

The complaint

Mr A and Miss M's complaint is about a mortgage they had with Nationwide Building Society. They are unhappy that when they wanted to port their existing interest rate product to a new mortgage with Nationwide, they were unable to do so, and had to pay an early repayment charge when they paid off the existing mortgage.

What happened

Mr A and Miss M took out a mortgage with Nationwide in 2016. They attached a fixed interest rate product to the mortgage in 2020 which was due to expire on 31 May 2025. If the mortgage was repaid in part or in full before that date, an early repayment charge (ERC) would be payable. However, the interest rate product could be ported to a new mortgage with Nationwide, but this was dependent on a new mortgage being granted, which required Nationwide's lending criteria to be met.

In 2024 Mr A and Miss M decided they wanted to move. They completed a decision in principle (DIP) process, which showed that the mortgage they wanted was affordable. However, when Nationwide was given the property address later in the process, it told Mr A and Miss M that it was not willing to lend on the property. They complained.

Nationwide responded to the complaint on 16 October 2024. It didn't consider it had done anything wrong and the complaint was declined. Mr A and Miss M were not satisfied with the response and referred their complaint to this Service.

Mr A and Miss M decided to proceed with the purchase and arranged borrowing with another lender. Nationwide applied the ERC linked to the interest rate product when the mortgage was repaid.

One of our Investigators considered the complaint, but he didn't recommend that it be upheld. Mr A and Miss M didn't accept the Investigator's conclusions. While the Investigator considered their further comments, he was not persuaded to change his conclusions. As such, it was decided that the complaint should be passed to an Ombudsman for consideration.

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.

Mr A and Miss M have raised the Consumer Duty in relation to the events they have complained about. I would firstly highlight that the Consumer Duty did not come into effect until 31 July 2023. The interest rate product at the centre of their complaint was created and attached to their mortgage in 2020, and the Consumer Duty requirements for a product or service to represent fair price and value do not require lenders to waive ERCs applied under contracts entered into before the Consumer Duty came into force, even if they are applied after it came into force, as long as the contract was entered into in line with the rules in force

at the time. That said, Nationwide still needs to have treated Mr A and Miss M fairly in deciding whether to apply the charge.

A lender will decide what risks it is willing to accept when it lends. These are decisions a lender is entitled to make, and some lenders will take a more cautious approach to particular risks than others. This process will include deciding what types of properties it is willing to lend on and what proportions of its mortgage portfolio it will allow to be secured on certain types of property or properties in certain locations. That was the case here: Nationwide wasn't willing to lend on this property because it already had a significant number of mortgages on other properties in the area. It's not unusual for lenders to want to avoid concentrations of lending as that creates additional risk.

Mr A and Miss M have effectively said that in refusing to lend on the property they wanted to buy, Nationwide has breached the Consumer Duty, as it has meant they didn't receive fair value from the mortgage overall and that it inflicted foreseeable harm on them. I would firstly comment that while the Consumer Duty requires that businesses think about what they can do to deliver good outcomes for customers, that doesn't mean that individual customers will always get the outcome they want. And it doesn't mean that a lender needs to set aside its lending criteria in order to give a consumer what they want. A fixed rate ties a borrower in for a set period – including an ERC allows a customer to break that fixed period if circumstances change without being in breach of contract. It's the price to be paid in return for early exit. It allowed Mr A and Miss M to buy the new home they wanted even though Nationwide couldn't lend them a new mortgage. I don't think that amounts to harm, or meant that their previous mortgage wasn't fair value, provided the ERC was clearly explained and was charged fairly. As I will explain, I think it was.

I am satisfied the ERC was clearly documented, in the way the rules required, in the rate switch offer that Mr A and Miss M were given when they applied to add the interest rate product to their mortgage in 2020. They accepted the offer and the ERC that was associated with it, even if they thought at the time, it was unlikely they would have to incur it. I don't think I can fairly find that Nationwide was in breach of the rules that applied when Mr A and Miss M took out their fixed rate product and became subject to the ERC.

The rate switch offer also confirms that it might be possible to port the interest rate product to a new mortgage with Nationwide and avoid having to pay the ERC. However, porting is always dependent on the property the borrowers want to move to being acceptable to the lender. Future lending and porting were not things that were guaranteed when Mr A and Miss M added the interest rate product to their mortgage in 2020, they were simply a possibility.

I have noted Mr A and Miss M's comments about the transparency of Nationwide's lending criteria and that they could not have known the property they wanted to buy would not be acceptable to it. It is true that they could not have known whether Nationwide would lend on the property they chose, but no prospective borrower will know whether any lender will lend on a property before the lender has been given information about the proposed property. In many cases, it is not known whether the property will be accepted as security until after a valuation has been completed, after both the DIP and full application have been submitted.

In addition, lenders will change their lending criteria from time to time, due to changes in the property and mortgage markets, and changes to its appetite for risk. As such, until a property has been selected by a potential borrower a lender cannot let them know if that property is acceptable security for a mortgage. I can understand the frustration Mr A and Miss M felt when their application was declined, but until they told Nationwide that they wanted to move and to what property, I don't consider that it could reasonably have been expected to let

them know that it would not lend on it. When they did provide details of the property they wanted to buy, Nationwide told them it was not willing to lend immediately.

It is unfortunate for Mr A and Miss M that this meant they couldn't do what they wanted to, but I can't find that Nationwide was wrong to assess their potential application in the same way it would any other customer. I have also thought about Nationwide's obligations under the Consumer Duty, but that doesn't change my view of the case. The Consumer Duty doesn't oblige Nationwide to agree to any application Mr A and Miss M might make. It requires Nationwide to ensure that they are treated fairly and that it ensures, as far as possible, that they achieve good outcomes. I am satisfied that in assessing Mr A and Miss M's potential application in the way it did, it treated them fairly and it is unfortunate that assessment did not produce the result they wanted – but that's not because it acted unfairly. Achieving good outcomes does not always mean agreeing to a customer's application; it means giving that application fair consideration. I am satisfied that is what Nationwide did.

At the point Mr A and Miss M's application was declined, they had a choice to make. They could remain in their existing property until the ERC period had expired and look to move then; they could look for an alternative property that might be acceptable security for Nationwide; or they could proceed with the purchase in the knowledge they would incur an ERC. They chose the latter option, which was a choice they were entitled to make, but they did so knowing it would involve paying the ERC and I don't consider that means it was unreasonable of Nationwide to apply the ERC that they accepted in 2020. Overall, I am satisfied that Nationwide treated Mr A and Miss M fairly.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr A and Miss M to accept or reject my decision before 27 March 2025.

Derry Baxter
Ombudsman