

The complaint

Miss K complains about how Nationwide Building Society handled her application for a mortgage – in particular, that it made mistakes in the property valuation and unreasonably requested an EWS1 form for her property, which resulted in significant delay and ultimately the refusal of her application. As a result, she ended up staying with her existing lender but at a higher interest rate.

What happened

Miss K had a mortgage over her property with another lender. As her existing fixed rate came to an end she consulted a broker with a view to shopping around for a new fixed rate. She applied to Nationwide for a new mortgage, as a new customer, with a five year fixed rate of 1.84%. Her application was submitted in March 2022.

As is usual, Nationwide then arranged a valuation. The valuer said that the property wasn't suitable for mortgage purposes – for reasons including its location and the lack of a lift as well as stairs. As a flat in a block, the valuer said a lift was necessary because the building was five storeys.

Miss K didn't agree. She said the valuer had made mistakes about her property. She said the valuer had got the number of floors in the block wrong and a lift wasn't required. She appealed, and also complained about the valuation.

Miss K says that Nationwide didn't respond to her concerns for some time. Then in May 2022 it told her broker that it would require an EWS1 form for the property.

An EWS1 form is a report prepared by a qualified fire safety professional assessing the fire risk presented by the external walls of a building, and whether remediation work is required. Such reports are commonly prepared for buildings potentially affected by issues such as combustible cladding or balconies – an EWS1 will say that there are no fire safety risks, that there are potential risks, but they are of low concern, or that there are risks such that remediation work is required. There is guidance from their professional body (the Royal Institution of Chartered Surveyors or RICS) to valuers on the types of properties and circumstances where an EWS1 might be necessary to be able to value a property.

Miss K said that her building is only four storeys high (the valuer said it was five) and RICS guidance was that an EWS1 wasn't required. Her building owner hadn't obtained one and it wasn't reasonable for Nationwide to ask for one as part of the mortgage application. She said her existing mortgage lender hadn't asked for one, and neither had other lenders who had lent to her neighbours.

Nationwide said the valuer had said the property was unsuitable to use as security for the mortgage. That was because it was a block of flats above commercial premises with no lift. It had noted Miss K's appeal and passed it to a senior valuer for his comments; it was at that point that the valuer asked for an EWS1. Nationwide said it was entitled to rely on the valuer's professional opinion.

Miss K therefore remained with her existing lender and took a new interest rate. As interest rates were rising at the time, by the time she applied to her existing lender the best available rate was 3.4% rather than the 1.84% she'd hoped to get with Nationwide.

Miss K complained to us. She said the valuer had made mistakes and there was no need for an EWS1. While she accepted that Nationwide was generally entitled to rely on the opinion of a valuer, obvious mistakes should be corrected. And the valuer was applying Nationwide's lending criteria – which unreasonably required an EWS1 even when RICS guidance said it wasn't necessary. She said that Nationwide hadn't considered her application fairly and had also taken far too long to deal with it. The whole process had been very stressful and had ended up with her having to pay more interest than she should have done.

I've previously issued a decision setting out why we could consider Miss K's complaint. Following that, our investigator said that he didn't think it should be upheld. So Miss K has asked for an ombudsman to decide the merits of her complaint.

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.

Miss K says her flat is in a four storey building. It is accessed from street level and the only access is to four storeys of flats. She's provided photographic evidence, along with a letter from the freeholder.

The letter from the freeholder does say that the residential units are four storeys. They have their own dedicated entrance at street level. There are two flats on each floor, with Miss K's flat being on the fourth floor. The residential elements are separate from adjacent commercial units which occupy the ground floor.

However, I also think it was reasonable for the valuer to conclude that it was a five storey building. The entire structure consists of a commercial unit at ground floor level. That is an independent premises with its own entry point. On top of that commercial unit is a block of flats. The block of flats has its own separate street level entry point – leading directly to a flight of stairs to the first floor, with flats on the first second third and fourth floors. Miss K lives on the fourth floor.

So Miss K's residence is part of a four storey block of flats. It's accessed directly from street level and there is no communicating access to the ground floor commercial unit below. But the entire building, including the commercial unit, is five storeys. It's a four storey block of flats on top of a single storey commercial unit. While the commercial unit is not accessible from the flats, they are all part of the same structure. The four storey block of flats begins one storey above ground level as part of a wider five storey building.

Nationwide's lending criteria say:

“All flats in blocks and Scottish tenements not exceeding five storeys* in height will be acceptable at the discretion of the valuer. This is subject to the valuer accepting the guidelines and restrictions on non-traditional construction.

...

Flats in blocks over four storeys high should have a lift. This also applies when the subject flat is on the lower floors. We can make some exceptions, but this is subject to marketability and valuers' recommendation.

*Five storeys means a ground floor with four floors above, ignoring any basement.”

Miss K’s flat was on the fifth storey of her building, though the fourth floor of the dedicated residential part of the building. The requirement for a lift is a health and safety requirement related to the height above the ground, not the height solely of the residential element. To access her flat Miss K has to go up four flights of stairs – street level to the first floor of flats, and then on to her own flat on the fourth residential floor. If she lived on the top floor of a four storey building rather than a five storey building, she would only need to go up three flights of stairs. It’s the entire building, not merely the residential element, that’s important.

In the circumstances I think it was reasonable for the valuer to conclude that this was a five storey building and that therefore to satisfy Nationwide’s lending criteria there should have been a lift. On that basis the valuer recommended rejecting Miss K’s property.

Nationwide was entitled to rely on the valuer’s opinion in making its lending decision. It considered the evidence Miss K provided and asked the valuer to comment on it. But for the reasons I’ve explained above, I’m not persuaded that the evidence Miss K provided shows that the valuer made an obvious error which ought to have led Nationwide to disregard his professional opinion. It was reasonable to conclude that while the residential element was four storeys, the residential element was on the upper storeys of a five storey building and so should have been treated as a five storey building.

Miss K says that Nationwide mis-handled her mortgage application and caused substantial delay because it – or the valuer – made a factual mistake about the nature of her property. But for reasons I’ve explained, I don’t agree about that. I don’t think the evidence shows that the valuer did make a mistake, or that Nationwide acted unreasonably in relying on his opinion to say that the property wasn’t suitable for a mortgage.

Miss K decided to appeal the Nationwide valuation. A senior internal valuer reconsidered the valuation and the wider circumstances. As the lending criteria I’ve quoted above says, exceptions can be made in certain circumstances. Nationwide’s internal notes record the feedback from the valuer as:

The scheme is modern with separation from ground floor users.

So I would accept this type of scheme even though central, it is near the station and shops, it will sell and let.

I have estimated six sales in the block / this postcode in the last 3 years...

But the penthouse appears to have thin walling and timber clad with extensive timber decking to terrace, so if construction acceptable we need an EWS1 for this valuation.

So I would accept subject to EWS1 and say sales show an acceptable market, so overrides no lift in 5 storey building.

The original valuer rejected the property outright because it sat outside Nationwide’s lending criteria. He didn’t ask for an EWS1 because there were other reasons to reject the property as suitable security for lending.

On appeal, the second valuer agreed to set aside the requirement for a lift on the basis that the history showed it was unlikely to affect the marketability of the property – applying the exceptions in the lending criteria. However, that meant that other considerations which (because of the refusal) the first valuer hadn’t needed to consider now became relevant – which led to the request for an EWS1.

RICS guidance at the time was that an EWS1 was required on blocks above six storeys / 18 metres high. This was a five storey building below 18 metres – in those cases, RICS guidance was that an EWS1 was not required unless there was reason to believe there might be a cladding risk. The guidance says it should be required for a five storey building where there is a significant amount of cladding (meaning one quarter or more of an elevation), where there is combustible cladding of particular types, or where there are stacked balconies constructed with or linked by combustible material. Even if those factors aren't present, that doesn't mean an EWS1 must not be requested – the criteria are merely guidance and the valuer must always exercise professional judgement. An EWS1 will be justified where those criteria are met, but may also be justified in other cases where, in the valuer's professional judgement, there is a potential risk to be assessed.

The second valuer in this case noted that Miss K lived on the top storey (referred to as the penthouse) which was of different, and potentially more risky, construction to the rest of the building. He therefore required an EWS1 to confirm whether or not there were specific risks associated with Miss K's particular part of the wider structure.

That was a reasonable decision for the valuer to make. He gave a rational reason for requiring an EWS1 which was within the broader guidelines to valuers. Miss K's building has stacked balconies with timber decking, and while her floor does not have a balcony the valuer noted it was timber clad with a timber-decked terrace. Timber is a combustible material.

Miss K points to an agreement by certain lenders, including Nationwide, not to require EWS1s on buildings below 18 storeys, or to lend where there is a remediation plan in place – which she says there was for her building. However, I don't think that general agreement means that Nationwide will always accept an application or can't apply discretion in individual cases, or that it can't request an EWS1 in an individual case where it has specific concerns. In any case, the agreement dates from July 2022 – after this application – and so isn't relevant to this case.

Miss K also says that other lenders, including her existing lender, have accepted mortgage applications for this property. Her neighbour got a mortgage from another lender – that lender originally asked for an EWS1 but then accepted the neighbour's explanation of why one wasn't required.

That may be so, and it may also be the case that it's not a legal requirement for there to be a lift – the legal requirements depend on several factors, including the nature of the building and when it was built – or a legal requirement for there to be an EWS1. But mortgage lenders are entitled to have criteria about whether they are willing to accept particular types of property, and what reassurance they require before doing so. Different lenders may legitimately take different views about a particular property; it isn't unfair that Nationwide's criteria are different to those of other lenders, or higher than minimum legal requirements. Nor is it unfair that Nationwide is more cautious about the need for an EWS1 than other lenders – especially where, as here, the request for one is not inconsistent with the guidance.

The initial valuation was in line with Nationwide's lending criteria about the requirement for lifts in blocks of flats. On appeal, a senior internal valuer agreed to set aside that requirement because of specific evidence about this property – but raised further concerns about the construction of Miss K's specific flat. This second decision was not a decision to decline to lend – it was a decision to lend, subject to there being a satisfactory EWS1. But Miss K couldn't provide an EWS1, allowing the application to proceed, because her building owner didn't think one was needed and hadn't obtained one. I've referred above to the RICS guidance – it does, in the case of properties below six storeys, give discretion to individual

valuers. In this case, the valuer gave a credible reason for requiring an EWS1 before agreeing to lend. It's unfortunate that Miss K's building owner took a different view, but that doesn't mean Nationwide's decision was outside the range of reasonable decisions.

I'm not therefore persuaded that Nationwide acted unfairly in first rejecting the property and then, on appeal, agreeing to accept it subject to an EWS1. Both decisions were consistent with Nationwide's lending criteria and the second was consistent with RICS guidance, and both relied on the professional judgement of qualified valuers.

I'm also not persuaded that there was unreasonable delay. Nationwide gave Miss K the outcome of the valuation promptly after her application. The valuation took place on 22 March, and Miss K was given the outcome on 31 March. It was then her decision to contest the valuation rather than apply to another lender or to her existing lender. She did so, and Nationwide told her that it would accept the property, subject to EWS1, in early May. Miss K then complained about and tried to appeal the second decision.

I appreciate Miss K didn't agree with that decision and continued to contest it, but as I've said I'm not persuaded the decision was unfair. Miss K herself says that her existing lender still had rates as low as 1.9% available in early July, some two months after Nationwide told her of its decision, and I don't think I can reasonably hold Nationwide responsible for the fact that Miss K didn't apply to her existing lender until later in July, after rates rose.

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 Miss K to accept or reject my decision before 8 February 2024.

Simon Pugh
Ombudsman