complaint

Mr and Mrs O complain about the early repayment charge, ("ERC"), which Nationwide Building Society requires them to pay. They feel that the most that they should have to pay is a lower figure that they were told. And they want more compensation for the stress that Nationwide has caused them by giving contradictory figures.

background

Mr and Mrs O took out a mortgage with Nationwide in December 2013. It was for a term of 24 years with a fixed interest rate of 3.54% for three years.

In 2015 Mr and Mrs O decided to sell their property in England and buy another one in Scotland. Because the new house was cheaper than the old one, they decided that they needed a smaller mortgage. Both Mr and Mrs O and their solicitor, (the "solicitor"), asked Nationwide the amount that would be required to redeem the existing mortgage. Nationwide gave them several different answers variously based on: no ERC at all being payable, an ERC at the agreed rate on the whole balance of their existing mortgage being payable, (a "full ERC"), and figures in between these two. On completion of their sale Mr and Mrs O paid Nationwide a sum to redeem the existing mortgage which did not include an ERC.

Nationwide then wrote to them asking for an extra amount to cover the ERC. And when Mr O complained, Nationwide explained why the ERC was payable and offered to let Mr and Mrs O pay it in instalments. It also offered compensation of £150 for the distress and inconvenience it had caused and the service overall that Mr and Mrs O had received.

Our adjudicator's view was that the ERC was payable and that it was fair that Mr and Mrs O should be allowed to pay it in instalments. But he felt that the compensation ought to be increased to £250. Nationwide accepted this. But as Mr and Mrs O did not, the matter has been passed to me to decide.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

I know that this will come as a disappointment to Mr and Mrs O, particularly at a time when I understand that Mr O is already under stress, but I agree with the adjudicator. I have set out below how I have reached this conclusion. (I have used italics where I think it is helpful to highlight certain parts of my decision.)

I have looked at the 2013 offer setting out the terms of Mr and Mrs O's original mortgage. It says that an ERC is payable if the mortgage is repaid during the first 36 months. It then gives an example of the maximum that would be payable if the whole loan was repaid. And explains that the charge is calculated on the basis of 4% of the amount repaid. It goes on to say that if the borrowers move house and Nationwide is able to offer them a new loan, the borrowers can keep the mortgage product and will not have to pay an ERC. This is ***if they transfer the balance*** and terms of the product to the new loan for the balance of the 36 months.

From the above I am satisfied that Mr and Mrs O were required under the terms of their mortgage to pay to pay an ERC because they did not transfer ***the balance*** of the product to the new mortgage. That is to say the amount that they ported was less than the balance outstanding under the original mortgage.

A short time after the sale, Mr and Mrs O completed the mortgage on their new property. And Nationwide allowed them to port the terms of their original product to the new mortgage. Nationwide treated the redemption of the mortgage on the sale, and completion of the new mortgage on the purchase, as a single process. It calculated the ERC based on the balance outstanding on the original mortgage, which they repaid. I am satisfied that by reference to the terms of the mortgage offer this was fair and reasonable.

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Having said that, as I have mentioned above, I have seen that Nationwide caused confusion and uncertainty to Mr and Mrs O and their solicitor by issuing different figures for the ERC. At the risk of being too detailed I think that it would be useful to set out the timing of and various ERC figures that Nationwide produced.

On 14 July 2015 Nationwide sent the solicitor a redemption statement showing a full ERC being payable. The statement referred to notes on its reverse side. These notes said that ***if the product attracted an ERC which was not included on the statement this presumed that completion of a new mortgage with Nationwide was taking place porting the same product and balance simultaneously***. It asked the solicitor to contact Nationwide if this was not the case, as the figure would not be valid.

On 3 August 2015, following a fact finding exercise with Mr and Mrs O, Nationwide's consultant wrote to them. This letter said that an ERC would be payable. It included an approximate figure for the ERC; almost £1,000 less than Mr and Mrs O were later asked to pay.

On 13 August 2015 the solicitor faxed Nationwide. She pointed out that a new mortgage was being taken, but not simultaneously. She asked whether the ERC was still payable. She also asked how much would be payable on completion of the sale as the date of the new purchase would not yet be known. And how much, if any, of the ERC would be repaid following the completion of the purchase.

The solicitor says that she spoke to Nationwide on 19 August 2015. She says she was told that if the sale and purchase were not simultaneous the full ERC would be payable and none refunded. But when she phoned Nationwide again two days later it said that it had reviewed the position and could not say whether there would be any refund until the purchase had completed.

Between these two calls the consultant emailed Mr O to say that he had checked with Nationwide's head office and it had confirmed that an ERC would not be payable.

On 21 August 2015 Nationwide wrote to the solicitor saying that there would be an ERC payable on the part of the original mortgage not ported to the new property. That is to say, it gave the correct answer.

Nationwide's consultant emailed the solicitor on 24 August 2015 saying that whether or not an ERC would be payable depended on the proposed purchase going ahead. Amongst other things the email said that if Mr O redeemed his mortgage and proceeded with the purchase within a few months **without making any further changes to the mortgage offer**, no ERC would be charged.

Nationwide has sent us a copy of the mortgage offer. It is dated 11 August 2015. So it seems that there were no changes to the offer after that date. And so, according to the consultant's email, no ERC should have been payable. This was clearly wrong.

A redemption statement faxed by Nationwide to the solicitor at the beginning of September 2015 showed no ERC being charged. But it had the same note as the fax of 14 July 2015. As the terms of the original mortgage referred to ERCs being payable in certain circumstances, I think the solicitor ought to have concluded that the figure might not be right.

Nationwide has told us that the solicitor had asked for this statement on-line. It said that its site for the use of solicitors tells them that the portal can be used if there is a ***simultaneous redemption and new mortgage for the same amount***. And that it tells users that if the new mortgage is not simultaneous, or is for a different amount, then they need to call Nationwide for a manual statement as any figure given may be wrong. So again I am persuaded that the solicitor ought to have checked whether the statement was right or not.

Overall I find that even taking into account the qualifications which were said to apply to some of the statements which Nationwide produced, there are circumstances where it clearly gave wrong information. And I can understand why Mr and Mrs O may have been confused about what the correct position was.

I have to decide what Mr and Mrs O would have done had Nationwide not made any errors. On balance I find that it is most likely that if they had been told the correct ERC figure from the outset they would still have proceeded to redeem their original mortgage. So I am not persuaded that Nationwide needs to reduce the ERC to the amount estimated by its consultant. But because Mr and Mrs O did not necessarily make provision at the time of the redemption and new mortgage for the payment of the ERC, they should be permitted to make the payment in equal monthly instalments over two years. And Nationwide should not charge interest on this sum

As I say above, I find that Nationwide gave Mr and Mrs O and the solicitor wrong and, what would on the face of it, appear to be confusing and contradictory information. And I am satisfied that Nationwide ought to compensate Mr and Mrs O for the stress and trouble that its poor service caused them. I have considered the facts of this particular complaint and I find that I agree with the adjudicator. The appropriate compensation for Nationwide's poor customer service in respect to this complaint is £250.

In passing I would like to assure Mr and Mrs O that Nationwide has ported part of their original product to the new mortgage. Because the loan is secured over a different property they now have a new mortgage and, not unreasonably, a new mortgage account number. But the product is the same and the fixed interest period is the balance of the period remaining from the original mortgage. I can see that the fact that this is the case is not clear. This is because of the way the consultant, and sometimes the financial services industry as a whole, are not always precise in the way they utilise the terms "mortgage" and "product".

my final decision

My decision is that I order Nationwide Building Society to allow Mr and Mrs O to pay the early repayment charge of £2,979.73 in equal monthly instalments over a period of two years without interest. The two-year period to commence one month after the date Mr and Mrs O accept my decision, if they choose to do so.

I further order Nationwide Building Society to pay Mr and Mrs O the sum of £250 in compensation for the stress and trouble caused to them by its poor customer service.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs O to accept or reject my decision before 19 February 2016.

Ros Barnett
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