DRN-4478228

The complaint

Mr and Mrs Y complain that the mortgage they have with Nationwide Building Society was arranged on an execution only basis.

What happened

Mr and Mrs Y have held a mortgage with Nationwide for a number of years. In April 2021, they applied online for a "product switch" to transfer the mortgage to a two-year fixed rate.

In early 2023 Mr and Mrs Y complained to Nationwide. They said they should've received advice for the mortgage application in 2021 and had now lost out on the Financial Conduct Authority (FCA) protections that would've accompanied an advised sale.

Nationwide didn't uphold this complaint. It said Mr and Mrs Y had applied for the rate online, and it had made clear this was an execution only sale.

Mr and Mrs Y didn't accept this and referred the complaint to our Service where one of our Investigators looked into it. He didn't think the complaint should be upheld. Mr and Mrs Y didn't agree and asked for the complaint to be considered by an Ombudsman. So, it's been passed to me to review and make 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.

Mr and Mrs Y have responded to our Investigator in detail. I want to reassure them that I've considered everything they've said. If I don't respond to a particular point, it's not because I haven't thought about it. It simply reflects the informal nature of this service. Instead, I'll focus on the crux of the complaint – whether this was an advised sale and, if not, whether it should've been.

Mr and Mrs Y applied for this product switch online. I've seen nothing to suggest that Mr and Mrs Y spoke to anyone at Nationwide prior to or during the application for this mortgage. Nor that they were under the impression that they were receiving advice at the time. And given that Mr and Mrs Y had received advice on previous product switches, I think they would've realised that the process they were going through this time was different and that they weren't receiving advice.

I've been provided with screenshots of the process Mr and Mrs Y would have had to go through to apply online. Mr and Mrs Y have said these are generic and asked if we've seen the actual process they specifically went through. I haven't, however I've seen nothing that makes me think Mr and Mrs Y would've gone through a different process to other customers. So, I'm satisfied this was most likely the process they would've gone through.

The online application said:

"you'll be applying without advice (also known as an "execution only" basis).

A bullet point after this said that:

"you won't benefit from the regulatory protections offered by an advised level of service."

There was a link to click to learn more about applying without advice and how to book an appointment to receive advice. Mr and Mrs Y had to click a button to accept and proceed just below this information. They would've needed to click this to proceed.

After completing the application online, Mr and Mrs Y were sent a product transfer offer with details of the rate they'd chosen. The product transfer offer said that Nationwide had not recommended this mortgage product.

Based on this, I think Mr and Mrs Y ought to have been aware that they were not receiving a personal recommendation from Nationwide, and that they wouldn't be afforded the protections that went with an advised sale.

Mr and Mrs Y have also argued that Nationwide should have made a recommendation and in not doing so have breached FCA rules. They've specifically referred to the Mortgage Conduct of Business (MCOB) rules. I've thought about this, but I don't agree. I'll explain why.

Mr and Mrs Y have pointed to MCOB 4.8A which sets out the rules for non-advised or "execution only" sales. They say that this prohibits an execution only sale if information personalised to them is provided. They've argued that by providing the monthly payment specific to their mortgage, they've been given personalised information and that this means they should've been provided with advice.

I believe Mr and Mrs Y have misinterpreted this part of MCOB. Personalised information in this rule is specific to them and their circumstances. Whilst the monthly payments are specific to their mortgage, it would be the same for anyone else with a mortgage the same as theirs – and I don't consider this to be personalised to their circumstances. It would be no use providing them with generic information in this regard which wasn't specific to their mortgage as they wouldn't be able to make an informed decision. Furthermore, this rule only applies where there is spoken or other interactive dialogue between the borrower and lender. Mr and Mrs Y didn't speak with anyone from Nationwide or interact in any manner other than completing the product transfer form on the website.

I know Mr and Mrs Y believe that completing the application online is interactive dialogue, but I don't agree. They are simply completing a form and answering questions presented to them by this form. There is no interaction from Nationwide's point of view. Based on this, I'm satisfied Nationwide was entitled to treat this application as execution only and that no advice was provided.

Mr and Mrs Y also complained that their mortgage offer says that at the end of the fixed rate deal whilst the payments changed, they would again be fixed. They believe that the wording of the mortgage offer means that Nationwide cannot vary the monthly payment above what is contained within the mortgage offer, even when the mortgage reverts to Nationwide's standard variable rate (SVR). Again, I disagree with their interpretation.

Section two of the mortgage offer states:

Our Standard Mortgage Rate will apply after the initial interest rate for any remaining part of the mortgage term. This is a variable rate, set by Nationwide without a minimum or maximum value.

This makes it clear that after the initial fixed rate period, the mortgage interest rate will be a variable one, not fixed again.

Mr and Mrs Y have also referred to a specific part of the mortgage offer that they believe implies their monthly payments will be fixed after the initial fixed rate ends. The particular part of the offer which sets out the monthly payments says:

5. Amount of each instalment

…

24 payments of £2,600.90 Followed by 275 payments of £3,381.18. Followed by a final payment of £3,261.28

…

After the fixed rate ends, the interest rate on this loan can change. This means the amount of your instalments could increase or decrease. For example, if the interest rate rose to 9.49%, your total payments could increase to £5,960.18.

Mr and Mrs Y argue that there is no caveat that suggests the monthly payment would increase beyond that. However, the fact that it says straight after that the interest rate can change after the fixed rate ends, means that after the 24 months of fixed payments, the interest rate and therefore the monthly payments can clearly change.

It appears that Mr and Mrs Y also believe that the final line of this section saying "*For example, if the interest rate rose to 9.49%, your total payments could increase to £5,960.18"* means that if interest rates rose to 9.49% then the total due under the mortgage would be £5,960.18.

It's clear to me that this is an example of what would happen to the monthly payments if rates were to raise to these levels, and this is something lenders are required to provide within illustrations and offers. I struggle to understand why Mr and Mrs Y believe that if rates were to rise to a certain level, the amount owing on their mortgage would drop to such a low level. And I don't agree with this.

Based on what I've said above, I've seen nothing to suggest that Nationwide is interpreting the mortgage offer incorrectly at this stage with regards to the monthly payments.

Mr and Mrs Y have also questioned the enforceability of the mortgage offer because of this. I've explained why I disagree with their interpretation of what happens once the fixed rate ends. However, I'd also note that our Service cannot declare a mortgage contract unenforceable, only a court can do that. So, if Mr and Mrs Y believe that the mortgage is unenforceable, they will need to seek legal advice.

Mr and Mrs Y have also complained that Nationwide haven't responded to specific questions and that their complaint wasn't properly assessed. Complaint handling isn't a regulated activity and not an activity listed within the rules that set out how we operate. This means, I can't consider any complaint points about how Nationwide handled their complaint.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr and Mrs Y to accept or reject my decision before 7 February 2024.

Rob Deadman
Ombudsman