

The complaint

Ms R and Mr R complain that London and Country Mortgages Ltd gave them incorrect information about whether an early repayment charge (ERC) would apply when they moved home. They say they are about £6,000 out of pocket and this was an extremely stressful experience.

Ms R and Mr R ask that L&C compensates them for the ERC.

What happened

Ms R and Mr R wanted to move home and took mortgage advice from L&C in late 2023. They intended to borrow less than the mortgage they had at that time. L&C recommended they apply to their current lender so that they could port their mortgage product to retain the interest rate and avoid paying the ERC in full. It told Ms R and Mr R they'd have to pay an ERC on the amount that wasn't ported.

Ms R and Mr R decided to proceed on this basis and L&C submitted a porting application on their behalf. The lender issued a mortgage offer in early February 2024.

In late February 2024 Ms R contacted L&C to query whether the mortgage offer required them to pay an ERC. L&C told them incorrectly that no ERC was due if the sale and purchase were simultaneous. When Ms R and Mr R came to complete their sale and purchase in March 2024 the lender required them to pay an ERC.

Our investigator said while L&C did make an error, he didn't think Ms R and Mr R would have acted differently if they'd been given correct information. He said L&C's offer was fair.

Ms R didn't agree and asked that an ombudsman re-consider the matter.

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 R and Mr R were repaying a mortgage of about £315,000. They applied to the same lender for a new mortgage loan of about £165,000. They applied to port their mortgage product to the new mortgage. No ERC was applied to the amount ported (about £165,000). The lender applied an ERC to the amount that was repaid (about £150,000).

L&C recommended that Ms R and Mr R make a porting application, so that they could retain the interest rate and not have to pay the full ERC. It told Ms R and Mr R that they'd have to pay an ERC on the portion of the mortgage that wasn't ported. It told them this on 5 December 2023 and 15 December 2023. Ms R and Mr R agreed to proceed on this basis. L&C submitted a porting application on their behalf.

The lender issued a mortgage offer on 6 February 2024. This said:

Please note that where the sale and purchase completion is not simultaneous (i.e.

they do not occur on the same day), then the customer(s) will be required to pay any Early Repayment Charges related to their existing ... mortgage in full.

Ms R says they assumed when they received the mortgage offer and read this section that the lender had used its discretion to decide not to apply the ERC. Although L&C had previously told them an ERC would be payable, Ms R says they presumed a lender's offer holds greater weight than an intermediary's advice.

Ms R has also said that the mortgage offer was issued by L&C. She says that must be the case because it's in the same format as previous offers from other lenders when they applied via L&C. That's not right. Mortgage offers are issued by the lender.

I don't think Ms R's interpretation of the mortgage offer – that no ERC is payable if the sale and purchase are contemporaneous – is reasonable. But if there was a misunderstanding about the wording in the mortgage offer I don't think L&C was responsible for this. I haven't seen any evidence that L&C gave Ms R and Mr R incorrect information about whether an ERC was payable before 21 February 2024.

Ms R says they received information from the lender on 20 February 2024 that an ERC was payable. They contacted L&C that day to check whether they had to pay an ERC.

There's no dispute that L&C made an error. On 21 February 2024 it incorrectly told Ms R and Mr R they wouldn't have to pay an ERC if their sale and purchase were simultaneous. It didn't correct this when Ms R said they were only porting part of the mortgage balance.

Ms R and Mr R exchanged contracts for their sale and purchase on 21 February 2024. Ms R says they were told on 13 March 2024 that an ERC was payable. By this time it was too late for them to withdraw from their sale and purchase.

How did L&C's error affect Ms R and Mr R?

I don't think Ms R and Mr R are out of pocket due to an error by L&C. The ERC didn't become due because of an error by L&C. It was applied by the lender under the terms of the mortgage.

Ms R said based on their interpretation of the mortgage offer and the assurance from L&C they exchanged contracts on 21 February 2024. She says if they hadn't been given incorrect information they'd have given greater consideration to another option. That was to keep their property and rent it out.

I appreciate that it's difficult for Ms R and Mr R to provide evidence that they'd have acted differently if L&C hadn't given them incorrect information. I should explain that where the evidence is incomplete, inconclusive or contradictory, I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

Ms R says their understanding of the mortgage offer was that the lender had used its discretion to decide not to apply the ERC. Ms R says they received information from the lender on 20 February 2024 that an ERC was payable. So any misunderstanding as to whether the lender would apply the ERC was cleared up at that point.

Ms R and Mr R say they were considering keeping their property and renting it out. Ms R provided a spreadsheet which she'd first prepared in mid-2023 showing the financial implications of doing this and says they'd undertaken some research.

Ms R told us how important it was that they moved. Ms R and Mr R had jobs in the area they were moving to, some 250 miles away from where they were living. Ms R said having to commute was expensive and adversely affected family life. She said if they didn't move one of them would have to resign from their position. She said their child was due to start a new school on 18 March 2024 and due to the school's popularity they couldn't risk losing the place.

If, on 21 February 2024, Ms R and Mr R were considering renting out their property and renting somewhere to live in a new area I'd expect some evidence they'd taken steps to arrange this. This might include evidence they'd viewed and possibly made offers to rent somewhere to live in the new area. That they'd appointed an agent to market their property for rental. Or that they'd asked their lender if it would give them consent to let the property and what additional costs would be involved. I haven't seen evidence that they'd taken these steps.

Against this, Ms R and Mr R had proceeded with their sale and purchase to the point of exchanging contracts – incurring costs of over £900 for a survey and legal fees for their purchase. They'd done so after L&C had told them in December 2023 that they'd have to pay an ERC. They exchanged contracts after the lender told them on 20 February 2024 it would apply an ERC.

Taking all this into account, I think Ms R and Mr R would have continued with their sale and purchase if L&C had confirmed on 21 February 2024 an ERC was payable.

Ms R said having been told they didn't have to pay an ERC they committed the money elsewhere. This included booking a removals firm (rather than relying on help from family and friends) and booking holidays to visit family. I'm not persuaded that Ms R and Mr R wouldn't have incurred these costs regardless of the incorrect information. They haven't said their funds were limited such that they couldn't afford to do this as well as pay the ERC. And the lender had told Ms R and Mr R that an ERC would be payable, so they were aware of this when they incurred the costs.

L&C should have given Ms R and Mr R correct information on 21 February 2024. But I don't think its error caused them financial loss or any significant inconvenience. L&C had previously given Ms R and Mr R correct information and the lender had also told them an ERC was payable. L&C offered £100 by way of an apology and in recognition of any inconvenience and distress caused. I think that's fair and reasonable in the circumstances.

My final decision

My decision is that London and Country Mortgages Ltd should pay £100 to Ms R and Mr R, as it offered to do (unless of course it has already paid this).

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms R and Mr R to accept or reject my decision before 10 January 2025.

Ruth Stevenson
Ombudsman