

The complaint

This complaint is about Miss H and Mr S' mortgage with Nationwide Building Society. They say Nationwide gave their broker wrong information about their ability to reserve a new rate for their current mortgage at the same time that they were applying for a new mortgage to fund a house move.

What happened

The broad circumstances of this complaint are known to Miss H and Mr S and Nationwide. I'm also aware that the investigator issued a detailed response to the complaint, a copy of which has been sent to all parties, and so I don't need to repeat the details here.

Our decisions are published, and it's important that I don't include any information that might result in Miss H and Mr S being identified. Instead I'll give a brief summary of the main points, rounding the figures, focus on giving the reasons for my decision. If I don't mention something, it won't be because I've ignored it. It'll be because I didn't think it was material to the outcome of the complaint.

Miss H and Mr S' existing mortgage was on a fixed rate of 1.54%, which was due to expire on 31 August 2022. As is the norm with such deals, an early repayment charge (ERC) would be payable if they exited the deal early. In the normal course of events, Nationwide's rules would have allowed them to reserve a new fixed rate from 1 April 2022 onwards, and for that rate to take effect from 1 June 2022, without incurring the ERC.

However, Miss H and Mr S had already applied to Nationwide for a new, bigger, mortgage to move house, and an offer had been issued on 31 March 2022. Under the terms of the new offer, they were "porting" - i.e. transferring - the existing fixed rate to the new mortgage and then taking a new fixed rate of 1.84% fixed for three years for the additional borrowing. What Nationwide failed to make clear to their broker was that Miss H and Mr S couldn't use the normal rules to reserve a successor rate for the existing mortgage at the same time as applying for the new mortgage.

Miss H and Mr S had to wait until they had completed the new mortgage on 27 May 2022, and as soon as they were eligible, reserve a successor rate for the ported element on which the fixed rate was due to expire on 31 August 2022. Rates had gone up in the meantime, and they ended up secured a new fixed rate of 2.79% for the carried over borrowing.

The gist of Miss H and Mr S' complaint is that Nationwide didn't provide enough information to make an informed choice about the alternative course of action they could have taken. Nationwide accepted it didn't give them the right information, and paid £100 to their current account by way of an apology.

Miss H and Mr S brought their complaint to us; one of our investigators looked into it, but didn't recommend it be upheld. He wasn't persuaded Miss H and Mr S would have acted differently if they'd had all the information they should have had. Miss H and Mr S asked for the complaint to be reviewed by an ombudsman.

What I've decided – and why

I'll start with some general observations. We're not the regulator of financial businesses, and we don't "police" their internal processes or how they operate generally. That's the job of the Financial Conduct Authority (FCA). We deal with individual disputes between businesses and their customers. In doing that, we don't replicate the work of the courts.

We're impartial, and we don't take either side's instructions on how we investigate a complaint. We conduct our investigations and reach our conclusions without interference from anyone else. But in doing so, we have to work within the rules of the ombudsman service, and the remit those rules give us. It's for me to decide what the material issues are that will affect the eventual outcome. It's also my judgement on what evidence I need to see and consider, in order to reach a fair decision.

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, these are my conclusions, and the reasons for them. This isn't a complaint where I have to decide fault; Nationwide admits it made mistakes and has apologised and offered compensation. All that leaves for me to decide is whether Nationwide's response provides a fair settlement or not.

Nationwide's mistake was not to explain fully to Miss H and Mr S's broker that they could not reserve a new interest rate deal for their existing mortgage at the same time that they were seeking to port the existing rate deal to a new mortgage. Had it done what it should have done, Miss H and Mr S would have understood they had three choices; either

- wait until the new mortgage had gone through, and risk having to reserve a higher new rate for the ported balance (which is what they did);
- cancel the new mortgage application, reserve a new rate on the existing mortgage, and reapply for the new mortgage running the risk that the new borrowing would be at a higher rate; or
- fund the house move with a new mortgage from a different lender, redeem the Nationwide mortgage (incurring an ERC) and hope that the fixed rate they secured from the new lender would insulate them against possible future rate rises and offset the ERC.

It's now a matter of record that interest rates continued to rise during 2022, so much so that Miss H and Mr S would have been better off if they'd mortgaged elsewhere and paid the ERC to Nationwide. But in deciding this complaint, I can't take account what the parties know now. Hindsight can't be a factor in assessing how Miss H and Mr S would have acted if they'd received the right information at the outset.

The conversation between Nationwide and Miss H and Mr S' broker took place at the beginning of April 2022. At that stage, interest rates generally had begun to go up, largely as a response to the global financial reverberations that followed the invasion of Ukraine. I've noted what Mr S has said about his occupation and the insight that gives him into how financial markets behave.

However, with the best will in the world, predicting interest rate movements is a very inexact science, even for the most experienced professionals. It's one thing to suspect that the recent gradual rise in rates would continue; however, it's quite another to be so confident that rates were going to rise that one would be willing to incur a known cost (the ERC) of around £2,000 in anticipation of saving the same amount (as a minimum) through securing a new rate.

As the parties bringing the complaint, it falls on Miss H and Mr S to show, on the balance of probabilities, that it's more likely than not that they'd have been prepared to pay the ERC in the spring of 2022, in the expectation of recouping it through a lower rate. That test, *more likely than not*, is critical here, because equally likely is not enough for me to find in their favour.

Overall, I can't fairly conclude that Miss H and Mr S have passed the *more likely than not* test on this point. From the information they've provided, I'm persuaded they *could* have funded their house move and paid the ERC, but I can only conclude that it is no more than equally likely as not that they *would* have done. For that reason, I don't find that Nationwide needs to pay them redress for the financial loss they're seeking.

Assessing fair compensation for people's time trouble and upset isn't an exact science either; again, it comes down to perception; every situation is different and everything has its own context. Even in the best-ordered situation, some things can or will go wrong in such a complex transaction as a house purchase, and some degree of stress and inconvenience is to be expected. Taking into consideration everything that both parties have said and provided, and mindful of our general approach. I consider that the £100 already paid represents fair and reasonable compensation for Nationwide's admitted shortcomings in this case.

I said at the outset that I wouldn't be commenting on every single point, and I haven't. I have, as I said I would, confined myself to those matters that I consider have a material effect on the outcome. I can see from their submissions how important this is to Miss H and Mr S. That's a natural reaction, and entirely understandable when you're as close to a situation as they have been here. This is very much a subjective area; everyone reacts to and perceives things differently, especially "in the moment", when subject to the stresses that are inherent in a house transaction.

But I have a different remit. I have to be objective, and impartial, and sometimes that means stepping back from the fine detail, taking an overview and deciding what is fair, reasonable and pragmatic in all the overall circumstances of the case. It also means that I'm not required to provide answers to every specific question that comes up if I don't consider doing so will affect the overall outcome.

My final decision

My final decision is that I don't uphold this complaint.

My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further consideration or discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H and Mr S to accept or reject my decision before 7 November 2023.

Jeff Parrington

Ombudsman