

The complaint

Mr and Mrs A complain that their mortgage lender Nationwide Building Society hasn't offered them suitable support during their period of financial difficulty. They complain that options to help get their mortgage back on track haven't been fully considered before starting legal action.

What happened

In 2006, Mr and Mrs A took out a mortgage with Nationwide. They borrowed £126,399 (inclusive of fees) on interest and capital repayment over a term of 17 years.

In 2020 Mr A told Nationwide that him and Mrs A were in financial difficulty due to a change in their circumstances. Mr A's ability to work was impacted by his ill health.

Sadly, Mr and Mrs A's circumstances didn't improve. Mr A was unable to return to work indefinitely and Mrs A also subsequently stopped working to care for Mr A. This had a significant impact on their household income and from June 2022, they stopped making payments towards their mortgage which caused arrears to rapidly accrue.

During 2022 Nationwide agreed time for Mr and Mrs A to make arrangements for government support. Nil payment arrangements were agreed for several months.

Mr A was in the process of appealing the outcome of his Personal Independent Payment (PIP) application and the amount awarded. Nationwide was willing to offer more time for the outcome of that appeal, but I can see honest conversations took place about the mortgage not becoming any more affordable again, even after taking into account the expected increased PIP payments.

In November 2022 Nationwide carried out an up-to-date affordability assessment - so it could consider possible long-term support. Based on Mr and Mrs A's benefit payments at the time - taking into account their existing outgoings (including their capital repayment mortgage payments) they were in a monthly deficit of around £2,583. The affordability assessment was also carried out using interest only mortgage repayments to see if that could be a solution, but that still produced a monthly deficit of around £1,535.

By early 2023 Mr and Mrs A's account was in arrears of more than £9,000. They were of the realisation that they'd either need to consider Equity release or make arrangements to sell their property to repay their mortgage with Nationwide. Nationwide discussed the option of Equity Release but unfortunately Mr and Mrs A didn't qualify due to a second charge held on their property. Nationwide suggested they seek independent financial advice to explore other possible lenders. Mr and Mrs A were also informed of the timescales for a private sale, but it doesn't appear that they explored that further.

As it did not appear that there was any real prospect of Mr and Mrs A's circumstances improving, Nationwide explained that unless they were able to repay their arrears, it intended to start legal action.

Mr and Mrs A complained to Nationwide. They feel they haven't been properly supported or offered any other alternative options to help make their mortgage more affordable – including stopping their payments until the outcome of Mr A's benefits income appeal.

Nationwide didn't uphold the complaint. It was satisfied that it had considered taking legal action as a last resort. It said that after assessing Mr and Mrs A's circumstances, it didn't consider any of the possible long term concessionary options appropriate for them, as if implemented, any of the available options would only make their financial situation worse.

Nationwide also said that it would make little difference waiting for the outcome of the PIP application, because even when taking the expected benefit payments into account, the mortgage would still be unaffordable for them.

Nationwide signposted Mr and Mrs A to suitable debt charities and offered them the option of providing an updated income and expenditure assessment to reassess their situation in case of any changes. It doesn't appear that any updated information has been provided to date.

Unhappy with Nationwide's response, Mr and Mrs A brought their complaint to our service. An investigator looked into things and explained why she didn't think Nationwide had acted unfairly or unreasonably in the circumstances, so she didn't recommend that the complaint should be upheld.

Mr and Mrs A disagree that Nationwide has properly considered all the available options including switching their mortgage to interest only – which they say Nationwide has made no mention of to date. Mr and Mrs A say the income and expenditure information held by Nationwide isn't up to date or accurate because it doesn't take into account all the benefit payments. They remained unhappy with the outcome reached so asked for the case to be decided by an Ombudsman.

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.

It's clear that Mr and Mrs A have been through and continue to go through a difficult time – I do empathise with their circumstances. I've given careful consideration to all the submissions made by both parties, having done so, I don't think this complaint should be upheld. I realise this will come as a disappointment to Mr and Mrs A. But I hope the reasons I have set out below will help them to understand why I have come to this conclusion.

The regulator of financial services, the Financial Conduct Authority (FCA) sets out rules for lenders that it expects them to abide by. The rules can be found in the FCA's Handbook, available online, in the chapter headed MCOB.

These rules require lenders to treat borrowers facing financial difficulty fairly, to try and ensure the mortgage can be paid and to ensure repossession is a last resort. The rules require lenders to consider what forbearance options are appropriate in the circumstances of the individual customer.

The rules also state that in doing so, the lender must ensure that any variation made to the mortgage (for example, extending the term or changing the payment method) must be affordable for the customer. The starting point is for a lender to carry out an affordability assessment, to determine ability to repay the mortgage.

The difference between the possible forbearance options available depends on whether the consumer is experiencing short-term or long-term financial difficulty. And in any event, there must be prospect of the customers circumstances improving and them being able to get their mortgage back on track and being able to repay it by the end of the term.

In considering this complaint, I've considered whether Nationwide has acted, as I'd expect, in accordance with the rules. When considering everything, I've not seen anything to suggest Nationwide has acted unfairly in the circumstances. During the early stages it offered a short-term solution by the way of reduced payment arrangements, to allow Mr and Mrs A time to make their benefits arrangements which they had applied for in early 2022.

Once in place, it would be suitable to carry out an affordability assessment to agree an affordable plan to get the mortgage back on track. This was delayed by the appeal Mr A made to his PIP application. He thought he should receive more money. Nationwide patiently waited, but by late 2022, Mr A was no closer to the outcome of his appeal. Arrears continued to rapidly accrue so Nationwide had no option but to assess Mr and Mrs A's circumstances using their current income to decide a suitable way forward.

Mr and Mrs A recorded their household income at around £834 a month. After considering their monthly outgoings they were in deficit of around £2,583.

Part of Mr and Mrs A's response to the investigator's view is that Nationwide failed to consider a possible switch to interest only. I can confirm that the affordability assessment carried out was also done on interest only terms, but that also returned a monthly deficit of around £1,535.

So, I'm satisfied this option was considered by Nationwide. It didn't consider this was an appropriate way to offer support as Mr and Mrs A still could not afford an interest only mortgage. Nationwide also said it couldn't extend the term of Mr and Mrs A's mortgage because the monthly payments, while lower, would still be unaffordable.

Mr and Mrs A also feel that it would help their situation if Nationwide offered them a new interest rate. Taking out a new interest rate is often not in the customer's best interest where they're experiencing long term financial difficulty and struggling with their mortgage. I say this because where there is a likelihood of them needing to sell their property or becoming repossessed by their lender, then they'd have to pay an early repayment charge – reducing any remaining capital on the property or causing a larger shortfall in some circumstances.

Nationwide has also considered this as an option. Whilst a new fixed rate would reduce Mr and Mrs A's monthly mortgage payments, this wouldn't make their mortgage any more affordable and resolve the problem – due to the large deficit they have each month when considering their overall affordability.

Nationwide has offered Mr and Mrs A the option of providing up-to-date affordability figures if there has been a change to their circumstances. This has not been provided yet by Mr and Mrs A. Until there has been any change, I don't think it's unreasonable for Nationwide to continue to rely on the information it used to carry out the last assessment in November 2002 when deciding the next course of action in relation to the account. Although I don't expect Nationwide to rely on projected figures (as these can't be guaranteed), I must also add that even when considering the projected benefit figures provided by Mr A previously, the outcome of the affordability assessment would still produce a large deficit – making all the options discussed unaffordable.

As some time as passed since this complaint has been with our service, I do encourage both parties to engage further to reassess Mr and Mrs A's circumstances. Unless there has been a significant change that impacts the affordability of the mortgage, I can't fairly say that Nationwide can't consider starting legal action in the circumstances as a last resort where there is no real prospect of Mr and Mrs A's circumstances improving and them being able to get the mortgage back on track. It would not be responsible of Nationwide to allow their indebtedness to continue to increase.

Nationwide has confirmed that by taking legal action it does not mean it would look to evict Mr and Mrs A immediately, as it will discuss a possible repayment agreement with the court in the first instance.

I'm sorry about the difficult circumstances Mr and Mrs A are dealing with, and that they feel Nationwide didn't offer support in the form they would have preferred. But overall, I don't think it treated Mr and Mrs A unfairly.

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 A and Mrs A to accept or reject my decision before 18 September 2023.

Arazu Eid
Ombudsman