

The complaint

Miss B and Mr P complaint about incorrect information given to them by Nationwide Building Society in relation to the “borrow back” facility on their mortgage.

What happened

Miss B and Mr P have a mortgage with Nationwide which was taken out in 2018. They’ve made overpayments since having the mortgage.

In February 2022, Mr P phoned Nationwide. He was looking to switch the mortgage to a fixed rate and wanted to know whether he was able to borrow back overpayments if he took a new rate. He was told that he was, subject to an application and affordability checks. Miss B and Mr P took a new fixed rate shortly after which was applied for online.

In October 2022, Mr P contacted Nationwide to discuss borrowing back some of the overpaid amount. He was told this wasn’t a feature on their mortgage.

Mr P complained to Nationwide about this. Nationwide responded agreeing he was given incorrect information in the call of February 2022. However, it didn’t agree that Miss B and Mr P should be allowed to borrow back the overpayments. Nationwide paid £50 compensation for the incorrect information.

Unhappy with this response, Mr P referred the complaint to our Service. One of our Investigators looked into things. He agreed that Mr P had been given incorrect information. But he said that an overpayment feature wasn’t a part of Miss B and Mr P’s mortgage. He thought that £50 compensation was fair in the circumstances.

Mr P didn’t accept this. He said if he’d been given correct information during the call in February 2022, he would’ve applied to borrow more money at the time of changing his mortgage rate. Mr P asked that the complaint be considered by an Ombudsman. So, it’s been passed to me to review and make a decision.

I reviewed the complaint and issued a provisional decision on 21 November 2023. In this decision, I said:

It’s not disputed that Mr P was given incorrect information by Nationwide in the call of February 2022. I’ve been provided with a recording of that call which I’ve listened to.

Within that call, Mr P says he understands he can reborrow his overpayments at any time. He’s told that it’s not as simple as that and that he’d need to apply for it and go through an affordability assessment. He’s also told that he can have additional borrowing at any time and that his overpayments won’t be affected if he switches products.

I agree this information is misleading and incomplete. Borrow back wasn’t a feature of Mr P’s mortgage. And had been removed from Nationwide mortgages taken after 2010. Mr P could’ve borrowed further funds. However, this would’ve needed to be done as a further advance and at a rate available at the time.

I do note within this call though that Mr P wasn't assured that any further borrowing would've been at the rate of the new product he was switching. I can see why he may've thought this. But I think he could've sought further clarification had he been looking to actively use this facility.

Mr P says he would've borrowed more money at the time had he known he couldn't borrow back. I do need to think about whether Mr P would've acted differently had he been given complete information. But having done so, I don't think I can safely say he would've borrowed additional funds had he been given clearer information at the time. I say this because, during the call to Nationwide, there's no indication Mr P is looking to utilise this facility in the short term or that he has plans to borrow back soon. And he didn't get in touch to use this facility for another eight months.

Mr P has said he could've easily achieved more through investment rates had he borrowed additional money at the time. But I think this was unlikely to have been that case at the time Mr P switched products. I say this as, Mr P switched products, interest rates were still very low. So, interest rates offered to savers at the time were much lower than they are now. Whilst they'd risen a small amount, they were yet to start rising in the way we've seen them rise in the past 18 months. I don't think Mr P could've known at the time that rates would be as high as they are now. And whilst he could now be getting rates higher than that of the mortgage fixed rate he took, this is using the benefit of hindsight.

I've also considered the fact that the mortgage offer didn't make any reference to a borrow back facility. Taking all of this into account, I don't intend to ask Nationwide to allow Mr P to borrow back funds at the fixed rate he took in February 2022. This was never a feature of this mortgage.

I've considered the compensation of £50 Nationwide has paid to Miss B and Mr P. Having done so, I don't think this amount is sufficient. Whilst borrow back was never a feature of Miss B and Mr P's mortgage, the misinformation did lead him to believe he could borrow back the funds, and he assumed this would be at the fixed rate. He's since discovered this is not the case. This must've been upsetting for Mr P. He thought he could access funds at what is now a very competitive rate, only to find out he couldn't. And if he does now decide he wishes to borrow additional funds, he will need to pay a higher rate than he was expecting. Based on this, I'm minded to tell Nationwide to pay Miss B and Mr P an additional £200 compensation.

I invited both parties to provide any further comments or submissions they had before 5 December 2023. Nationwide accepted my provisional decision. But Miss B and Mr P didn't. Mr P responded in detail setting out why he disagreed.

The complaint has now been passed back to me to review and make 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.

Having done so, I'm satisfied that the outcome within my provisional decision is a fair one, and for the same reasons. But I'll address some of the points in Mr P's response. The findings within my provisional decision (set out above) should be considered part of this final decision.

Firstly, I want to acknowledge that Mr P has responded in great detail to my provisional decision. And I understand he feels very strongly about this matter. I want to reassure him that I've read everything he's said and thought about all of the points that he's raised within his response to my provisional decision. I may not respond to each and every point. Nor will I respond in the level of detail in which Mr P has set out his response. I hope that Mr P

realises I mean no disrespect by this. But this simply reflects the informal nature of our Service. Instead, I'll respond to what I consider the key points of Mr P's response to my provisional decision.

The crux of Mr P's response is that he always intended to borrow back the funds at a later stage and that he would've acted differently had he been given correct information. He's said that many economists expected rates to increase, and his decision was based in part on this. Furthermore, he was also considering home improvements which he could've used this money for at a competitive rate.

I've accepted that Mr P was given mis-leading information. And I'm willing to accept that he may well have wanted to borrow back these funds at a later stage. But, put simply, this was never an option to Mr P. Borrow back was no longer a facility on mortgages with Nationwide after 2010 and had never been a feature of Miss B and Mr P's mortgage.

This means that, had Miss B and Mr P wanted to access funds he would've needed to actually borrow additional money at the time of the product switch. They couldn't just apply for it and have it as a reserve. So, I need to consider whether I think it more likely than not that Miss B and Mr P would've taken this action at the time had they been given correct information.

When making a decision such as this, where I can't know what would've happened. I need to make my decision on the balance of probabilities. That is, what I think is most likely given the information I do have.

I accept that many economists did think that rates were likely to increase. However, I also note that this was many months before the "mini budget" which had the most significant effect on interest rates, and I don't think this had been foreseen within the markets at this time. So, I don't think Mr P was likely making plans based on an assumptions of interest rates being as high as they are now.

Had Miss B and Mr P applied for additional borrowing at the time of the product switch, this would've meant that they would've been paying interest on this money which they had no firm plans for at the time. And it's for this reason that I don't think I can say that, on balance that Miss B and Mr P would've borrowed additional funds and paid interest on these funds at the time of the product switch had they been given correct information.

As I said within my provisional decision, with the benefit of hindsight, having taken additional funds at this time would now seem a wise decision. But, for the reasons given above I'm not persuaded that Miss B and Mr P would've decided to take the additional borrowing, and paid interest at the time without any firm plans of how or when they might use it, even if they had been given complete information during the time of their application.

Putting things right

As explained within my provisional decision, I agree this matter has caused some distress and inconvenience to Miss B and Mr P. And for that reasons, Nationwide Building Society should pay Miss B and Mr P a further £200 compensation. I'm not going to ask it to do anything more.

My final decision

I uphold this complaint and require Nationwide Building Society to put matters right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B and Mr P to accept or reject my decision before 8 January 2024.

Rob Deadman
Ombudsman