

The complaint

Mr C complains that he was recently charged an Early Repayment Charge (“ERC”) for ending his fixed interest rate mortgage deal with Nationwide Building Society. He said he’d been told this only applied if the rate he then took was lower, and in this case it wasn’t.

What happened

Mr C told us he took out a two year fixed interest rate mortgage with Nationwide in 2021, following a phone appointment with a mortgage advisor on 13 April 2021. Mr C said he was told during that meeting that the mortgage deal he was agreeing had an ERC, but it would only be charged if he exited this deal early to move to a lower interest rate.

Mr C said in July 2022, he decided to end his existing deal early, and he chose instead to take out a ten year deal, at a rate which was higher than his previous deal. Mr C said then that he was advised an ERC would apply, and he said that he would pay this, but challenge it later. Mr C said he then found the notes he made of the meeting, and those confirmed his recollection that he’d been told an ERC would only apply if he moved to a lower rate deal.

Mr C said he was wrongly advised in 2021, and he believed if he’d been properly advised then, that he would have taken out a longer term mortgage in 2021, and this would have been at a much lower rate than he’d secured now. He said he didn’t think it would be fair to ask Nationwide to put that mortgage in place now, but he did think it should waive the ERC he’d been charged. Mr C said he understood the 2021 call had been recorded, so he asked Nationwide to listen to this call. But it said the call hadn’t been recorded after all, because the advisor was working under arrangements put in place for the pandemic at the time.

Mr C said Nationwide wouldn’t waive the ERC, because it said the ERC was explained in the paperwork he’d received, but Mr C said he didn’t feel the need to read that part of the application, because he’d already asked the advisor a direct question about this.

Nationwide said it didn’t have a call recording from 2021, but it did have notes from the meeting. And those suggested Mr C wanted a two year fixed rate deal, because he wanted to review in two years’ time and see if he would be able to get a better rate. And Nationwide said that full details of the ERC which applied to this lending were included in the letter that the advisor then sent Mr C. That said this -

"Your mortgage has early repayment charges (ERC) which means you'll need to make an extra payment to us if you move your mortgage to a new provider, switch to a new rate or repay all or more than 10% of your original balance in one year during your product period"

Nationwide didn’t think it had done anything wrong, and it wouldn’t pay back the ERC that Mr C was charged.

Our investigator didn’t think this complaint should be upheld. He said he’d reviewed the notes from the meeting, and also considered that Mr C was then sent a letter which

mentioned the ERC, as well as a mortgage offer which set it out in detail. So our investigator thought Mr C was made aware of the terms of the mortgage. He said there wasn't any evidence to support what Mr C said about being misadvised, and the notes suggested Mr C wanted to remortgage in a couple of years, when he might have moved into a lower loan to value ("LTV") bracket.

Our investigator said Mr C was told about the ERC before he made a decision to switch rates, but he went ahead and paid, in order to secure extra years of stability and protection. So our investigator didn't think there was evidence to show Nationwide had acted incorrectly, and he didn't think it would be reasonable to ask it to pay back the ERC it charged.

Mr C didn't agree. He said if we listened to the call, we would hear he'd been misadvised, and that influenced his decision. Mr C said he understood he'd been sent information in writing, but some people aren't good at reading, and rely on asking questions. He said he accepted he made a mistake by not reading the contract, but he said he had clearly been misled, and Nationwide should be held accountable for that. In this case, because of the serious nature of the mistake, he thought Nationwide should pay him back the ERC. And Mr C said he would send us his notes of the meeting.

Because no agreement was reached, this case then came to me for a 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.

I've reached the same overall conclusion on this complaint as our investigator.

Mr C argued Nationwide should face consequences for its maladministration. But I should say at the outset, that our service isn't a regulator, and we don't punish businesses for mistakes. Rather, I need to look at the impact of any mistake on Mr C, and think about the position he'd have been in, if the mistake hadn't been made.

Mr C's argument is that he was misled during the meeting where he chose a two year fixed term mortgage, and he would, if not misled, have chosen a much longer fixed term. That's why he thought Nationwide should pay the ERC back now. But that doesn't seem to me to fit with some of the other things that I do think were discussed during this meeting.

Nationwide's notes say Mr C wanted a two year fixed term, because he was hoping to pay enough of his mortgage off in the first couple of years, to drop into a lower LTV bracket. Looking at Mr C's mortgage offer, I can see from the figures provided that Mr C was likely to have been in a very high LTV bracket, but towards the lower end of this bracket.

Mortgage providers usually reserve their best deals for those who are borrowing a smaller proportion of the value of their home. So what I can see in the notes of the meeting, with the mortgage advisor checking if Mr C would be able to contribute more to the deposit for his house purchase, and decrease the percentage he was borrowing, is what I would expect to see in a situation like this.

I can also see notes that suggest Mr C was asked if he thought mortgage rates were likely to rise in the future, and he said then he didn't think they were likely to increase in the next two years. I think this is likely to be a fair reflection of what was said at the time, because it fits with what Mr C then did, in taking out a two year fixed rate.

So everything I've seen suggests to me that Mr C wasn't expecting rate rises, and that he did have a reason to think he might be able to secure a lower mortgage rate in a couple of years, as he might be in a lower LTV bracket. Because of that, it doesn't seem likely that Mr C would have made a different decision in 2021, regardless of the advice given about the ERC.

I also note that Mr C was given full documentation for his mortgage offer in the usual format. And as well as this, he was also given a single page summary of the mortgage advisor's recommendation. This summary clearly set out that an ERC would apply, in a much wider range of circumstances than Mr C said he'd been told about. So, even if I did think it was most likely that Mr C had been misadvised during the phone appointment he had, I would still have said Nationwide had then done enough to make the terms of his mortgage clear when he took up its offer.

I also think it's relevant that Mr C was then reminded of this ERC when he was discussing ending his existing fixed rate deal early. He chose still to go ahead, and pay the ERC.

Finally, I should say that unfortunately, there is no clear evidence that Mr C was misadvised. I appreciate that he's found it very frustrating not to have a recording of this call, and he's been clear about his recollections of the call content. Mr C has also shown us what he says are contemporaneous notes, which do say he was told that an ERC would only be payable in limited circumstances, where he was moving to a lower interest rate. But I do have to weigh against this, that this isn't how Nationwide works, and indeed, that what Mr C has noted would be very unusual for a mortgage lender.

So, although I appreciate that Mr C hasn't come away with a clear and correct understanding of how the ERC worked, I haven't been able to see that it's most likely that the mortgage advisor is responsible for this. But, more importantly, for the reasons set out above, even if the mortgage advisor had misadvised Mr C on this call in 2021, I would still have said that Nationwide did then provide Mr C with the right information almost immediately after this. And I haven't been able to see that it's likely Mr C would have behaved differently when he took out this mortgage in 2021 or when he changed to a new fixed rate deal in 2022. For those reasons, I agree with our investigator, and I don't think it would be fair and reasonable to ask Nationwide to pay back this ERC now.

I know Mr C will be disappointed, but I don't think his complaint should be upheld.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 30 October 2023.

Esther Absalom-Gough

Ombudsman