

The complaint

Mr M complains that he's been charged an early repayment charge (ERC) on the mortgage he held with Bank of Scotland plc trading as Birmingham Midshires (BM) when repaying it. He says he was given conflicting information and believes he paid it off when he was allowed to with no ERC.

To put matters right, Mr M is seeking a refund of the ERC.

What happened

Mr M held a buy to let (BTL) mortgage with BM. In August 2018 he changed the product that this mortgage was on. The new mortgage product was arranged on his behalf by an independent mortgage advisor. A fixed rate of 3.19% was selected which ran until 31 October 2023. There was an ERC payable if the mortgage was redeemed prior to the end of the fixed rate.

Mr M called BM on 19 October 2023 to ask about redeeming his mortgage. He was told that his fixed rate ended on 31 October 2023, and this is when he could repay his mortgage without incurring an ERC. BM provided Mr M with a redemption figure if he repaid it on 1 November 2023. However, Mr M says he then reviewed his mortgage offer from BM and saw that the fixed rate expired on 31 October 2023, so he arranged to make the payment on this day instead as he believed this is the day that he could repay his mortgage without incurring an ERC.

Mr M paid the amount he'd been told on 31 October 2023, but this wasn't enough to fully redeem the mortgage as BM applied an ERC due to Mr M making the payment before the end of the fixed rate and ERC period. Mr M complained about this to BM soon after.

BM issued its final response on this complaint on 10 November 2023. It said that Mr M had repaid his mortgage whilst still in the ERC period. So, it wasn't willing to refund the ERC. Mr M remained unhappy and referred his complaint to our Service. He said that the amount charged as an ERC wasn't proportionate and he disagreed with BM's interpretation of its mortgage offer.

One of our Investigator's looked into the complaint, but he didn't think it should be upheld. He thought that BM had told Mr M when his ERC would apply until. And that it had applied it correctly.

Mr M didn't accept this. He said, in summary, that he'd made a correct payment to BM and that he'd been told that there may be a day delay in the funds crediting his account, but this would be back dated and this confused matters. Mr M also said that there was no fairness or proportionality in making this charge for a payment that was made a matter of hours early. He asked for the complaint to be considered by an Ombudsman. So, it's been passed to me to review and make a final 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've listened to the call between BM and Mr M on 19 October 2023 when Mr M enquired about redeeming his mortgage. Mr M is told by BM's agent that a figure will be produced for him to repay the mortgage on 1 November 2023. The agent he spoke to explains that his interest rate *"does tie you in until the midnight of the 31st of October so from the 1st November you won't have any penalties to settle the mortgage"*. Mr M confirms this is what he wants to do.

Based on this, I'm satisfied that during this call BM clearly told Mr M when he could repay his mortgage without incurring an ERC.

Later in this call, Mr M confirms he is going to make the payment on the 1st of November. And the balance, without the ERC is provided to him. The agent then confirms that it will be received by a holding account and may be credited to the mortgage the following day, but that this would be backdated to the day the payment was made. This is what Mr M has said caused confusion.

I've thought about this, but as I've said, I think that BM had been clear about when Mr M could make the payment without incurring an ERC. And, whilst Mr M may've been confused by this, he hasn't told us that this is the reason he made the payment on 31 October. He's said this was because he read his mortgage offer and interpreted it differently to what he'd been told on the phone.

Mr M accepts he made the payment on 31 October 2023. And BM has shown us that it received the funds the same day. Whilst it may've taken a day for BM to credit the mortgage account with the funds from the holding account it was sent to, it was received by BM on the 31 October 2023. And Mr M was told on the phone call of 19 October 2023 that this would be the case and he should make the payment on 1 November 2023. Mr M went against this instruction, and this is why he incurred the ERC.

Moving on to the mortgage offer, which was provided to Mr M on 2 August 2018. This says:

"Early repayment charges apply to part 1 of this mortgage until 31/10/2023"

Part one of the mortgage was the majority of the balance. Mr M says that *"until 31 October 2023"* means that the ERC repayment period expires on that day. But I don't agree with his interpretation of this. To me, the use of the word "until" will include that day meaning that BM will charge an ERC up to and including that date. And the day following this is the first day that the mortgage can be repaid without an ERC. This is what was confirmed to Mr M on the call of 19 October 2023. So, I'm satisfied that the mortgage offer allowed BM to apply the ERC any time up to, and including, 31 October 2023 – the day Mr M redeemed the mortgage.

Having reviewed the offer, 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 M. Whilst this is a BTL mortgage, which means it isn't regulated by the Financial Conduct Authority, the information about the ERC was set out in a manner that met the regulator's requirements for regulated mortgages. Taking this, and the phone call of 19 October 2023 into account, I'm persuaded Mr M should have known he'd have to pay an ERC if he repaid the mortgage on or before 31 October 2023.

Mr M has argued about the proportionality of the ERC given he only repaid the mortgage a matter of hours before the ERC expired.

The rules for regulated mortgage contracts are set out in the Financial Conduct Authority's Mortgages and Home Finance: Conduct of Business sourcebook (MCOB).

As I've said, this is a BTL mortgage, so not subject to MCOB as it isn't a regulated mortgage contract. But we generally feel that the MCOB provisions are good industry practice and so it isn't unreasonable for a business to set its ERCs with those provisions in mind.

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 a similar type, rather than for individual loans.

BM was entitled to set an ERC based not on the actual cost to it of Mr M ending his own mortgage early, but on a reasonable pre-estimate of the costs of early termination of a group of mortgages of a 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.

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, BM 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; BM 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.

Whilst I understand Mr M's point that he was just hours away from not having to pay an ERC, he was still within the period where it applied. And therefore, BM is entitled to apply it. The ERC remained consistent through the period it would apply for the reasons I've just set out – whether it was paid a year early or a day early. I can't therefore require BM to refund the ERC on this basis.

In summary, I'm satisfied BM clearly set out when an ERC would apply to Mr M's mortgage. And it's applied the ERC correctly. So, I won't be asking BM to refund the ERC.

My final decision

Whilst I understand Mr M feels very strongly about this matter, and I am sorry to disappoint him, my final decision is I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 5 April 2024.

Rob Deadman

Ombudsman