

The complaint

Mr E is unhappy that Nationwide Building Society wouldn't offer him a new mortgage which resulted in him going to a new lender. He said that Nationwide has charged him an early repayment charge (ERC) when he redeemed his mortgage. He said due to personal extenuating circumstances, he had no choice but to redeem his mortgage and believes the ERC is disproportionate and that Nationwide were unfair in charging it.

What happened

Mr E took a mortgage out with Nationwide in October 2023. He borrowed £102,750 on a five-year fixed rate of 5.18% over a term of 27 years.

Mr E said he originally planned to port his mortgage – transfer the product to a new property, and he was given a mortgage offer from Nationwide in July 2024. But he has explained that his personal circumstances changed when his father became ill and he had to care for him, so he didn't go ahead with this purchase. Sadly, Mr E's father passed away in December 2024.

In November 2024, Mr E said he'd carried out an online decision in principle (DIP) to borrow £300,000 with a joint party but it indicated that it wasn't affordable. He said the online platform indicated that he may be able to borrow up to £270,000 but this wasn't enough, so he didn't proceed with an application. Mr E then approached his broker and was able to obtain a mortgage with a different lender. He paid an ERC of £4,517.62.

Mr E complained to Nationwide as he said that they had acted unfairly by charging him an ERC because his personal circumstances were extenuating. He explained he was going through a lot of trauma at the time and felt he had no choice but to redeem his mortgage. He also complains that the ERC was disproportionate.

Nationwide said that while they understood the difficult time that Mr E was going through, they acted fairly in applying the ERC which was charged in line with the terms and conditions of the mortgage. They also acknowledged that Mr E had completed a DIP online which showed that he couldn't borrow as much as he wanted. They said no application was made but any new mortgage would need to be approved and subject to their lending criteria.

Mr E didn't agree so he brought the complaint to the Financial Ombudsman Service where it was looked at by one of our investigators. Our investigator didn't uphold the complaint. He said the ERC was charged fairly and didn't agree that it was disproportionate. He also said that Mr E applied to port the mortgage, but he changed his mind. And when he carried out a DIP online, he chose to go to a different lender.

Mr E didn't agree. In summary, he made the following comments:

- He said the outcome fails to consider the full breadth of his personal and financial circumstances and doesn't reflect the principles set out by the Financial Conduct Authority (FCA), consumer duty and vulnerable customer guidance.
- Under consumer duty (PRIN 2A.1), it requires firms to deliver good outcomes, avoid foreseeable harm and enable customers to meet their financial objectives – Nationwide failed to do this.

- Nationwide dismissed his vulnerability, and the significant impact of bereavement and caring responsibilities so they failed to apply the FCA's guidance of fair treatment of vulnerable customers.
- He believes Nationwide have acted unfairly in a way that has caused him emotional and financial harm during a period of acute vulnerability.
- Nationwide's refusal to provide the additional lending he required forced him into redeeming his mortgage and being charged an ERC of £4,517.62.
- He had a clear intent to port the mortgage but chose to move to a new lender as a direct consequence of Nationwide's lending decision.
- Mr E has made various references to FCA guidance, consumer duty and provided information about other cases that our service has looked into.

Mr E would like the ERC refunded, as well as the £999 product fee for the new mortgage and compensation for the distress and inconvenience he has been caused.

As Mr E disagreed with the investigator, the case was passed to me to decide.

My provisional decision

I issued a provisional decision on 26 August 2025. I said:

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

I'd firstly like to say how sorry I am to hear about the challenging circumstances that Mr E has told us about and would like to pass on my condolences for his loss.

I acknowledge that Mr E has provided case studies for cases that have been decided at our service but I must make it clear to Mr E that we look at cases on their own individual merit rather than what's based on precedent.

I've looked at the mortgage offer which was dated 13 October 2023. This mortgage offer confirmed an interest rate of 5.18% which was to be fixed for five years. Section 8 of the offer confirmed the level of ERC that would need to be paid if Mr E decided to repay the mortgage before the expiry date. It confirmed the ERC would be calculated at 5% in years one and two, 4% in year three, 3% in year four and 2% in year five of the balance repaid and cash examples were also provided. So, I think this offer made it clear what the ERC would be as the mortgage offer set out clearly and prominently in the contract that Mr E agreed to.

The Financial Conduct Authority's Mortgage and Home Finance: Conduct of Business Sourcebook (MCOB) includes provisions about ERC's. 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 they calculate the ERC and can calculate the same level of ERC across a group of mortgages of a similar type, rather than for individual loans. Nationwide is entitled to set an ERC based not on the actual cost to them of Mr E ending his own mortgage early, but on a reasonable pre-estimate of the costs of early termination of a group of mortgages of similar type.

The purpose of an ERC is to protect the lender from the costs of the mortgage being repaid early. In very simple terms, a lender must raise the funds to lend to their customers from a variety of sources, including 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, they don't get back all the returns as expected, and so don't have to refund the difference, but equally they don't tell a customer to pay the difference if it goes the other way.

The ERC is expressed as a cash value in the mortgage offer. So, I've considered whether the ERC was a reasonable pre-estimate of the cost of the mortgage being repaid early.

Nationwide have provided evidence to show how they pre-estimated the costs of this group of mortgages being paid early. Under our rules I am allowed to accept evidence in confidence if it is appropriate to do so. What this means is that I won't be able to explain in detail how Nationwide have estimated their costs, but I can say what they've included to calculate them. They were:

- To reflect the ongoing cost of funding the mortgage that would continue even when it was repaid.
- The cost of incentives given when the loan was taken out that they won't have the chance to recoup.
- Other costs associated with the mortgage that they will lose the chance to mitigate.

Nationwide shared with us the calculations they made and the information that sits behind them. It shows that Nationwide carried out calculations along the lines that I've set out above and it shows that the ERC calculated which was added to Mr E's mortgage, was a reasonable pre-estimate of the costs of early redemption as apportioned across the group Mr E's mortgage was a part of.

Taking all that into account, I'm satisfied that in this case, the ERC Nationwide charged was set on a fair basis and they have shown that they had pre-estimated the cost of repaying the mortgage early. Mr E took advantage of the facility to repay his mortgage early, knowing that there was a cost involved in doing so. The mortgage operated as it should have.

Mr E doesn't agree that Nationwide have treated him fairly and he has raised various arguments as to why he feels this way. He said that Nationwide charging him an ERC goes against PRIN 2A.1, or the obligation of Nationwide to provide good outcomes for consumers.

While the FCA's consumer duty does say that all firms should act to deliver good outcomes for consumers, that is supported by the cross-cutting obligations, and other outcomes, including on price and value and consumer understanding. Those rules say that while firms should avoid causing foreseeable harm, that does not mean that a firm has a responsibility to prevent all harm. It says, for example, that products may have inherent risks which a consumer accepts by taking the product.

That could include having to pay an ERC if the mortgage is repaid early. But a firm won't breach the rules if it reasonably believes that a consumer understands and accepts such risks. That depends on a number of factors including the product design and communications. I've already found that the ERC was set out clearly and prominently and that it was a reasonable pre-estimate of the costs of the mortgage being repaid early – and the ERC is not out of line with those applied by other lenders for similar products. So I think it was reasonable for Nationwide to understand that Mr E accepted and understood the risk of an ERC being applied when he took out the mortgage. And the steps Nationwide took to set the amount of the ERC were not unreasonable.

While Nationwide should enable and support their customers to meet their financial objectives, that does not mean they should go beyond what a prudent firm carrying out the same activity and in relation to the same product and taking account of the needs and characteristics of consumers, would do. As I explain below, Mr E did not complete a formal application with Nationwide and that was likely because of affordability. A prudent lender would be required to assess whether a new application was affordable. Therefore, I do not think it was unfair for Nationwide not to allow the application to proceed any

further than it did, and the consequences of that was that Mr E repaid his mortgage and incurred the ERC.

In view of all the above, and taking into account what the consumer duty says, I do not consider Nationwide acted unfairly or unreasonably in applying the ERC.

I do understand that Mr E was going through a difficult time caring for his father and his circumstances changed significantly for him based on what he has said. I can see that he did apply to Nationwide in July 2024 to port his mortgage to a new property – but he couldn't go ahead with this. And from what he and Nationwide have both said, Mr E carried out a DIP to borrow £300,000 to purchase a new property but the online platform indicated that Mr E couldn't afford this much. Nationwide said that Mr E was told the most he could borrow was around £270,000. From what I understand, Mr E then approached his broker and he ended up leaving Nationwide to go to a new lender who was able to lend the amount that Mr E required. This is why Mr E ended up paying the ERC.

I haven't seen any evidence that shows that Mr E actually made a mortgage application for this amount, it seems to be based on the DIP and because Nationwide couldn't lend him the amount he was looking for, he sought advice from his broker.

I appreciate this would have been upsetting for Mr E, but this doesn't mean that Nationwide have done anything wrong. Mr E has provided information about other cases where our service deemed it was unreasonable for lenders to charge an ERC where the mortgage was unaffordable. Like I said, we look at cases on an individual merit and how Mr E puts it, isn't as straight forward as it sounds.

From the evidence I have seen, it doesn't look like Mr E submitted a formal application, so I can't say what this decision was assessed on – as it appears to be solely from the DIP alone. But even if Nationwide did assess the application, they would have been entitled to carry out an affordability calculation even if Mr E was porting his mortgage because he wasn't porting on a like for like basis. He was looking to borrow much more than he already had so Nationwide would always have had to ensure that any lending was suitable against their criteria. This alone doesn't mean that Mr E should get the ERC refunded.

I accept that Mr E was going through a difficult time and he said he was vulnerable after the passing of his father. I'm not making light of that at all. He's said that Nationwide didn't assess his needs or accommodate him in any way. Mr E has alluded to the FCA guidance for vulnerable consumers as he strongly believes that Nationwide haven't treated him as they should have done. But I'm not persuaded what Nationwide could have done that was any different. If the mortgage that Mr E wanted to take wasn't affordable, that doesn't mean that Nationwide should lend on this basis. And it also follows that Nationwide didn't have to waive the ERC because of his personal circumstances. We have to think about what is fair and reasonable in the circumstances of each case and in this situation, I am satisfied that Nationwide have acted reasonably.

Developments

Nationwide agreed with the provisional decision however Mr E didn't. In summary he made the following comments:

- Mr E has had a traumatic experience and believes the provisional decision doesn't take into account the exceptional personal circumstances he faced.
- Mr E has highlighted his vulnerability due to bereavement and doesn't agree that it has been adequately considered or responded to. He says the FCA guidance specifies that firms are expected to provide tailored support such as dedicated bereavement services or adjustments to reduce stress. Mr E said Nationwide acknowledged his circumstances on 6 February 2025 but didn't demonstrate any

proactive steps to assess or accommodate his vulnerability. Nationwide did not offer flexibility in their lending assessment such as his care duties and bereavement in their affordability criteria.

- Nationwide have breached consumer duty principles by failing to deliver good outcomes and avoid foreseeable harm. His intention was to port his mortgage and maintain a relationship with Nationwide. They said he could only borrow £270,000 forcing him to redeem the mortgage and incur an ERC. Nationwide acted in a way that prioritised their standard terms over Mr E's needs. The provisional decision notes the ERC is a reasonable pre-estimate but doesn't address whether the ERC application due to Mr E's vulnerability was aligned with consumer duty.

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 E has explained in detail why he disagrees with my provisional decision. I've thought carefully about what he has said and if I've not mentioned something, it's not because I haven't considered it. I'd like to reassure Mr E that I've considered all of his comments.

I do empathise with Mr E and I do understand he has been through a very difficult time. It's never easy when you lose someone and that can have an impact on many things.

Mr E has said he doesn't believe that his vulnerability has been adequately considered and doesn't believe that Nationwide did enough to help him. As I said in my provisional decision, I'm not persuaded that Nationwide could have done anything different. We wouldn't expect Nationwide to adjust their lending criteria or affordability assessment when someone is vulnerable. We would expect them to deal with consumers appropriately and help them in certain situations, but it doesn't mean just because someone is vulnerable, that lending decisions are changed because of that.

The same can be said for consumer duty. Mr E has highlighted that Nationwide have failed to deliver good outcomes and avoid foreseeable harm. And Mr E has explained the situation he is now in because he's had to pay the ERC.

I said the following in my provisional decision:

While the FCA's consumer duty does say that all firms should act to deliver good outcomes for consumers, that is supported by the cross-cutting obligations, and other outcomes, including on price and value and consumer understanding. Those rules say that while firms should avoid causing foreseeable harm, that does not mean that a firm has a responsibility to prevent all harm. It says, for example, that products may have inherent risks which a consumer accepts by taking the product.

That could include having to pay an ERC if the mortgage is repaid early. But a firm won't breach the rules if it reasonably believes that a consumer understands and accepts such risks. That depends on a number of factors including the product design and communications. I've already found that the ERC was set out clearly and prominently and that it was a reasonable pre-estimate of the costs of the mortgage being repaid early – and the ERC is not out of line with those applied by other lenders for similar products. So I think it was reasonable for Nationwide to understand that Mr E accepted and understood the risk of an ERC being applied when he took out the mortgage. And the steps Nationwide took to set the amount of the ERC were not unreasonable.

Nationwide clearly set out what the ERC would be and Mr E accepted and understood this when he took the mortgage out. He wasn't able to borrow as much as he wanted with Nationwide so he ended up redeeming the mortgage which led to the ERC being charged.

The consumer duty rules do say that firms should avoid causing foreseeable harm but like I said, they cannot prevent all harm. Mr E knew that taking a product with an ERC had a risk which he accepted. This doesn't therefore follow that Nationwide breached the consumer duty rules because of this.

I know that Mr E feels very strongly about this complaint and I'm sorry to disappoint him, but I am satisfied that Nationwide have acted fairly and reasonably under Mr E's specific circumstances.

My final decision

For the reasons given above and in my provisional decision, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 14 October 2025.

Maria Drury
Ombudsman