

complaint

Mr and Mrs H complain that the early repayment charge, ("ERC"), required by Nationwide Building Society is unfair and punitive. They want to be able to switch to a new product without having to pay it. They also say that Nationwide should have told them about alternative products between their initial application for the mortgage and its completion.

background

Mr and Mrs H applied to Nationwide for a mortgage in the summer of 2012. The product they were interested in had a fixed interest rate for four years. Mr and Mrs H say that the property market was moving very fast at that time. But Nationwide did not tell them of other products that were available before they completed the mortgage.

Approximately some two and a half years after taking the mortgage Mr and Mrs H approached Nationwide requesting to transfer their mortgage to a new product with a lower fixed interest rate. Nationwide told them that they would have to pay an ERC in the region of £16,000. Mr and Mrs H thought that this was unfair and not a reasonable pre-estimate of the cost to Nationwide of their switching to a different product. They spoke to Nationwide who told them that there was nothing that could be done. They say that an employee told them that the charge was to protect Nationwide's profit and that they were also told that the charge was meant to be a sort of penalty. Nationwide told them that if they wanted to take the matter further they would have to make a formal complaint, which they did.

Nationwide rejected their complaint and said that the terms regarding the payment of the ERC were clearly set out in the mortgage offer and terms and conditions of the product. By accepting these Nationwide says that Mr and Mrs H entered into a legally binding contract. It also says that as it was a non-advised sale so it would not have told them of any alternative products. It did however point out that there was a section in the mortgage offer telling them that they could review the offer before accepting it, any time up until it expired.

Our adjudicator did not think that Nationwide had done anything wrong. As Mr and Mrs H did not agree 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.

Mr and Mrs H have not disagreed with Nationwide's comment that the mortgage was sold on a non-advised basis. So I have no reason to question this. In these circumstances I am satisfied that Nationwide was not under any duty to keep Mr and Mrs H informed of other products that were available.

Mr and Mrs H have told us that they were aware of the ERC and its nature and effect. Their complaint is that they do not think that the amount of the charge is fair or proportionate. But is punitive. The features of the ERC that they note as evidence of this includes:

- Nationwide does not distinguish between customers who want to change to another product with them and those who want to go to a different lender;
- It is fixed for the whole period that it is payable and does not decrease over time;

- It is based on the same percentage of the loan for mortgages at different interest rates

Nationwide was required to set the ERC at a level which was a reasonable pre-estimate of the cost to it of the loan being repaid early. To do this it did not have to work out the loss it would incur by Mr and Mrs H repaying their specific loan early.

The regulations allow lenders to estimate the loss on a portfolio basis for a given period. In calculating the loss a lender would have to take into account several factors including the cost of the funds it lends; the probability of the borrowers in the portfolio repaying early; and the stage in the mortgage when such repayments will be made. A lender is entitled to choose the size of the portfolio it uses in any review period. It does not have to do a separate calculation for each different product. It is also allowed to make the ERC a fixed amount over the whole period for which it is payable if it wishes. That is it does not have to reduce it step by step over the period. But the mortgage offer must make clear what the ERC will be.

This service has seen the basis on which Nationwide fixed its ERC at the time Mr and Mrs H took out their mortgage. The information was sent to us in confidence. Our rules allow us to receive information confidentially in certain circumstances. As I am satisfied that this information is commercially sensitive I accept that it is appropriate to keep it confidential. So I find that the adjudicator was not able to share the detail with Mr and Mrs H. However I have seen Nationwide's figures and am satisfied that the calculation is a fair pre-estimate of its loss as required under the regulations. And not set as a penalty. So as Mr and Mrs H were aware of the charge I agree with the adjudicator that Nationwide is entitled to charge Mr and Mrs H the ERC at the amount stated in their mortgage offer.

Mr and Mrs H are unhappy that the matter could not be resolved by further informal discussion. But as Nationwide was not prepared to waive or change the ERC I cannot see what alternative it could suggest other than a formal complaint.

my final decision

For the above reasons I do not find that Nationwide has done anything wrong so my decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs H to accept or reject my decision before 9 November 2015.

Ros Barnett
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