

## **The complaint**

Mr and Mrs P complain that Nationwide Building Society (Nationwide) acted irresponsibly when they extended loan facilities to them in 1987 and 1988.

## **What happened**

- In 1987, Nationwide granted Mr and Mrs P a £100,000 commercial loan to purchase and convert an existing building into a residential care home.
- According to Nationwide, as this was a start-up business, initially a moratorium on the loan repayments was agreed and this was set to last until November 1987.
- In 1988 Mr and Mrs P were granted a further advance of £30,000 to help with the purchase of adjacent land. This was so that a further building could be erected in order to facilitate Mr and Mrs P's proposed expansion of their care home business.
- At the time both loans, which comprised the 1987 lending and associated rolled up interest, as well as the newly agreed further advance were combined into one loan totalling £139,000. I'll refer to both advances together as "the Loan".
- Unfortunately, Mr and Mrs P were unable to secure the number of care home residents they'd hoped for, added to which they were also unable to obtain planning permission to build on the adjacent land as they'd intended. So, by January 1989 repayments began to fall into arrears.
- Attempts were made by Mr and Mrs P to diversify the business - including changing the use of the main property from a residential care home to student accommodation. But Mr and Mrs P were unable to meet the required payments towards the Loan and arrears continued to accrue.
- Mr and Mrs P told the society they intended selling the properties, but it would appear this was unsuccessful.
- In August 1991 the Loan was restructured to consolidate the arrears. In addition, the term of the borrowing was extended to 25 years, which according to Nationwide was so that the repayments towards the Loan would be reduced. The consolidated balance stood at just over £162,000.
- Nonetheless, despite the restructure, repayment problems persisted, and further arrears accrued. And in 1993, the bank turned down Mr and Mrs P's request for further borrowing.
- In January 1994 Nationwide obtained possession of the properties. A few months later, in April 1994 they were sold for £170,000. This left a shortfall of just over £47,000, which the society secured by way of a charge over Mr and Mrs P's home.

- In the succeeding years, Nationwide contacted Mr and Mrs P regarding their repayment proposals for the shortfall. But there were no such proposals from Mr and Mrs P. So, in April 2019, Nationwide contacted Mr and Mrs P again regarding such proposals.
- However, Mr and Mrs P didn't think the request from Nationwide was fair and therefore, they didn't think they should be required to settle the shortfall. So, they complained to the society saying:
  - Nationwide knew their circumstances at the time they were granted the Loan. In particular, that they were having difficulties securing enough care home residents to make their business viable.
  - At the time they applied for the further advance in 1988, the society knew about their local authority's refusal to grant them planning permission to build on the adjacent land. But the society, still lent them money for that development.
  - They were already in arrears and struggling with their repayments at the time of the further advance. So, Nationwide shouldn't have lent them any more money.

Nationwide said they have few records available regarding the Loan, and are unable, for example to provide anything demonstrating the affordability checks they'd carried out at the time it was granted to Mr and Mrs P. They said that's because prior to the 1991 restructure, the Loan was with another entity of the society and following the restructure, the Loan was classed as redeemed, meaning the old records were destroyed in line with the society's retention policy.

But Nationwide said they believe they'd have carried out a thorough lending assessment of Mr and Mrs P's before they agreed to grant the Loan to them. Therefore, they didn't think their lending was irresponsible.

Unhappy with Nationwide's response, Mr and Mrs P referred their complaint to this service.

Our investigator didn't uphold the complaint. She noted that given the length of time that has elapsed since the Loan was granted to Mr and Mrs P, Nationwide have no actual evidence of the affordability checks they said they carried out at the time. But she wasn't persuaded by the available evidence that the society's lending to Mr and Mrs P was irresponsible. In particular, that the society granted them the further advance in 1988 when they were already unable to meet their repayments and were therefore in arrears.

Mr and Mrs P didn't accept the investigator's conclusions and have asked for an ombudsman's review of their case.

In their response, they have largely maintained their position that the society did not act responsibly when granting them the Loan. And they still believed the society granted them the further advance, when they were experiencing repayment difficulties and were already in arrears. They don't believe Nationwide should have agreed to the further advance to purchase the adjacent land in the absence of planning permission to erect a further building to expand their care home.

As Mr and Mrs P's complaint remained unresolved, it was passed to me to consider

### **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.

Where the evidence is incomplete or inconclusive (as indeed some of it is here) I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

I start by saying that financial businesses have discretion regarding their lending. And in respect of Nationwide when making their decision whether or not to lend to Mr and Mrs P, that's a matter for the society's own commercial judgement.

Generally speaking, it's not for me as ombudsman to interfere with that judgement. Especially, in circumstances where, in my opinion, the society has exercised that judgement fairly after giving proper consideration to Mr and Mrs P's application.

At the heart of Mr and Mrs P's complaint is that they think the lending by Nationwide to them was irresponsible.

To help me determine that question I would ordinarily have had regard to any relevant industry codes as I'm required to do under our DISP rules – more particularly DISP 3.6.4. But here, I face some difficulty in the sense that the Loan predates the codes that came into effect later. In particular, the lending code which set certain obligations on its subscribers to assess whether their customers would be able to repay the lending that's been made available to them. That code was issued in 2011, some years after Nationwide granted the Loan to Mr and Mrs P.

That being said, the society acknowledges it had an obligation to lend responsibly and believes it did.

The society says that as part of its checks, it would have required various items of information from Mr and Mrs P for sending to its underwriting team to approve the Loan. And that the information it would have needed included:

- Income and Outgoings Analysis to confirm disposable income to meet the repayments.
- Serviceability analysis at the then current rates and stressed rates to protect against interest rate rises.
- Confirmation of income from any paid employment at the time.
- Valuation report to confirm operating income that could be generated from the properties including a view on alternative uses.

But Nationwide have said they cannot provide actual proof these checks were carried out at the time of the Loan. And without the point-of-sale documentation and background notes it is difficult for me to say for sure whether the society did so.

That being said, I have to bear in mind the Loan was granted around 35 years ago and furthermore, since then, the properties against which the Loan was secured have been sold and the lending redeemed. So, it would be difficult for me to conclude the society was at fault for failing to retain those records and being unable to produce them now in support of its position.

That, however, is not an indication the checks weren't carried out nor does it mean the Loan was granted irresponsibly.

From their own records Mr and Mrs P have sent me a copy of the following:

- A letter the society sent to them in October 1986 as part of their initial discussion leading up to the 1987 initial lending.
- Their 1987 statement showing the repayments they made over the course of the year from April 1987 when that first loan was granted to March 1988.
- A copy of the correspondence between their local authority and architect regarding the outcome of a 1987 planning application.

I start with the 1986 correspondence. In it, and to help consider their application, the society said it needed various items of information from Mr and Mrs P - including:

- Confirmation of 3 months' worth of salary details.
- Evidence of qualification.
- A breakdown of the costs of the conversion of the property being purchased.
- Details of fixtures; fittings and furnishings.
- The amount and source of Mr and Mrs P's contribution towards the purchase, fees, stock and working capital.

The information requested appears to be both detailed and relevant to an affordability analysis. And it supports what the society has told us regarding the information Mr and Mrs P would have been asked for to help it determine whether to grant the Loan.

It seems likely Mr and Mrs P would have provided most if not all of the information requested. Or sufficient at least for Nationwide to come to their decision whether to agree the lending. And I think it's likely the society would have weighed up the information before deciding it was appropriate to offer Mr and Mrs P a loan.

Given this evidence, I don't think I can safely say that Nationwide omitted to carry out affordability checks and therefore acted irresponsibly when agreeing to lend in 1987.

I turn next to the 1988 further advance. In relation to that lending, I note Mr and Mrs P have said they were struggling with their repayments and were in arrears at the time it was agreed. So, I've considered very carefully the copy of the 1987 annual statement which they've submitted as proof. The statement records Mr and Mrs P's repayments over the course of that year.

As noted above, Nationwide said since Mr and Mrs P's business was a new start up, the society agreed to allow them a moratorium on repayments until November 1987. And I can

see the 1987 statement reflects that. In other words, it shows that Mr and Mrs P commenced their repayments in November 1987. Although by then there had been a roll up of unpaid interest, this should not be confused with Mr and Mrs P being in arrears.

More importantly the statement shows Mr and Mrs P making regular monthly payments from November onwards. And in the first two months of commencement, payments made were in excess of the interest amount they were required to pay.

That being said, it does appear that when added up, the interest payments due on the Loan between November 1987 and March 1988, compared to the amounts Mr and Mrs P paid, there was a small shortfall of just under £200. But I don't think that's enough for me to be satisfied the statement demonstrates that Mr and Mrs P were struggling to meet their regular monthly repayments, and this should therefore have precluded further lending to them.

I come now to Mr and Mrs P's case that the society agreed to lend to purchase the adjacent land when there was no planning permission to build on it as intended.

I'm afraid the 1987 correspondence with their architects that Mr and Mrs P have shared do not relate to their intended build on the adjacent land. Rather it relates to plans for a rear extension to the existing building that they'd purchased.

But, in connection with the funding of the purchase of the adjacent land, I've seen a copy of the Offer Letter from the society dated 6 September 1988. And I note there were a number of Special Conditions attached to the proposed lending at that time. It is true those conditions don't include the requirement that planning permission be obtained for the proposed new building on that land. What Nationwide required was for there to be a valuation that was satisfactory to the society.

Additionally, I note that Nationwide also set limits to their proposed lending. For example, by restricting such lending to 50% of the freehold valuation of that adjacent land or £139,000 total lending whichever is the lower.

This leads me to conclude that at the time of the further advance in 1988 and bearing in mind the restriction on the lending set out in the Special Conditions, the society took a commercial decision regarding the basis on which it was prepared to help finance the purchase of the adjacent land. This does not in my opinion suggest it was being irresponsible in its approach.

Overall, looking at the evidence as a whole, I've not been persuaded Nationwide acted irresponsibly when they granted the Loan to Mr and Mrs P

### **My final decision**

For the reasons I've given above, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs P to accept or reject my decision before 6 September 2023.

Asher Gordon  
**Ombudsman**