

## **The complaint**

Mr and Mrs H complain that they had understood their Early Repayment Charge (“ERC”) would be refunded by Nationwide Building Society, if they took out a new mortgage with Nationwide soon after redeeming the old one. But then Nationwide wouldn’t pay this back.

## **What happened**

Mr and Mrs H have been supported in bringing this complaint by their mortgage broker, who made their mortgage application to Nationwide for them.

Mr and Mrs H took out a mortgage deal with Nationwide in 2017, then increased their mortgage borrowing (on a separate deal with Nationwide) in 2018. In early 2022, they needed to increase their borrowing again, because they were moving house.

The broker in this case said Mr and Mrs H knew they weren’t going to be able to sell their old house and buy a new one at the same time. And Mr and Mrs H had an ERC on their existing mortgage with Nationwide.

The broker looked at entirely new borrowing for them, and the top choice was Nationwide. So the broker contacted Nationwide through an online broker chat facility to see if the ERC could be refunded. The broker said they were told, as long as the new mortgage started within 180 days from redemption of the existing mortgage, then the ERC would be refunded. So the broker put in a new mortgage application for Mr and Mrs H on this basis.

The broker then contacted Nationwide to check how to get the ERC paid back, and said they were then told Nationwide’s previous advice was wrong, and the ERC wouldn’t be paid back. The broker escalated this within Nationwide, but were told they would have needed to submit a paper application, and to port the mortgage. By this time, the completion of Mr and Mrs H’s purchase was imminent, and there was no time for a paper application to be processed.

The broker said they complained on behalf of Mr and Mrs H, and Nationwide didn’t respond in the allowed time. When it finally did respond, the broker said Nationwide hadn’t made any reference to the chat where the broker was told to submit the application.

Nationwide said it had told Mr and Mrs H’s broker that they would need to apply to port their existing mortgage deals (as we know, they had two) to qualify for a refund of the ERCs, but Nationwide had understood that Mr and Mrs H didn’t want to carry forward their existing borrowing – they wanted a new mortgage deal instead. So Nationwide said Mr and Mrs H had asked Nationwide to consider agreeing to refund the ERCs applied on redemption of their mortgage.

Nationwide said Mr and Mrs H had taken out borrowing in 2017, then additional borrowing in 2018. Both of the offers they were sent included details of the ERCs which would be charged if they redeemed the mortgage early, and in both cases, the ERC was still payable when they moved house and redeemed the borrowing.

Nationwide said both the mortgage deals that Mr and Mrs H had could be ported, so they

could have applied to move their existing lending to a new property, and taken out new borrowing for any extra money they needed above their existing amount. But their broker hadn't done that. The broker had submitted an application for a completely new mortgage deal for their new property rather than porting their existing deals. Nationwide said that was why Mr and Mrs H didn't qualify for a refund of the ERCs applied when they redeemed their previous borrowing.

Nationwide said it had told Mr and Mrs H's broker they could port their mortgage and receive a refund of the ERC even if they didn't buy and sell at the same time. But to do that, they would have to ask Nationwide to port their existing lending, and they would need to complete on a new purchase within 180 days of selling their home and redeeming the old lending.

Nationwide said it had never suggested it would just waive the ERCs for Mr and Mrs H.

Nationwide said it was sorry that it had taken a while to process Mr and Mrs H's mortgage application, and that it took so long to reply to their complaint. It offered £150 to apologise for that. But it wouldn't pay back the ERCs they'd been charged.

The broker rejected this response on behalf of Mr and Mrs H, saying that Nationwide had missed out from its reply to Mr and Mrs H, the advice it gave before the mortgage application was made. The broker said Nationwide hadn't told them that the application needed to port the old mortgage. It had just said that as long as a new mortgage was started within 180 days, the ERC would be refunded in full. But Nationwide wouldn't change its mind.

The broker said Mr and Mrs H had been charged an ERC of £1,300 and they wanted at least that back from Nationwide.

Our investigator thought this complaint should be upheld in part only. He noted the different viewpoints of Nationwide and Mr and Mrs H's broker. He said the two amounts of borrowing that Mr and Mrs H had, making up their mortgage, were both subject to an ERC when the mortgage was redeemed. So he didn't think Nationwide made a mistake charging that. Those two deals also each said that lending could be ported to a new property.

Our investigator said Nationwide hadn't mentioned the online chat it had with the broker, before the application was submitted, when it responded to this complaint. That advice did suggest Mr and Mrs H could get a refund of the ERC, but our investigator thought that Nationwide was just telling the broker about its policy on porting mortgages when the sale and purchase don't happen at the same time, which Nationwide refers to as a non-simultaneous port.

Our investigator said Mr and Mrs H's application was being made by a professional broker, who would have full access to the information on Nationwide's processes and policies on its broker website. But he said when this broker made the application for Mr and Mrs H, the broker didn't apply to port their existing borrowing. Instead, a new mortgage for the full amount of their new purchase was requested. So our investigator said the wrong application had been made, and he thought a professional broker should have been aware of that. He didn't think the broker was advised by Nationwide not to complete a porting application.

Our investigator did think Nationwide could have offered more information and guidance on how Mr and Mrs H could qualify for a refund of the ERC. But he thought Nationwide might not have added as much detail, because it reasonably assumed the broker would be aware that the old mortgage needed to be ported, in order for the ERC to be refunded.

Our investigator said Nationwide did then offer the broker the option of a paper application, which would have ported the old mortgage and meant the ERC was refunded, but that

wasn't something Mr and Mrs H then had enough time to do.

Our investigator said he was partially upholding this complaint for the impact of lack of clear information given on 11 May 2022, through the broker chat facility, and any confusion this may have caused the broker. He said Nationwide should pay £150 more, making a total of £300 in compensation. But he didn't think Nationwide had to pay back the ERC.

Nationwide didn't agree. It said our investigator had said its advice online was right, in respect of a porting application, and that the application was made by a professional broker.

Nationwide thought the online chat was clear and gave correct advice. And further advice was available on Nationwide's website for brokers. Nationwide said its position on porting a mortgage and refunding an ERC, is industry standard, not something that's special to it.

Nationwide also said it had told the broker how to correct this mistake, but the broker had then gone ahead with an application which would mean the ERC wasn't refunded. Nationwide didn't think it should have to pay any more compensation in this case.

Because no agreement was reached, this case then came to me for a final decision. I then reached my provisional decision on this case.

### **My provisional decision**

I issued a provisional decision on this complaint and explained why I did not propose to uphold it. This is what I said then:

As a starting point, I can see that both the deals that make up Mr and Mrs H's old mortgage do provide for an ERC to be payable at the time when they sold their old house and redeemed that mortgage. So I agree that charging an ERC when their old mortgage was redeemed was in line with the two contracts Nationwide then had with Mr and Mrs H.

Both of these offers also set out what happens if Mr and Mrs H wanted to move house. I'll set out the section below, which is the same in each of the two offers.

*What happens if you move house?*

*If you move house, and we are able to offer you a new loan, you can keep this mortgage product and you will not have to pay an early repayment charge if you transfer the balance and the terms of this product to the new loan for the remainder of the Benefit Period.*

*This product may not be available for any additional borrowing above the balance transferred when completing your new mortgage. This does not guarantee acceptance of any future loan application.*

I think that makes clear how Mr and Mrs H can avoid paying an ERC when they move home. They can apply to move their existing mortgage with them, and just take out new borrowing for the extra cost of the new property. Nationwide says that this is industry standard, and I think that's right. It's referred to as "porting".

Nationwide still allows its customers to port their mortgages if they sell first, then buy a new property within 180 days of the sale.

I think it's now appropriate to set out the online chat between Nationwide and Mr and Mrs H's broker. The relevant section of this reads as follows –

*Broker - hi there I'm wondering if you can help please? I have clients that have an existing mortgage with Nationwide they are selling their property and buying another but they won't complete simultaneously so I'm wondering if they redeem their mortgage and take out another with Nationwide a few weeks later whether their ERC will be refunded*

...

*Nationwide - It will yes, if they are applying as a non sim you will need to wait until they have redeemed, or you can apply online if they have not yet redeemed*

*Broker - so how long do they have from redeeming their original mortgage to starting a new one do they have for the ERC to be refunded?*

*Nationwide - 180 days from redemption until completion.*

The question Mr and Mrs H's broker asked, doesn't mention porting. And in a later email, I can see that the broker said, "*I was also not informed that it would be the same product the clients would continue on.*" So there does seem to have been a misunderstanding here.

It appears that the broker had not intended to ask a question about transferring existing mortgage borrowing, or porting, but instead, just a general question about whether Mr and Mrs H could redeem their mortgage, take out completely new borrowing with Nationwide, and get their ERC back.

I think it's important to note, as our investigator did, that Nationwide isn't talking to consumers through this chat facility. This facility is specifically for brokers. And because of that, I think Nationwide will have different conversations through this facility. Nationwide can, in my view, fairly expect that a broker using this chat facility will have a much greater knowledge of how mortgages generally work, than ordinary consumers.

I think it may also be helpful to set out some of the background here. As a starting point, industry rules say an ERC must be a reasonable pre-estimate of the costs the lender faces if a borrower repays early, before the end of the ERC period.

Put another way, when a lender offers fixed interest rate borrowing for a set period, it has to plan carefully to be able to keep that borrowing at that rate throughout the period, regardless of any changes that might happen in that time to interest rates in the wider market. And the ERC is a key part of that. It isn't just a profit for lenders, rather it's charged to cover a cost a lender expects to incur, if things don't go to plan, and the borrower decides they don't want to keep paying their fixed interest rate mortgage for the whole of the fixed rate period.

That's why many lenders will allow people to port their old mortgage to a new property (subject to a successful application). That keeps the existing lending in place. But lenders usually won't just let borrowers pay off the old mortgage, and take out a new one, without paying the ERC on the old lending.

I think it's reasonable for Nationwide to have assumed, when it was talking to a broker through its dedicated chat facility, that the broker would know this is the general approach taken by lenders. So it was reasonable for Nationwide to have understood

that, when a broker asked about Mr and Mrs H moving house and getting an ERC refund, the broker was asking a question about porting Mr and Mrs H's mortgage.

We now know the broker wasn't asking that. This is where the misunderstanding has occurred. But, for the reasons set out above, I don't think that misunderstanding was Nationwide's fault.

Nationwide has paid Mr and Mrs H £150 for delays in responding to their complaint, and for the time it took to process their new mortgage application. I think that provides a fair outcome to that part of Mr and Mrs H's complaint.

But on the core issue of whether Nationwide has to refund Mr and Mrs H's ERC, I don't think it would be fair and reasonable for me to ask Nationwide to pay that money back. I know that Mr and Mrs H will be very disappointed by my decision here, but I think that the advice Nationwide gave to the broker was reasonable, and sufficiently detailed for the context it was given in. So I don't think that Nationwide has to pay more now, because that advice may not have been understood in the same way as it was meant. And that means this complaint won't be upheld.

I invited the parties to make any final points, if they wanted, before issuing my final decision.

### **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.

Only Nationwide replied to my provisional decision, and it simply said it had nothing to add. That means neither side has offered any further evidence or argument in this case. And I haven't changed my mind. I'll now make the decision I originally proposed.

### **My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H and Mrs H to accept or reject my decision before 7 August 2023.

Esther Absalom-Gough

**Ombudsman**