

The complaint

Mr M is unhappy with how he has been treated by Nationwide Building Society in relation to his mortgage. He has experienced health challenges which have caused him to experience financial difficulties. He doesn't think Nationwide has treated him fairly, given what he has been and continues to go through.

What happened

Mr M originally took a mortgage with Nationwide in 2014. The mortgage was for around £262,500 over a 25 year term, on a repayment basis on an initial 2 year fixed rate deal. Further interest rate products were agreed in 2017 and 2020. The latter was a 2 year tracker deal, linked to base rate.

Mr M has raised a number of complaints in recent years to do with his mortgage. Nationwide issued a number of responses, giving Mr M the option to refer his concerns to the Financial Ombudsman Service if he remained unhappy. Records suggest that Mr M contacted us around June 2020 about his concerns to do with Nationwide not agreeing to provide him with a payment holiday. An investigator was initially minded to uphold the complaint but then changed their decision following receipt of further information from Nationwide.

Mr M also contacted us in August 2020 about Nationwide losing some Support for Mortgage Interest (SMI) forms and we notified Nationwide of this. We didn't subsequently hear anything further from Mr M.

Mr M was in an out of arrears on the account and the arrears balance fluctuated until April 2022, when the arrears began to significantly increase. His arrears balance went from around £670 in March 2022 to nearly £24,000 in June 2023.

In May 2022, Nationwide granted Mr M a concession allowing him to pay a less than interest only amount on the mortgage. Nationwide was receiving SMI payments from DWP, but these payments were at a certain level and were under the interest only payments on the mortgage. The SMI payment amount didn't change as Mr M's mortgage payments increased due to rising interest rates (linked to increases to the Bank of England base rate) and this resulted in the sharp increase in arrears. Nationwide had told Mr M that his arrears would increase.

Mr M contacted us in April 2023. In summary, he raised the following issues:

- Nationwide hadn't dealt with him fairly to do with his mortgage, over a number of years. It wasn't responding fairly to the difficulties he was facing, wasn't helping him to get back on his feet and he was concerned he may end up losing the property.

- The arrears had built up due to Nationwide mis-calculating interest and this had led to it not allowing him to go onto a new deal.
- He had no choice but to put the property on the market. Despite not being able to make repayments when the interest rate was 2.4%, Nationwide increased the interest rate significantly, worsening his position and adding to the stress of the situation.
- It took two years for Nationwide to refer him to its Specialist Support Unit.

We notified Nationwide of Mr M's concerns and in May 2023 it issued a final response letter. The final response letter covered the issues Mr M has raised to this Service plus some other ones. Nationwide said that a number of the issues raised had been dealt with in the past and it wouldn't re-visit them. For all other points, it didn't uphold the complaint.

Nationwide told us that it didn't consent to us considering any complaint points referred to us outside of the six month time limit.

An investigator here first issued an assessment about the time limits that apply to refer complaints to the Financial Ombudsman Service. In summary, they said:

- Of the numerous final response letters issued by Nationwide, they could only consider those issued within six months of the contact to us in April 2023 (letter dated 25 November 2022) and those issued after (letters dated 5 May 2023 and 23 May 2023).
- They couldn't though consider all of the complaint points contained in those final response letters, because some of them had been previously considered by the Financial Ombudsman Service.
- With that in mind, they could only consider the concerns raised about the following issues:
 - o The concession given by Nationwide in May 2022, including the fact that interest and arrears continued to accrue.
 - o The use of affordability assessments to inform forbearance options.
 - o Nationwide paying Leaseholder and associated fees and these being added to the mortgage balance.
 - o The information Nationwide had supplied to DWP.

Nationwide agreed with the assessment. Mr M said he agreed as well, although he did explain that referring his concerns about Nationwide to the Financial Ombudsman Service was too much at the time, given the level of strain and stress associated with his medical conditions.

The investigator then issued an assessment of the issues they'd said they could consider. In summary, they said:

- They'd listened to the calls that had taken place around May 2022. They thought that Nationwide had been sympathetic to Mr M's situation and provided reassurance that it would support him with options regarding his arrears moving forward.

- They couldn't say that Nationwide had acted unreasonably. It had explained the nature of the concessions (allowing Mr M to pay less than interest) and what this would mean for arrears increasing.
- They appreciated affordability assessments may seem intrusive, but they are standard practice and for the benefit of both the borrower and the lender, helping to make sure that whatever payment arrangements are agreed, are affordable.
- It hadn't been unreasonable for Nationwide to pay the Leaseholder and associated fees. This was allowed for under the terms of the mortgage and was necessary in order to protect its security.
- The information supplied to DWP had been correct at the point it was provided. Nationwide wasn't obliged to provide DWP with updated figures in the event that interest rates changed.

Mr M didn't accept the outcome. He questioned whether the investigator had listened to a particular call from around six weeks' prior, which had led to him feeling pressured about the situation. The investigator requested a recording from Nationwide and listened to it. They told Mr M they didn't think Nationwide was pressuring him and that they thought the forbearance options mentioned were in line with what's expected of a lender.

As the matter wasn't resolved, it was necessary for it to be escalated for an Ombudsman's review. Mr M emphasised the following points (in summary):

- The conclusion that what Nationwide had offered to do is reasonable cannot be right given the severity of his circumstances. Not everyone's illnesses are the same.
- Nationwide should've arranged for someone to visit him to discuss matters and the delay in being referred to the Specialist Support Teams demonstrates a lack of care.

I asked for some further information from both parties. I asked Mr M to let me know any dates after 2021 that he had asked Nationwide for an interest rate product and what it said at that time. Mr M said he had been trying on an ongoing basis to secure a rate with Nationwide after his rate had ended. He supplied further information, much of which was information he had previously supplied.

I asked Nationwide to let me know the same thing in terms of any requests for a new interest rate product and also whether and when it had offered a forbearance rate to customers experiencing financial difficulty. I also asked it to provide more information about the Leaseholder and associated fees it had paid.

Nationwide said it didn't have a record of Mr M applying for any particular rates, although it confirmed that the interest rate applying had been discussed with Mr M and that he hadn't been eligible for a rate due to his arrears position. It didn't say anything about a forbearance rate. It did say that the option to switch product whilst in arrears was made available to some customers from July 2023, but that this option hasn't been discussed with Mr M as there's been no contact with him since May 2023.

It also provided further information about the Leaseholder and associated fees paid, including that payment had been made following a County Court Judgement (CCJ).

I issued a Provisional Decision (PD) in December 2023. In it, I said the following:

“What I’ve provisionally decided about what I can (and can’t) consider – and why

I will first set out my thoughts on what I can and cannot consider, by reference to the time limit rules that apply. Under the rules - which are set out in the Financial Conduct Authority’s Handbook at DISP 2.8.2 R and are available online - a consumer has up to six months from the date of a final response letter to refer a complaint to the Financial Ombudsman Service, unless either the firm consents to the complaint being considered (notwithstanding that it has been brought too late), or exceptional circumstances apply that prevented the consumer from bringing the complaint within the time frame.

Nationwide hasn’t consented to the complaint issues that were dealt with in final response letters more than six months prior to Mr M’s referral to us. In terms of exceptional circumstances, it’s clear from what Mr M has said that he has faced some significant health challenges, affecting his ability to work (and as a consequence affecting his income) and other things.

However, I must take into account that Mr M has frequently been in contact with Nationwide in the time period covering the complaints and final response letters going back to 2020. And that he contacted us twice in 2020 as well. I appreciate that Mr M has said that trying to launch complaints against Nationwide through the Financial Ombudsman Service was too much due to his medical circumstances, but Mr M did make contact with us on two occasions.

Whilst I appreciate that Mr M has clearly faced some very challenging health circumstances, when I consider this – and the ongoing contact with Nationwide - I can’t reasonably conclude that those challenges prevented him from referring the concerns not already referred to the Financial Ombudsman Service in 2020, within the time limits that apply.

Finally, I disagree in part with what the investigator said about not being able to consider Mr M’s concerns about Nationwide not agreeing to provide him with an interest rate product. I agree with the investigator that it wouldn’t be appropriate for us to re-visit an issue we considered a number of years ago.

However, any requests for an interest rate (or considerations of such by Nationwide as part of forbearance) after the event we considered, would be something that we could and should consider (unless otherwise out of our jurisdiction due to time limits or something else). This was one of the reasons behind my request for further information from both Mr M and Nationwide, on this topic.

So next, I will set out my provisional thoughts on the issues I can consider.

What I’ve provisionally decided about the things I can consider – and why

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

Having done so, I am not currently of the view that Nationwide needs to do anything further, in terms of the issues raised that I can consider. I appreciate Mr M feels strongly that he hasn’t been treated fairly, given his circumstances. But whilst I appreciate his circumstances have been very difficult, I don’t agree that Nationwide has treated him unfairly. I’ll explain why.

The forbearance offered in and around May 2022

Mr M is unhappy that Nationwide continued to charge interest on his mortgage when he

couldn't afford the repayments at the level they'd been at and when interest rates began to rise. His view is that this inevitably made his situation worse, because in addition to his health issues affecting his ability to earn income and thus afford his repayments, the combination of rising interest rates and the SMI payments being static, led to rapidly increasing arrears.

Mr M is unhappy that Nationwide didn't do something more to make sure the SMI payments changed to reflect changes to the interest being charged and believes that this directly affected his ability to get a new rate in the future.

Nationwide considers that the concessions it gave allowing Mr M to pay less than interest payments between May and September 2022 was appropriate forbearance.

I can understand Mr M's view and appreciate that with interest rates rising, he faced the prospect of getting further behind with the mortgage. Mr M was on a tracker deal at the time and with interest rates rising, this inevitably led to the amount he needed to pay to stay on track increasing.

I don't agree though that Nationwide needed to stop charging interest during this time. The starting point is that a lender is entitled to charge interest on the mortgage, according to the terms and conditions of that mortgage. Nationwide showed forbearance in agreeing for Mr M to pay less than interest for six months through the SMI loan (and nil payments for the first four months of 2023) rather than, for example, initiating repossession proceedings at that time. Mr M was saying that he was hopeful he would be in a position in future to work more and thus increase his income, which would hopefully enable him to get back on track with the mortgage.

From listening to the telephone conversations at the time, Nationwide was giving Mr M breathing space by agreeing the lower than required payments, to hopefully in time be able to get back on track. I'm also conscious that Mr M had the option of trying to sell the property as an alternative course of action (appreciating that this is often not a desirable thing from a borrower's perspective and that he says when he tried to do this at the beginning of 2023, he found this difficult).

In terms of the SMI payment amount not moving in line with increases to the mortgage interest rate, I can understand Mr M's perspective that if the payments received from the DWP had automatically changed to reflect changes in interest rates, the arrears wouldn't have increased in the way in which they did. However, that is not my understanding of how the system works. My understanding is that payments are made at pre-determined levels (set by DWP) and that changes to the interest rates on a particular mortgage, don't affect this.

Nationwide says the information it has provided to DWP has been accurate and I've not seen anything to suggest this is incorrect. I think it's possible that Nationwide could have been clearer with Mr M about how the system works and the limits of its involvement. However, I can't see that this would fundamentally change Mr M's situation.

Taking everything into account, I currently find that the forbearance offered by Nationwide from May 2022 to the point Mr M raised his complaint in 2023, was reasonable.

Not being offered a lower interest rate

Nationwide has said that Mr M hasn't made a specific request for an interest rate product since the prior complaint he raised about this, that was considered by the Financial Ombudsman Service. It also says that during the relevant time, it didn't allow borrowers in

arrears to switch products. Mr M says that he has continuously been asking Nationwide to reduce the interest he needs to pay.

I think both things are probably right i.e. Mr M hasn't applied for a particular product but he has been wanting Nationwide to allow him to pay less interest, so that his position doesn't worsen.

Given this, I think the key question is whether Nationwide ought to have allowed Mr M to move to a lower rate of interest from May 2022 up to when he raised his latest complaint, particularly after his tracker rate ended in 2022.

Allowing a borrower to change interest rate product is something that a lender can do as part of a range of potential forbearance measure. However, it is not something a lender must automatically do when someone is experiencing financial difficulties and would depend on the circumstances. In general, it is most likely to be appropriate when someone's income and expenditure is tight and where a lender allowing the borrower to move to a different rate, will likely be the difference between the mortgage being affordable and not.

From what I've seen and heard, Mr M's income has been such that if the mortgage had been moved onto a different rate, particularly when the tracker rate had ended, it would not have meant the mortgage was affordable. When a borrower takes out a new product, it is common (particularly for fixed rates – which I think is what Mr M was seeking) for those rates to come with an early repayment charge (ERC) and/or a product fee.

If taking out a product doesn't make the difference between the mortgage being affordable and not, then the introduction of an ERC and/or product fee will potentially make the borrower's situation worse e.g. in the event the property needs to be sold within the time period of the interest rate product.

Bearing this in mind, I don't find that Nationwide has acted unfairly by not offering Mr M a new rate as a forbearance measure. I can't see that it would've made the difference between the mortgage being affordable and not and would've had the potential to worsen his position.

Nationwide has recently said that it began allowing some borrowers in arrears to switch products from July 2023, but this hasn't been discussed with Mr M because there hasn't been any phone contact with him since May 2023.

It's not clear to me what, if any, difference this would make to Mr M's ability to have taken – or to take – a rate from July 2023. Unless his circumstances have materially changed, I suspect it may not make a difference. However, Nationwide should consider this and let Mr M know whether this means that it can offer him some kind of new rate.

Income and expenditure assessments

In short, it's not unreasonable for a lender to want to establish a borrower's income and expenditure position, to inform what forbearance options are appropriate. This can sometimes appear repetitive and unnecessary from a borrower's perspective, but people's situations can and do change over time. So I don't find that Nationwide has made any error here or treated Mr M unfairly.

Payment of Leaseholder and associated fees

From what I've seen, Nationwide made suitable attempts to contact Mr M about this issue and it only paid the relevant amount (and then added it to the mortgage balance) after a CCJ for the debt had been issued. After the CCJ was issued, there was a genuine risk that Mr M

could forfeit the lease, which would result in Nationwide losing its security. Nationwide's actions are allowed for in the terms and conditions of the mortgage and in all of the circumstances, I find that the actions it took were reasonable."

I asked both parties to provide any further evidence and/or arguments by 24 January 2024 at the latest. Nationwide responded to say it had nothing further to add. Mr M responded, in summary, to say he still didn't think Nationwide had treated him fairly and that lenders should be required to do more where people are extremely unwell.

What I've decided about what I can (and can't) consider – and why

Neither party has provided any further evidence and/or arguments in relation to this. As such, I see no reason to depart from my provisional findings on this (which form part of this final decision).

What I've decided about the things I can consider – 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 M has said he thinks Nationwide should be made to do more than it has. As such, I take it that he disagrees with my provisional findings in relation to the forbearance measures Nationwide offered and (related to this) it not having allowed him to move onto a fixed rate.

However, other than a general comment that Nationwide should be made to do more, Mr M hasn't offered any specific evidence and/or arguments in response to the detail of my provisional findings on these topics. As such, whilst I appreciate his perspective and have much sympathy for the health challenges he has faced and continues to face, I see no reason to depart from my provisional findings.

I still find (for the reasons given in my PD) that the forbearance Nationwide offered to him from May 2022 up to the point he raised his complaint was reasonable given the circumstances. I also still find that Nationwide hasn't acted unfairly by not offering Mr M a new rate as a forbearance measure, in the same time period.

Mr M has said that, in general, lenders should be required to do more where borrowers are very unwell. My role is to consider Mr M's individual complaint and it is neither necessary nor appropriate for me to make any broader comment in this decision.

Mr M hasn't provided any further evidence and/or arguments about income and expenditure assessments or the payment of Leaseholder and associated fees. As such, I see no reason to depart from the findings set out in my PD in relation to these topics.

Finally, as set out in my PD, Nationwide has said that it began allowing some borrowers in arrears to switch products from July 2023, but this hadn't been discussed with Mr M because there hadn't been any phone contact with him since May 2023.

If it hasn't already done so, Nationwide should consider this and let Mr M know whether this means that it can offer him some kind of new rate.

My final decision

My final decision is that I don't uphold Mr M's complaint about Nationwide Building Society.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or

reject my decision before 21 February 2024.

Ben Brewer
Ombudsman