DRN-3953751

The complaint

Miss H has complained about how the early repayment charge (ERC) was calculated on her National Westminster Bank Plc Buy to Let mortgage.

She's said she understood that the ERC would be based on how many days were left of the ERC period as that is what happened with her previous mortgage she'd held with a different lender. She's also unhappy that NatWest didn't use up the 10% overpayment allowance which is ERC-free when it calculated the ERC due on redemption of the mortgage.

What happened

In May 2021 Miss H took out a fixed rate mortgage with NatWest on a non-advised basis. The mortgage offer explained that if the mortgage was repaid before 30 June 2023 an ERC would be applied, to a maximum of £2,530.

In 2022 Miss H was looking to redeem her mortgage. Upon receipt of a redemption statement, she complained about the ERC saying it was unfair.

Miss H then redeemed the loan in April 2023, paying an ERC of around £1,200.

Our investigator didn't uphold the complaint. She said the ERC was set out in the paperwork and NatWest hadn't acted unfairly in not reducing it either due to the time remaining or by utilising the overpayment allowance.

Miss H didn't agree and so it's been passed to me to decide.

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.

I'm conscious I've condensed the events of the complaint into rather less detail than the parties have presented them. I recognise that Miss H feels very strongly about this, and I thank her for the thoroughness of her submissions. Although I've read and considered the whole file I'll keep my comments to what I think is relevant. If I don't comment on any specific point it's not because I've not considered it but because I don't think I need to comment on it in order to reach the right outcome.

The mortgage offer set out the terms of the contract, and that showed the ERC would be:

- 2.00% of the amount repaid on or before 30 June 2022, and
- 1.00% of the amount repaid on or before 30 June 2023.

I'm satisfied the terms of the ERC were set out in the mortgage offer in a way that should have been readily understandable to Miss H; certainly, the information about the ERC was set out in a manner that met the regulator's requirements. So I'm persuaded Miss H knew – or at least should have known – how much she'd have to pay if she repaid the mortgage on or before 30 June 2023.

That said, I need to decide what is fair and reasonable in the individual circumstances of the complaint. The rules we operate under say that in doing that I must take into account, amongst other things, the relevant rules and regulations. The rules for regulated mortgage contracts are set out in the Financial Conduct Authority's Mortgages and Home Finance: Conduct of Business sourcebook (MCOB).

Whilst this is a BTL mortgage, so not subject to MCOB as it isn't a regulated mortgage contract, we generally feel that the MCOB provisions are good industry practice and so it isn't unreasonable for a business to set its ERCs with those provisions in mind.

MCOB includes provisions about ERCs. 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 it calculates an ERC and can calculate the same level of ERC across a group of mortgages of similar type, rather than for individual loans.

NatWest was entitled to set an ERC based not on the actual cost to it of Miss H ending her own mortgage early, but on a reasonable pre-estimate of the costs of early termination of a group of mortgages of similar type.

Lenders generally raise money to offer preferential rates for their mortgage customers on 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, it doesn't get back all the returns it expected, and so doesn't make back the costs in raising the funds to offer that preferential rate.

It's complex and onerous for lenders to calculate individual losses as and when individual customers decide to terminate their contracts early. And it isn't possible to estimate, for any given individual, when or if they might do so. So NatWest is allowed to project how many customers, on average, are likely to terminate early and, on average, at what point they're likely to do so, and to apportion that cost across the mortgages in the group.

For some individual mortgages that will end up being an over-calculation, and for others it will be an under-calculation. But that's allowed; NatWest doesn't have to refund the difference, but equally it doesn't tell a consumer to pay the difference if it goes the other way.

Miss H has said that her previous lender would reduce the ERC progressively each month, rather than having a flat rate for an entire year. I'm aware how Miss H's previous lender calculated its ERCs, however in my experience I would say that at the time NatWest's way of undertaking the calculation (using flat rates, rather than pro-rata) was much more prevalent in the industry and it wouldn't be considered unusual.

In response to our investigator's assessment, Miss H said she was misled and advised incorrectly when she took out the mortgage. Unfortunately the original call isn't available so

I've been unable to listen to what was said, but I've considered Miss H's testimony that she put in our complaint form:

> *"When I took this mortgage out with Natwest, I was assigned a financial advisor (employed by Natwest). They went through the entire mortgage applications with me and I explained my old mortgage with* [previous lender] *that I would be converting to this one with Natwest (as it is a let to buy mortgage). I discussed the early repayment charges with* [previous lender] *and how they were worked out as I assured them the early repayment charges would only be minimal as I only had a few months left on the* [previous lender] *mortgage so it wouldn't affect me- this is one of the questions that gets asked when you apply for a mortgage so I 100% know that I had this conversation as I had to assure the advisor that the early repayment charge didn't concern me. At no point did this financial advisor think to explain how their early repayment charges work and that they are completely different to* [previous lender]*, so I had no idea."*

From this I can see that Miss H originally told us that it wasn't that she was misled, instead it simply wasn't discussed either way. Whilst she may have spoken about the ERC on her previous mortgage with the NatWest staff member, the NatWest staff member didn't need to point out the differences unless Miss H asked, which it seems from this testimony that she didn't. Especially as in this context Miss H was talking about the ERCs on her previous mortgage in terms of how much she needed to borrow and whether it was a good idea to take this new mortgage, not in the context of any intention she might have to repay this new NatWest mortgage early.

There would have been many differences between the old mortgage and this new mortgage, and as this was a non-advised sale NatWest wasn't responsible for ensuring the mortgage was suitable for Miss H.

Miss H has said that NatWest should have used her 10% overpayment allowance upon redemption so she didn't pay an ERC on that part.

Section eight of the mortgage offer sets out how overpayments work under the contract. That says:

> ***"Overpayments:***
>
> *You can make overpayments on this mortgage.*
>
> - *You can overpay a maximum of 10% of your outstanding mortgage balance in each 12 month period commencing on completion of your mortgage and continuing from each anniversary of that date until the end date of this rate, without incurring an Early Repayment Charge. If your mortgage is made up of more than one part you can overpay up to a maximum of 10% of the outstanding balance of each part. For the avoidance of doubt, this overpayment allowance does not apply to payments which redeem the mortgage in full or, where your mortgage is made up of more than one part, a part in full."*

It is clearly stated that the overpayment allowance doesn't apply to full redemption and again, in my experience, I would say that at the time this was fairly normal in the industry and as I would generally expect to see.

In the circumstances, I'm satisfied NatWest was entitled to charge Miss H the ERC as set out in her mortgage contract when she repaid her mortgage early. I'm also satisfied there was no requirement for NatWest to reduce that amount just because Miss H only had a few months to go, or because she hadn't already used the 10% overpayment allowance.

My final decision

I don’t uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Miss H to accept or reject my decision before 31 August 2023.
Julia Meadows
Ombudsman