

The complaint

Mr C and Mr H's complaint is about a retirement interest-only (RIO) mortgage they had with Nationwide Building Society. They have said that Nationwide failed to disclose information they believe was critical to their decision-making and so the mortgage was mis-sold. The information – that porting had to be simultaneous between properties – meant they had to pay off the mortgage and pay an early repayment charge (ERC). This has meant that they can't afford to purchase an equivalent property to the one they wanted in the area they wanted to move to.

In settlement of the complaint, Mr C and Mr H want Nationwide to at least refund the ERC they paid when they redeemed the mortgage, plus compensation for the anxiety and reduced circumstances they now live in.

What happened

Mr C and Mr H owned their home and in 2020 they applied for a RIO mortgage with Nationwide. The mortgage was designed to run until the later death of either Mr C or Mr H. It was to be set up on an interest-only basis and attached to it was a five-year fixed interest rate product. Mr C and Mr H would need to make monthly payments of the amount of the interest accruing.

The mortgage offer issued to Mr C and Mr H on 6 May 2020 confirmed the nature of the mortgage. It also confirmed some flexible features that applied in section 8 of the attached illustration:

'Porting

You have the right to transfer this product to a new mortgage with Nationwide on another property. However, your application will be subject to the lending criteria at the time.

If a new mortgage is agreed, you can keep this product and its existing features, but any overpayment reserve you have built up cannot be transferred.

An early repayment charge will not apply if you transfer the remaining balance and terms of this product to your new mortgage on the same day as you repay this one.'

Mr C and Mr H decided not to go ahead with this mortgage. Instead, they moved home later in 2020. In early 2021, they again applied for a RIO mortgage with Nationwide on their new home. The money being released was to be used to purchase a holiday home.

The application was accepted, and a five-year interest rate product was attached to the mortgage. The illustration that accompanied the mortgage offer, which was issued on 30 March 2021, contained the same wording about porting as the 2020 offer.

Again in 2022 Mr C and Mr H decided they wanted to move. They applied for a new RIO mortgage on the property they wanted to buy and asked to port the existing interest rate product to the new mortgage. Nationwide accepted the application and issued a mortgage

offer on 8 July 2022, along with an associated illustration of the same date. This confirmed under the main features of the loan that the five-year fixed interest rate product was being ported from their existing mortgage. In relation to porting, it repeated the same information as the 2020 and 2021 illustrations.

Mr C and Mr H decided not to buy the new property in 2022, but they went ahead with the sale of their existing one.

The redemption statement sent to Mr C and Mr H's solicitors on 5 August 2022 documented the amount Mr C and Mr H needed to pay Nationwide to clear their mortgage. At the end of the document there was a section titled 'Porting your mortgage':

'If you're transferring your current mortgage product and rate onto your new property, you won't need to pay the Early Repayment Charge or Redemption Expenses shown on the redemption statement overleaf as long as you meet both of the below:

- *complete the sale of your existing property and the purchase of your new property on the same day and*
- *transfer the entire remaining balance of your existing product.*

Your solicitor will need to take off the Early Repayment Charge and Redemption Expenses before sending the funds to us or contact us on 0345 30 20 11.

If there's a delay between the sale of your existing property and the purchase of your new one, you'll need to pay any applicable Early Repayment Charge and Redemption Expenses. We'll refund these when you complete the port onto your new property. Nationwide won't release their charge on the property at the respective Land Registry until the full outstanding amount has been paid.'

The mortgage was repaid on 30 August 2022. Mr C and Mr H had to pay an ERC of slightly under £3,800. They complained about the lack of information about Nationwide's porting requirements.

Nationwide responded to the complaint in an email of 15 September 2022. It confirmed that it didn't allow non-simultaneous porting on the type of mortgage Mr C and Mr H had taken out in 2020 and so non-simultaneous porting would not be raised by its advisers. Had Mr C or Mr H said during the fact-finding process this was something they wanted the possibility of doing, the issue would have been discussed. In relation to the information contained in the redemption statement, Nationwide didn't agree that it was misleading. It was highlighted that the document didn't detail the terms and conditions of porting. The complaint was not upheld.

Mr C and Mr H weren't satisfied with Nationwide's response and referred the complaint to the Financial Ombudsman Service. When they did so, they explained their understanding of a mortgage being portable involved there being the option for a non-simultaneous sale and purchase. They said that if they had known this was not a possibility, they may not have proceeded with the mortgage at all, or if they had proceeded, it would have been in the knowledge there were restrictions placed on the porting option. Mr C and Mr H believe that Nationwide concealed the nature of the porting option deliberately.

One of our investigators considered the complaint, but she didn't recommend it was upheld. She was satisfied that Nationwide had acted in line with its lending criteria at the time. She also explained that she wouldn't expect a mortgage adviser to discuss every eventuality that could result from an application – the discussions would be based on the needs and circumstances that were established during the fact-finding process. The investigator was

satisfied Mr C and Mr H's queries had been correctly answered and the requirement for simultaneous porting was emphasised. She was also satisfied that as soon as Nationwide was made aware that Mr C and Mr H intended to complete on their sale, but were not progressing with a purchase, that porting the interest rate would not be possible. As such, it hadn't been unreasonable for Nationwide to apply the ERC when the mortgage was paid off.

Mr C and Mr H didn't accept the investigator's conclusions. They said the investigator's view failed to address the main part of their complaint, contained a misleading and inaccurate statement and was biased toward Nationwide. They explained that the main part of their complaint was that Nationwide used a different definition of porting on their mortgage type than it did on its other products, but it didn't highlight this in its documentation or during the course of discussions. They asked for an ombudsman to review the complaint.

I issued a provisional decision on 30 June 2023, in which I set out my conclusions and reasons for reaching them. Below is an excerpt.

'A lender is entitled to decide what types of risk it is willing to take when it lends, and that's not something this service would normally look to interfere with. This then translates into lending criteria and mortgage terms and conditions. Lenders will have different lending criteria for different types of mortgages as they will represent different levels and types of risk. There is nothing wrong with this and we would not uphold a complaint simply because the lending criteria or the mortgage terms and conditions were different to those applicable to a different type of mortgage.'

Nationwide has confirmed that it doesn't offer RIO mortgages on new property purchases – only on properties that are already owned by the prospective borrowers. However, as this would prevent existing RIO borrowers from moving without having to pay an ERC, as a concession it allows existing RIO borrowers to apply for a RIO mortgage on their new property, but this is only allowed if the sale and purchase happen on the same day. If the property is acceptable security for the amount of the borrowing, Nationwide then agrees to the new mortgage and allows the existing interest rate product to be ported.

Mr C and Mr H have said that it is usual for lenders to allow what is called a 'porting window'. This allows, if a new mortgage is taken out within a certain number of months of the old one being paid off, the interest rate product that was attached to the old mortgage to be transferred to the new mortgage and any ERC that has been paid refunded. However, the basic concept of porting involves a simultaneous sale and purchase of properties. While many lenders do at times allow porting windows, with most lenders it is a concession made outside of the terms of the mortgage. This means it is not something a borrower is entitled to. The concession can be added or removed at the lender's discretion and the size of the window can also be variable when the option is available.

Nationwide has confirmed that it only allows simultaneous porting on RIO mortgages. It is allowed to make that decision.

Mr C and Mr H have said the documentation was misleading. I have examined the mortgage offers sent to them between 2020 and 2022 and I am not persuaded the information about porting was misleading. The information set out how and when this could happen. It is written on the basis of the sale and purchase being simultaneous and I note that Mr C and Mr H have confirmed they understood this positioning. While they believe that the information provided should have set out that non-simultaneous porting was not allowed, I don't consider that was necessary. A lender is required to tell a customer how a mortgage works and what can be done. It would be unreasonable to expect a lender to set out all the things that cannot be done under the lending criteria and terms and conditions. The list would be exhaustive and in general a lender's lending criteria is considered to be commercially sensitive and is not something that a lender would be expected to release publicly. If Mr C and Mr H assumed that they could complete a non-simultaneous port if they

needed to do so, simply because the mortgage offers didn't say they couldn't, I can't hold Nationwide responsible for any consequences of that incorrect assumption.

Mr C and Mr H have commented on the information contained in the redemption statement provided to their solicitors. It is correct this is generic information and indicates that a porting window may be an option. However, by this point Mr C and Mr H had already decided to continue with their sale in the knowledge that a porting window was not available to them. I also note the statement was sent to the solicitors, rather than Mr C and Mr H. As such, I don't consider that its contents could have influenced their decision about what to do or misled them.

As our investigator explained to Mr C and Mr H, Nationwide discussed their needs and requirements before it made any recommendation. Again, I wouldn't have expected Nationwide to highlight things that the mortgage couldn't do unless something in the discussions raised needs or wants from Mr C and Mr H that couldn't be provided for by the mortgage. The information Nationwide provided orally was correct and as soon as it understood they wanted to do something the mortgage didn't allow for, they were told clearly that it was not an option.

Mr C and Mr H made the decision to continue with their sale, despite knowing they would have to pay off the mortgage and pay an ERC in the process. They made an informed choice and one that they were entitled to make. However, Nationwide can't be held responsible for the consequences of that decision.

I know that this will disappoint Mr C and Mr H, but I can't find that Nationwide misled them about the porting option or that it was wrong to not allow them a porting window when they wanted one.'

Both parties acknowledged receipt of my provisional decision. Nationwide didn't make any further comment.

Mr C and Mr H said they believed I had placed too much weight on Nationwide's position and had not responded to their reasonable concerns about the way in which Nationwide acted against their interests. They went on to say they thought the last sentence of the porting section of the illustration (above) was ambiguous and suggested alternative wording, which they believe would have made the position clear to them. In addition, Mr C and Mr H said that a porting window not being available on this type of mortgage appears to be unusual for Nationwide's mortgages and so they think it should have been made clear that a porting window didn't apply to this specific product.

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.

Mr C and Mr H have said they believe I have placed too much weight on Nationwide's position. I would firstly explain that we are impartial, and we don't act for either side in a dispute. As such, we also don't take either side's instructions on how we investigate a complaint or how we weigh the evidence provided.

When reviewing this complaint, I have considered all of the evidence and comments provided by both parties. While I have noted Mr C and Mr H's comments, I would confirm that my conclusions are based on an unbiased review of the facts of the case, which are quite basic. I can appreciate that Mr C and Mr H are disappointed with those conclusions, but I can assure them that I have reviewed the complaint from an independent and unbiased

position and not based on Nationwide's opinion about the case.

I have considered all of Mr C and Mr H's further comments. I have also reviewed the file again in its entirety and I have revisited my provisional decision. Having done so, I remain satisfied that Nationwide did nothing wrong and that any confusion or concept of ambiguity on the part of Mr C and Mr H was due to an assumption a porting window would be available to them. As I said in my provisional decision, I can't hold Nationwide responsible for the consequences of an incorrect assumption by a customer.

Mr C and Mr H have said that they don't think that I have responded to their reasonable concerns about the way in which Nationwide acted against their interests. A lender doesn't have to set aside the terms and conditions of a mortgage simply because a consumer asks it to do so. A mortgage is a legal contract, and it is not unreasonable for both parties to the contract to expect the other to abide by the terms agreed to. While there are some situations we would expect a lender to consider making concessions, in general this would only be where a consumer was in financial difficulties and the lender doing so was a reasonable way forward. I don't consider Mr C and Mr H's circumstances would fall to be described as them being in financial difficulties. As I pointed out in my provisional decision, they chose to continue with the sale of their property in the knowledge that there wasn't a porting window available and the consequences of that decision.

My final decision

My decision is that I do not uphold this complaint. Under the rules of the Financial Ombudsman Service, I am required to ask Mr C and Mr H to accept or reject my decision before 11 September 2023.

Derry Baxter
Ombudsman