

complaint

Mr and Mrs A complain that Nationwide Building Society has charged an early repayment charge (ERC) which they weren't aware they'd have to pay if they took out another Nationwide mortgage. And they feel the amount of the ERC doesn't reflect the cost to Nationwide of them paying off their existing mortgage. To resolve this complaint, Mr and Mrs A want Nationwide to refund the ERC.

background

Our adjudicator explained to Mr and Mrs A that the way Nationwide worked out its ERC has been reviewed and is seen as fair. And the ERC was part of the terms and conditions they'd signed up to when they chose to take out their mortgage. So, our adjudicator didn't feel able to recommend upholding Mr and Mrs A's complaint.

Mr and Mrs A disagree. They say they've had other advice that they shouldn't be made to pay this ERC as they're taking out another mortgage with Nationwide. Mr and Mrs A have asked for an ombudsman to review what's happened, so this complaint has been passed to me.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. But, like the adjudicator, I'm not persuaded this is a complaint I can fairly and reasonably uphold. That's because I don't think Nationwide has done anything wrong – or that it's acted in a way that isn't fair and reasonable. Here's why I say this.

Mr and Mrs A took out a four year fixed rate mortgage with Nationwide. An ERC was payable for the first 48 months whilst they were in the fixed rate period. So when Mr and Mrs A paid off this mortgage, a year or so before the end of the fixed rate period, under the terms of their mortgage an ERC was payable.

Mr and Mrs A say they had no choice but to take out the mortgage Nationwide offered them which included an ERC. But I can't uphold their complaint on this basis because Nationwide didn't recommend the mortgage to Mr and Mrs A – it was entirely their decision to sign up to the mortgage they chose.

And I'm satisfied they had enough information to make an informed decision about doing this as the ERC is set out in the mortgage paperwork. So I can't fairly say that Mr and Mrs A couldn't have known about the ERC or how it might apply to their circumstances.

Mr and Mrs A's mortgage allowed them to transfer (or 'port') their existing fixed rate deal to a new property if they took out another Nationwide mortgage. And in those circumstances an ERC wouldn't apply.

But that's only the case if Mr and Mrs A had transferred the balance and the terms of their old mortgage to the new loan for the remainder of the fixed rate period.

Mr and Mrs A decided to do something different. Nationwide recommended a new mortgage for them that met their affordability criteria – if they'd ported their old mortgage and taken out

new borrowing to make up the full amount they needed to buy their new home, the monthly repayments would've been too expensive for them.

So they took out a new mortgage for the full amount they needed to redeem their existing loan and pay for their new house. In these circumstances, Nationwide was entitled to charge the ERC in line with the mortgage terms and conditions.

And I can't reasonably say Nationwide acted unfairly or unreasonably in this situation. I've taken into account that Mr and Mrs A are longstanding customers – and Mr A's main bank account is held with Nationwide. But our adjudicator has explained that the way Nationwide calculates the amount of ERCs is fair overall. It reflects the cost to the business of offering its customers the benefits of the fixed rate mortgage deal Mr and Mrs A took out.

Mr and Mrs A did have an option to avoid paying the ERC if that had been a priority concern. But they chose, understandably, to re-mortgage on terms that offered them a deal that met their overriding concern to keep their borrowing within affordable monthly limits.

I can't require Nationwide to take any further action in these circumstances. But I hope that setting out my reasons in this way has helped explain how I've reached my decision, even though I appreciate this isn't the outcome Mr and Mrs A are hoping for.

my final decision

For these reasons, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs A to accept or reject my decision before 13 November 2015.

Susan Webb
ombudsman