told again that she could cancel this before it went into place. I am satisfied that she wasn't given any advice about which product to take on this call. In any event, she had already applied for the discounted rate online prior to this.

On 3 January 2023, Miss R called Clydesdale again saying that she had the paperwork for the product switch and wanted to know if she needed to do anything. She was told by the agent that she didn't have to do anything if she was happy but that if she were to change her mind then she could let Clydesdale know that she didn't want to go ahead. She was told that if she was happy the rate would go into place on 1 February 2023.

Miss R asked whether the discounted rate was the lowest rate that could be offered and the agent confirmed that it was currently the lowest rate but that it was a discounted rate and not fixed so it could fluctuate. Miss R then asked about the fixed rate and whether there would be a fee if she wanted to change from the variable rate and move onto the five-year fixed rate. The agent told Miss R that the rate wouldn't be in place until she had paid the fee. The agent said that if Miss R wanted to cancel then she (the agent) could cancel it for Miss R if she wanted to apply for the fixed rate. Miss R asked for the monthly payment and the agent explained that she couldn't provide these but that Miss R would have to go back online and it would bring up all the rates. Miss R said this was fine and she might do something else anyway.

Again, I am satisfied that no advice was provided on this call of 3 January 2023. Miss R was again told by the agent that she could cancel the discounted rate if she didn't want to go ahead but that the rate would go into place on 1 February 2023. The agent offered to cancel the product for Miss R but she didn't want to do this.

There were some further calls on 3 and 4 January 2023 but these related to Miss R trying to get an agreement in principle (AIP) for the further borrowing. When Miss R made a complaint on 4 January 2023 about the AIP being declined for the additional borrowing and what she had been told about this, she was asked when she had spoken to someone. Miss R checked and said that she spoke to someone at 14:30, 14:53 and 15:15 the previous day and that she had also spoken with someone on 23 December 2022. So I'm satisfied that these are all of the calls. I've listened to all of these calls and at no point does Miss R mention cancelling the product switch.

The next call shown on Clydesdale's internal system is on 20 February 2023, when Miss R complained about the fact that the variable rate has increased. But this was after the product had already started, so I don't find this to be relevant to the issues I need to consider.

In light of the above, I'm satisfied that Clydesdale provided Miss R with the correct information about the ERC which was applicable to the product she had chosen and her right to cancel the product before it was put in place on 1 February 2023. I'm also satisfied that Miss R didn't indicate before 1 February 2023 that she no longer wanted the discounted rate to be applied.

I do understand that Miss R is unhappy that her monthly repayments have increased and I understand her frustration at the impact of having to pay an ERC during a difficult time. But I don't think that means Clydesdale should waive the ERC if Miss R wants to leave the deal early. Miss R applied for the product herself online and was aware of the ERC when she decided to go ahead with the product switch. She was also made aware that she could only cancel the deal until it was put in place on 1 February 2023. So I don't consider it would be unfair for Clydesdale to apply the ERC in line with the agreement that Miss R entered into and, ultimately, Clydesdale is entitled to charge the ERC if Miss R wants to leave the deal early.

I know my decision will come as a disappointment to Miss R, but I can't say that Clydesdale has acted unfairly and therefore I don't uphold this complaint.

My final decision

For the reasons I've explained above, I don't uphold this complaint and don't require Clydesdale Bank Plc to do anything.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R to accept

or reject my decision before 17 January 2024.

Rachel Ellis
Ombudsman