

## **The complaint**

Mr D and Ms H complain that they had to pay an early repayment charge (ERC) because they were unable to port their mortgage with The Co-operative Bank Plc trading as Platform within a reasonable time.

## **What happened**

Mr D and Ms H had a mortgage with Platform. In 2020 they took a new five year fixed rate.

They said that they did so knowing they were likely to move house within the next one to two years, but said that they had been assured they would be able to port their mortgage to a new property, avoiding an ERC, and that porting was a simple, quick and straightforward process.

In 2021, Mr D and Ms H decided to move. They accepted an offer to sell their property. They applied to Platform to port their mortgage to a new property.

They arranged a telephone appointment. They say they were surprised to learn that it wasn't a straightforward process, and that they would have to complete a full new mortgage application, including providing full evidence of their income and expenditure – even though they didn't want to borrow any more money.

The telephone appointment went ahead. Mr D and Ms H say they spent almost three hours on the phone with an adviser completing an application. The adviser said that porting their existing mortgage wouldn't be affordable, but offered a term extension to reduce their monthly payments to an acceptable level. Mr D and Ms H agreed to this. The adviser then said they would be sent some forms to sign and return.

Mr D and Ms H were surprised to receive not a completed offer to sign and accept, but a blank application form. They questioned this with Platform, and Platform told them this was correct. They would need to complete an application form, and Platform would then consider their application. It said it would take up to 12 weeks to consider the application, and a further two weeks to issue an offer if the application was approved.

Mr D and Ms H complained. They said they had already made the application, during the phone call, and didn't see why they needed to do so again. And they said the adviser had already agreed they would be allowed to port, subject to a short term extension.

Mr D and Ms H said they couldn't wait a further three months for the application to be considered. They were concerned that they would lose their buyer if they had to wait three months for a new mortgage offer to be issued, as they were part of a chain.

Mr D and Ms H said they felt they had no other option but to go to another lender. They redeemed their mortgage and paid an ERC of around £4,500.

Mr D and Ms H complained. They said they'd been misled when they took this rate out, and had they known they wouldn't be able to port they wouldn't have taken a five year rate with

such a high ERC. And they said Platform hadn't treated them fairly in charging the ERC when it hadn't been able to complete their application in a reasonable time.

Platform offered them £25 compensation for not contacting them promptly about their complaint. But it didn't agree to waive the ERC. It said that porting applications were taking much longer at that time because of the impact of coronavirus and the stamp duty holiday.

### **My provisional decision**

I issued a provisional decision setting out my thoughts on the complaint. I said:

Porting a mortgage to a new property isn't a straightforward administrative process. Strictly speaking, the mortgage isn't ported at all – selling the old property involves repaying the old mortgage. A new mortgage application is then needed, and if the new mortgage is granted, it's the interest rate that is ported, to avoid it ending early and triggering the ERC.

That said, I don't think Mr D and Ms H were misled about the process when they took out their fixed rate. I think it was made clear that porting wasn't automatic and would require an application.

So what I need to decide here is whether Platform handled their application fairly in 2021, or whether it was handled unfairly – and whether it should refund the ERC Mr D and Ms H paid in moving to a new lender.

I find it difficult to understand why it was necessary for Mr D and Ms H to go through an initial application in May 2021, a full detailed application call in June 2021 – and then still have to complete an application form from scratch.

Platform says that around this time its porting applications were taking around twice as long as usual, because of the combined impact of reduced staff due to coronavirus and increased demand due to the stamp duty holiday window.

And I've taken that into account. This was a difficult time for many businesses, banks included – as it was for the rest of the country. And it's reasonable to expect some leeway to be given in normal service standards.

However, even taking that into account, I'm not persuaded that Platform acted fairly in this case.

As I say, it's difficult to see why Mr D and Ms H had to both go through a full advised telephone application *and* complete a full paper application. Only one of those seems necessary.

As they weren't borrowing more money, there's the facility in the rules of mortgage regulation to set aside the need for an affordability assessment in this situation. But Platform doesn't seem to have given any consideration to whether that would be appropriate in this case.

Either or both of those things were steps Platform could have taken to streamline its process – rather than simply expecting Mr D and Ms H to wait while things took much longer than its normal service standards would expect.

And while it may be understandable that Platform's usual timescales were extended around this time, the extent to which they were had a significant impact on Mr D and Ms H. They were in a property chain, and at risk of losing their buyer if they weren't able to proceed in a

timely way. I don't think expecting them to wait over three months for a mortgage offer – and imposing an ERC on them if they couldn't wait that long – was fair and reasonable in all the circumstances. I think Mr D and Ms H were willing to remain with Platform – but it put them in a position where that wasn't possible, leaving them with no choice but to go elsewhere.

I also bear in mind that this was a portable mortgage. As I've said, that doesn't give the *right* to port – that's subject to an application and current lending criteria – but it does give the right to make an application and have it given fair consideration. In my view, in this case, the timescales for completing their application made it impractical for Mr D and Ms H to port their mortgage, because it couldn't be completed in a reasonable timescale. In my view, it's part and parcel of the feature of portability that an application will be considered fairly and in a reasonable timescale – otherwise the feature can't be used in practice.

In all the circumstances, I'm not persuaded it was fair to charge Mr D and Ms H the ERC. To put matters right, I think Platform should refund the ERC. And it should pay them £350 compensation for the distress and inconvenience caused by the delay, the worry and the stress of having to find the ERC.

### **The responses to my provisional decision**

Mr D and Ms H accepted my provisional decision. Platform didn't respond.

### **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've considered again what I said in my provisional decision. As no further arguments have been made, and no further evidence presented, I see no reason to change my mind.

### **My final decision**

For the reasons I've given, my final decision is that I uphold this complaint and direct The Co-operative Bank plc trading as Platform to:

- Refund the ERC Mr D and Ms H paid, adding either:
  - simple annual interest of 8%\* running from date of payment to date of refund, if Mr D and Ms H paid the ERC themselves out of their own funds; or
  - interest at their new mortgage rate, compounded, if they added the ERC to the balance of their new mortgage. In this case, interest should run for 14 days after payment is made to give Mr D and Ms H time to use the refund to overpay their new mortgage, if they choose to do so.

Unless Mr D and Ms H provide evidence that they added the ERC to their new mortgage and of the interest rate they are paying, such as a new mortgage offer or mortgage statement showing an increased balance, Platform may work on the basis that they paid it themselves from their own funds.

Finally, The Co-operative Bank Plc trading as Platform should pay Mr D and Ms H £350 compensation.

*\* If the final award includes the 8% interest element The Co-operative Bank Plc trading as Platform may deduct income tax from this element of the award, as required by HMRC. But it should give Mr D*

*and Ms H confirmation of the deduction so they can reclaim the tax from HMRC if they're entitled to do so.*

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D and Ms H to accept or reject my decision before 5 July 2022.

Simon Pugh  
**Ombudsman**