

The complaint

Mrs S and Mr S complain that Nationwide Building Society made an error in their mortgage offer which led to them accepting a mortgage on incorrect terms.

What happened

In November 2022, Mrs S and Mr S applied to Nationwide, through their broker, to port their existing mortgage of £151,143 and borrow more as they were purchasing a new property valued at £280,000.

On 8 December 2022, a mortgage offer was produced showing that their existing mortgage would remain on its current five-year fixed interest rate at 2.04% and a further £88,857 would be borrowed on a two-year fixed interest rate of 6.24%. The contractual monthly payments for their original mortgage would be £523.84, and the monthly payment on the additional borrowing would be £529.62. The offer shows that the deposit they intended to put down was £40,000.

In February 2023, Mrs S and Mr S' broker notified Nationwide that the property price had been reduced to £265,000 and as such, they would need a revised mortgage offer to reflect that the amount of new borrowing would also reduce to £77,857.

On 7 February 2023, a new mortgage offer was produced showing that their existing mortgage would remain on its rate at 2.04% and a further £77,857 would be borrowed on a two-year fixed interest rate of 6.24%. The contractual monthly payments for their original mortgage would remain at £523.84 a month, but the monthly payment on the additional borrowing was listed as being £269.84 per month. The offer shows that the deposit they intended to put down was £36,000.

Mrs S and Mr S completed on their purchase in mid-February 2023, but when the first direct debit was taken for the new borrowing in April 2023, an amount of £464.06 was taken rather than the £269.84 they expected.

Mrs S and Mr S complained to Nationwide who investigated the matter and found that a mistake had been made. The correct contractual monthly payment for the additional borrowing of £77,857 on a two-year fixed rate at 6.4% set out in the offer, should have been £464.06.

Nationwide offered Mrs S and Mr S £300 in compensation for the distress and inconvenience caused but did not think it should honour the incorrect contractual monthly payment set out in the offer.

Dissatisfied with Nationwide's response, Mrs S and Mr S referred their complaint to our service.

One of our investigators reviewed the complaint and felt Nationwide's offer was fair. He found that Nationwide did not have to honour the error in the mortgage offer because it was an obvious mistake. He also thought the error should have been spotted by Mrs S and Mr S'

broker as the amount borrowed had only decreased slightly and the loan was on the same fixed interest rate.

Mrs S and Mr S disagreed with the investigator's findings and asked that the complaint be referred to an ombudsman.

They highlight that Nationwide accepted it had made an error, so they dispute and take offense to any suggestion that they or their broker are responsible for what happened. Instead, they think Nationwide should honour the contract they entered into with it – namely, the monthly payment of £269.04 for the new borrowing. They refer to the mortgage offer taking priority over any other document to support their position. They've also said that it is incorrect to assume they still would have gone ahead with the purchase had they known the correct figure, as their circumstances had changed significantly between the first offer in December and the revised offer in February.

As the complaint could not be resolved informally, it has now been passed to me for 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.

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When considering what is fair and reasonable in all the circumstances, I am required by DISP 3.6.4R of the Financial Conduct Authority's ("FCA") Handbook to take into account:

'(1) relevant:

- (a) law and regulations;
- (b) regulators' rules, guidance and standards;
- (c) codes of practice; and

(2) (where appropriate) what [I consider] to have been good industry practice at the relevant time.'

I also focus on what I think is material and relevant to reach a fair and reasonable outcome. So, although I have read everything that has been supplied to me, I may not address every point that has been raised.

Having done all that, I'm satisfied that this complaint should be upheld but I am not going to increase the amount of compensation Nationwide has already offered. I realise this will be disappointing for Mrs S and Mr S. But I hope the reasons I have set out below will help them to understand why I have come to this conclusion.

It is accepted by all parties that Nationwide made an error that should have been picked up before the offer was sent to Mrs S and Mr S. But this does not mean it should automatically be bound by its mistake and made to honour the incorrect figure quoted – particularly if to do so would be to Mrs S and Mr S's detriment. Instead, there are a number of factors to take into consideration which I have set out below.

Once accepted, a mortgage offer forms part of the binding contract between the borrower and the lender. It sets out the terms that the lender is willing to lend on and the conditions under which the borrower must repay the debt. As such, it is not a document that is typically

open to amendments post acceptance. However, mistakes do happen and so when considering this case, I need to decide whether Nationwide should be made to honour the contract as its written or if the mistake was such an obvious error that making Nationwide honour the mistake would fundamentally undermine the purpose of the contract. I also need to consider whether Mrs S and Mr S would have done anything differently had they been given the correct information before completion.

I understand that when Mrs S and Mr S applied for the revised mortgage offer, they expected their contractual monthly payment to decrease as the amount they were borrowing was lower. The contractual monthly payment in the first offer was £529.62 a month for a loan of £88,000 at 6.4%. The contractual monthly payment in the second offer was of £269.84 a month for £77,000 on the same rate.

The amount borrowed decreased by about 12% and the interest rate stayed the same, but the contractual monthly payment decreased by about 50%. I am satisfied that this was a clear error, and one that I think it's reasonable to say Mrs S and Mr S or their broker ought to have queried.

Further to this, if Mrs S and Mr S paid the incorrect contractual monthly payment, they would risk not paying enough to clear their mortgage balance by the end of its term. They entered a mortgage with a contractual obligation to repay the total sum borrowed at the interest rate specified – Nationwide's error does not change this requirement on Mrs S and Mr S. To fully repay their mortgage by the end of the term, they must pay the correct contractual monthly payment.

It would not be in Mrs S and Mr S' best interests to pay a lower contractual monthly payment than is needed to repay their loan as this would risk the mortgage becoming underfunded and arrears accruing. I am therefore satisfied that Mrs S and Mr S should pay the correct contractual monthly payment, rather than the one listed in error on their mortgage offer.

I have also considered what Mrs S and Mr S have said they would have done had they been given the correct information about their contractual monthly payment in their mortgage offer. They have said that they would have reassessed the house purchase or increased their deposit by between £15,000-£20,000, but that these funds are no longer available.

I'm not persuaded that Mrs S and Mr S would have withdrawn from the house purchase had they been given the correct information earlier. Mrs S and Mr S were willing to proceed with the purchase when the contractual monthly payment on the additional borrowing was £529.62. As Mrs S and Mr S were willing to go ahead when the monthly cost was higher, I'm not persuaded that they would have withdrawn from the process and started looking at other properties upon finding out that, while the payment was not going to be £269.84, it was still lower than they had originally agreed to repay.

While Mrs S and Mr S's circumstances had changed during this period, I haven't seen any evidence that this led to them discussing with Nationwide that the property may no longer be affordable for them. Instead, they continued with the intention to purchase the property in question – the amended mortgage offer was as a result of a reduction in property price, not Mrs S and Mr S determining that they now needed to look at more affordable properties because they had a child on the way.

Mrs S and Mr S have also alluded to increasing their deposit amount to reduce the monthly repayment. But it would appear the funds they would have used to do this were already earmarked for another purpose as they no longer have the savings. It is also noteworthy that they were intending on keeping these funds rather than put a higher deposit in when they agreed the original contractual amount of £529.62. As such, based on the evidence

available, I am not persuaded Mrs S and Mr S would've taken this action to reduce their borrowing had they been made aware of Nationwide's error.

Finally, I have thought about whether the error has caused Mrs S and Mr S financial difficulty. I have seen no evidence to suggest that the contractual monthly payments at the correct level are unaffordable for Mrs S and Mr S or that they have struggled financially since they have been paying them. And it is worth noting that Mrs S and Mr S went through an affordability assessment for the higher amount of borrowing and were comfortable with the repayment amount at that stage.

I am therefore not persuaded that Mrs S and Mr S would have done anything differently had they been given the correct contractual monthly payment amount in their mortgage offer. I appreciate that this error in the mortgage offer has caused Mrs S and Mr S distress and inconvenience at a time when they were expecting their first child and moving house and I agree that compensation is due for this. I have therefore thought about the impact the error has caused.

I can see that Nationwide sent Mrs S and Mr S a first payment letter on 20 February 2023 confirming that their contractual monthly payment on the additional borrowing would be £464.06 (the correct amount). I appreciate that Mrs S and Mr S had already completed on their purchase at this point, but they had some notice before the amount was taken as a direct debit in April 2023. However, for about two weeks they incorrectly believed their contractual monthly payment would be around £200 a month cheaper than it should have been.

As explained above, I don't think this would have changed what they did overall or caused them financial difficulty, but I appreciate this would have caused them disappointment and trouble when they realised they would need to replan their monthly finances.

Having considered the submissions of Mrs S and Mr S and thought about our usual approach to such awards, I think Nationwide's offer of £300 is fair for the distress and inconvenience caused and I am not going to direct that it increases this.

My final decision

For the reasons set out above, I uphold this complaint in part and direct Nationwide Building Society to pay Mrs S and Mr S £300 as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S and Mr S to accept or reject my decision before 17 April 2024.

Lucy Wilson
Ombudsman