DRN-3381057

The complaint

Mr H's complaint is that National Westminster Bank Plc has refused to refund the early repayment charge (ERC) of just over £11,000 that he paid on redemption of his mortgage. To settle the complaint, Mr H wants NatWest to reimburse this amount to him.

What happened

In early 2020 Mr H was in the process of a divorce. He and his ex-wife, Mrs H, were selling the family home (which was subject to a mortgage to NatWest in Mr H's sole name). The mortgage was on a five-year fixed rate of 3.28% which was due to end in June 2021. The original loan-to-value ratio (LTV) when the mortgage had first been taken out was 85% and by early 2020 there was about £556,000 outstanding on the mortgage.

The mortgage contract provided that if the mortgage was repaid before 30 June 2021 an ERC would be payable, on a tapering scale from 5% to 1%. However, the contract also said that if Mr H wanted to move house, the mortgage interest rate product could be ported onto a new mortgage, subject to meeting lending criteria. If the mortgage product was successfully ported, the ERC would be refunded.

The original porting window – the time between redemption of the old mortgage and completion of the new – was three months, but due to the pandemic, NatWest extended porting windows on its mortgages to six months.

Mr H was purchasing another property, a new-build. In March 2020 Mr H began discussing his mortgage requirements with NatWest. Mr H was told by NatWest's mortgage adviser (MA) that he could take out a new five-year fixed rate mortgage at 1.93%, and once that had completed, he would receive a refund of the ERC. There was no mention by the MA of any timescale within which a new mortgage had to complete.

All of this, however, was incorrect; there was no refund of an ERC where a new product was being taken out. Mr H didn't know this, however, and so proceeded with a new mortgage on the understanding the ERC paid on redemption of his old mortgage would be reimbursed. He borrowed £595,000 at an 85% LTV on a five-year fixed rate of 1.93%.

The original mortgage was redeemed on 7 April 2020, and Mr H was charged an ERC of £11,102.74. which was 2% of the balance repaid. His new mortgage completed on 22 October 2020. Throughout the summer and autumn of 2020 Mr H and the MA exchanged emails about how and when the refund would be paid. Mr H was assured that, as soon as his new mortgage completed, the ERC would be refunded, that this was an automated process and that the money would be sent to his current account.

It was only after completion of his new mortgage that Mr H was told that he'd been given the wrong advice by the MA and that he was never at any point entitled to a refund of the ERC because he'd taken out a new mortgage product.

Mr H complained to NatWest. In its final response letter, the bank acknowledged Mr H had been given incorrect information about the refund of the ERC and offered him £350 in recognition of this. However, NatWest also said that, as Mr H had chosen a new mortgage product, not a port of his previous product, no ERC was due.

The bank claimed Mr H had queried the porting timescales with the MA and had been told that this had been extended to six months. As the new mortgage had completed outside the six-months, there'd have been no refund even if he'd ported his previous product.

NatWest also argued that, as Mr H's ex-wife had received all the net proceeds of sale *"the ERC was paid through the equity of the sale and as such did not come as a personal financial expense to yourself."*.

As a result, NatWest said Mr H had suffered no financial loss and, indeed, had benefitted because his new mortgage was at a lower interest rate than the previous one.

Dissatisfied with NatWest's response, Mr H brought his complaint to the Financial Ombudsman Service. An investigator looked at what had happened, but thought the £350 was fair compensation.

Mr H disagreed and asked for an ombudsman to review the complaint.

Provisional decision of 7 March 2022

I issued a provisional decision in which I made the following findings:

> First of all, NatWest has acknowledged that the MA made a mistake by telling Mr H he'd receive a refund of the ERC in circumstances where the MA knew, or ought to have known, this wasn't, in fact, correct. It's difficult to see how such a serious mistake could have been made, but the emails from the MA are very clear that Mr H was assured he'd get the ERC back once his new mortgage completed.
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> Mr H isn't a mortgage professional and so I don't expect him to have queried what he'd been told by the MA. Mr H was entitled to rely on what he'd been advised as being the correct advice.
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> The emails between Mr H and the MA do not suggest that Mr H was told he had to complete on his new mortgage before 7 October 2020. In fact, the emails after that date clearly state that the MA was assuring Mr H he'd be given a refund of the ERC. So whether or not Mr H was able to complete before 7 October 2020 is irrelevant, because he was led to believe he'd be getting the ERC back after completion of the mortgage on 22 October 2020.
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> I also don't agree with NatWest's argument that the ERC was paid out of the net proceeds of sale and so there has been no financial loss to Mr H. As a former family law solicitor, I am satisfied that it is likely this was factored into the negotiations between the parties, on the full understanding that Mr H would be receiving a refund of the ERC. But in any event, that is a matter between Mr H and his former wife and has relevance whatsoever to the consequences of NatWest's error.
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> Where a mistake's been made, we have to try to put the consumer back in the position they'd have been in if there'd been no error.
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> If the MA hadn't made the mistake, Mr H would have been told that if he took out the new five-year fixed rate product, he wouldn't receive a refund of the ERC. In that situation, I'd have expected the MA to have analysed the financial impact on Mr H of:

- porting his existing interest rate of 3.28% for the full amount £556,000, with additional borrowing of £39,000 to make up the amount required of £595,000, with a refund of the ERC on completion of his new mortgage;

- redeeming the existing mortgage, paying the non-refundable ERC and taking out a new five-year fixed rate product at 1.93%.

However, because Mr H wasn't given the full picture, he was never in a position to make an informed choice about what the best option would be for him. Mr H is, I find, financially astute, and so I think it's unlikely he'd have followed the course of action that would ultimately be more expensive for him if he'd been given a comparison of how the various options would impact on his finances.

The fact-find and suitability letter focussed on Mr H's desire for fixed payments and stability over a long period. But whilst that might have been a driving factor, I think if Mr H had been given the correct advice about the ERC, he'd have been able to weigh up whether keeping the existing product was the best option for him – considering it was a substantial ERC.

Mr H says that if he'd known he'd never get the ERC refunded, he'd have looked for a better deal elsewhere. However, I've looked at mortgage rates available in from May 2020 onwards, and I've not been able to find a five-year fixed rate at a lower rate than the 1.93% Mr H ultimately took out with NatWest. The pandemic had seriously affected mortgage lending, and I'm not persuaded on the basis of my research that Mr H would have been able to source a better rate from another lender during the summer of 2020.

NatWest has confirmed that, as Mr H was borrowing at an 85% LTV on his new mortgage (the same LTV as his previous mortgage), there would have been no difficulty in him porting his existing interest rate product on £556,000, with an additional £39,000 on the 1.93% five-year fixed rate, making a total LTV of 85% on his new purchase. The repayments for this would have been higher than Mr H's previous mortgage by about £200 per month. However, Mr H is a high earner, and looking at his finances, I think that, if he'd been able to make an informed decision, it is more likely than not that he'd have chosen to make higher payments over the shorter term if this meant he would be refunded the ERC.

I've calculated what I think NatWest's mistake has cost Mr H. I've based this on a cut-off date of 30 June 2021. This is because, if Mr H had ported his existing mortgage product, this was due to expire on 30 June 2021.

At that point Mr H would either have had to refinance the £556,000 that had been on the 3.28% rate onto a new product with NatWest (and paid a product fee for this) or else he could have re-mortgaged to a new lender, redeeming the entire mortgage in full and paying whatever ERC was due on the £39,000 that was on the fixed-rate product (which would have been 5% of the outstanding balance, so less than £2,000).

So whilst there would have been some expense involved in switching to a new product in June 2021, I have calculated that by porting the existing mortgage and taking out a top-up of £39,000 on a five-year 1.93% fixed rate, this would still have cost less over the same period than the total cost (including the ERC) of Mr H taking out the new five-year fixed rate for the full amount of £595,000. Given this, although Mr H has benefitted from having a lower interest rate, the overall cost to him of taking out that product, after factoring in the ERC, is much higher.

I calculated Mr H's losses as follows:

Previous mortgage fixed at 3.28% until 30 June 2021	£637,500
Monthly repayment	£3,465.54
Mortgage redeemed 7 April 2020, balance of £556,289.48	
On redemption Mr H paid an ERC of	£11,102.74
New mortgage (completed 22 October 2020)	£595,000
Monthly repayments	£3,262.95
If Mr H had ported, monthly repayments would have been £3,413.47 (on the ported sum) plus £212.29 (on the 1.93% top-up)	£3,625.76
So from October 2020 to June 2021 he'd have paid 9 x £3,625.76	£32,631.84

Assuming Mr H decided to stay with NatWest, he would then have had another product fee of £995 to pay to switch to a new product,. Therefore the total cost to the end of the original fixed-rate product if he'd ported would have been:

£32,631.84 + £995 (top-up fee) + £995 (product fee after June 2021)	**£34,621.84**
The total cost of the new mortgage Oct 2020-June 2021 was £29,366.55 + £995 + ERC of £11,102.74	**£41,464.29**
By taking out the new mortgage, Mr H has lost	**£ 6,842.45**

I explained that I intended to order NatWest to pay Mr H £6,842.45, plus interest at 8% per annum simple from 7 April 2020 to the date of payment. I also thought NatWest should pay Mr H compensation of £1,000 in total (to include the £350 already offered) for distress and inconvenience.

Responses to the provisional decision

Both Mr H and NatWest accepted my provisional decision. NatWest explained, however, that my calculations were incorrect, due to the date on which Mr H paid his monthly mortgage payment. As a result, the bank thought Mr H was due slightly more than I had calculated.

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 all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I’ve reviewed the file again, including the responses to the provisional decisions. I’ve revisited my provisional decision and considered the calculations provided by NatWest. Having done so, I’m satisfied the complaint should be upheld, for the same reasons given in my provisional decision, and referred to above.

Putting things right

NatWest has provided its calculations of redress, along with the following explanation.

> Having reviewed the figures used by the Ombudsman in her calculation of redress, there is one area that the bank would like to comment on and that is in respect to the number of monthly payments made between completion of the new mortgage on 22 October 2020 and the expiry of the “ported product” (30 June 2021).
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> Due to the completion taking place quite late in the month of October, the customer’s payments commenced the following month on 15 November 2020 (he requested a repayment date of the 15th of each month) which means that he made 8 monthly payments for the period in question rather than 9 monthly payments.
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> This would have the following effect on the redress calculation suggested by the Ombudsman:
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> Notional Calculation for comparison: 8 x £3,625.76 + £995 fee paid + £995 fee again after June 2021 = £30,996.08
>
> Mortgage Payments: 8 x £3,262.95 + £995 fee paid + £11,102.74 ERC = £38,201.34
>
> Difference between the notional and actual = **£7,205.26**

I therefore direct the bank to pay Mr H the following:

- compensation for his actual financial loss of £7,205.26;
- interest on that sum at 8% simple per annum from 7 April 2020 to the date of refund*;
- compensation for distress and inconvenience of £1,000.

If NatWest considers that it is required by HM Revenue & Customs to withhold income tax from any interest, it should tell Mr H how much it has taken off. NatWest should also give Mr H a tax deduction certificate if requested, so the tax can be reclaimed from HM Revenue & Customs if appropriate.

My final decision

My final decision is that I uphold this complaint. I direct National Westminster Bank Plc to settle this complaint as set out above.

This final decision concludes the Financial Ombudsman Service's review of this complaint. This means that we are unable to consider the complaint any further, nor enter into any correspondence about the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 19 April 2022.

Jan O'Leary
Ombudsman