

The complaint

Miss G and Mr R complain that a mortgage adviser with Countrywide Principal Services Limited trading as Countywide Mortgage Services failed to advise them about an early repayment charge (“ERC”) that they had to pay.

What happened

Miss G and Mr R had a mortgage with a lender, I shall call Lender A. They had a fixed rate product and would have to pay an ERC if they redeemed the mortgage before the expiry of the fixed rate period unless they ported the mortgage product to a new mortgage with Lender A. From about March 2022, they were in contact with Countywide about a new mortgage and the purchase of a new property. They approached a broker with Countywide who, in about May 2022 recommended a mortgage with a different lender, Lender B. Miss G and Mr R paid the lifetime broker’s fee of £599 to Countywide.

Miss G and Mr R were to complete on 2 September when at the end of August, they got their completion statement showing an ERC of £5,378.28. Miss G and Mr R say that their fixed rate with Lender A was to end in October 2022 and they were completely unaware of any ERC. The broker at that stage suggested that they could consider cancelling the application with Lender B and try and port the mortgage product by taking a new mortgage with Lender A. But this wasn’t attractive because of the increased interest rates and wasted fees on the first application.

Countrywide said Miss G and Mr R had told the mortgage consultant that they believed there was no ERC applicable, so he had recommended the most suitable mortgage in the circumstances with Lender B. As it recognised that Miss G and Mr R would not be using its service again, it offered to refund £300 from the broker’s fee. Our investigator didn’t recommend that this complaint should be upheld as Miss G and Mr R should have been aware that an ERC applied. Miss G and Mr R disagreed saying in summary that they supplied details of their mortgage with Lender A to the broker so he could deal with Lender A.

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.

Countrywide said that Miss G and Mr R had told him that there was no ERC on the existing mortgage. I note that the adviser says in an email to Miss G that *“early on in our meetings you didn’t think there are any early repayment charges”*. Miss G replied that they had asked whether there were any potential fees from switching from their previous lender and the adviser had told them that there wouldn’t be any. The problem here is that the ERC that would be due to the first lender wasn’t highlighted until the sale was about to complete. Who should have known about the ERC?

Miss G and Mr R had dealt with Lender A and as part of the documentation supplied by Lender A, such as the original mortgage offer, it would have been clearly set out that if they redeemed the mortgage before a certain date that an ERC would be payable. Indeed, these offers are designed to highlight certain terms and if there is an ERC it's one of the terms highlighted. We would expect Miss G and Mr R to know, because they had that information, if there was an ERC. Countrywide didn't have that information as they hadn't dealt with Lender A. I can see that Miss G and Mr R supplied some information to Countrywide about the mortgage with Lender A although not about the ERC. That suggests that Countrywide was relying on Miss G and Mr R for information about the mortgage with Lender A rather than dealing with Lender A directly. So, we wouldn't expect Countrywide to know whether there was an ERC with Lender A.

In order to provide suitable advice, we would expect Countrywide to make enquiries from Miss G and Mr R including about any ERC payable.. The Countrywide adviser says that he raised a query and was told that the term of the fixed rate had passed and so there would be no ERC. If that was the case the adviser could continue with his advice. Miss G and Mr R say that they didn't tell the adviser this, but the Countrywide adviser told them there would be no charges from Lender A.

Clearly there are different recollections of the conversation. Miss G and Mr R's complaint is that they didn't know about the ERC. But, as I say above, from their own prior dealings with Lender A, they should have known, and I can't fairly uphold this complaint if it arises out of a matter they should have known about. A reasonable explanation of Miss G and Mr R's shock when they were told in August what the ERC would be is that they understood, as the adviser says he was told by them, that the fixed rate had ended, and no ERC was payable. In any case Miss G and Mr R were the ones who had the information in their hands about the ERC. So, for the reasons set out above I can't fairly uphold his complaint. I note that Countrywide offered to refund £300 of the Lifetime broker Fee and Miss G and Mr R may wish to consider that offer which seems fair

My final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss G and Mr R to accept or reject my decision before 10 November 2023.

Gerard McManus
Ombudsman