

## **The complaint**

Mr M's complaint is about an attempt to repay an existing lifetime mortgage held with Nationwide Building Society, from the proceeds of a new mortgage with a different provider. The redemption process was delayed (for reasons Mr M attributes to errors and omissions on Nationwide's part) causing the mortgage offer from the new provider to expire. A new offer was provided, but on a higher interest rate due to the general upward trend in rates during the intervening period.

Mr M is represented in the complaint by Mrs L. Nationwide has offered redress, but Mrs L says it's not enough as it doesn't cover Mr M's higher future mortgage costs.

## **What happened**

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

Our decisions are published, and it's important that I don't include any information that might result in Mr M being identified. Instead I'll give a brief summary of what led to the complaint, rounding the figures where appropriate, and then 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.

In August 2021, a lender I'll call A issued a lifetime mortgage offer to Mr and Mrs M, with a fixed interest rate of 2.65%. On 22 September 2021, Mr and Mrs M's solicitors – a firm I'll call E – requested a redemption statement from Nationwide. Due to an administrative mix-up between departments, Nationwide failed to issue the statement but instead, recorded the mortgage as having been repaid already. E chased up the redemption statement, and received it on 13 October 2021.

In November 2021, the solicitors acting for A – a firm I'll refer to as K – noted that Nationwide had apparently released its charge over the mortgaged property. It further noted that Nationwide, having realised it had released its charge in error, had registered a restriction at the Land Registry, to protect its interest. K asked Nationwide to remove the restriction so that it could complete the new mortgage with A.

Nationwide said it would remove the restriction immediately after the new mortgage had repaid its outstanding mortgage. In the meantime, the original mortgage offer from A had expired on 22 November 2021, a new offer was issued; albeit on a fixed interest rate of 2.95%. The impasse between Nationwide and K took until January 2022 to resolve, when Nationwide relented by removing the restriction. The new mortgage completed, at the higher rate of 2.95%, and the Nationwide mortgage was repaid in full just before the end of January 2022.

Mr and Mrs M had complained in November 2021 about the delayed redemption statement, and Nationwide had offered compensation of £100 by way of a cheque. Another complaint was made in January 2022 about the ongoing problem with the restriction; Mrs L joined the

complaint as attorney for Mrs M. As part of the new complaint, they returned the £100 cheque received in November 2021. Nationwide increased its offer of compensation to £350.

The case came to us in April 2022. Sadly by then, Mrs M had died. Our investigator thought Nationwide had made a fair offer to resolve the complaint. Mrs L disagreed and 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.

Under our rules, which are published by the FCA in a document called DISP, we can consider a complaint from a consumer. Mr M is a consumer, as was Mrs M when she was alive, so both met the definition of an "eligible complainant" set out in our rules. That eligibility now vests solely in Mr M, represented here by Mrs L.

Mrs L has set out, in some detail, that the dispute is not just about the events themselves, but also about how Nationwide dealt with the complaints they made. The problem there is that we're not free to consider every complaint, or part thereof, we receive. Section 2.3.1 of DISP 2.3.1 out the activities we can consider. The relevant activities in this case are "regulated activities", as stated in DISP 2.3.1 (1). Complaint-handling is not a regulated activity in its own right.

The DISP rules at 2.3.1 say that we can consider complaints about:

- regulated activities;
- payment services;
- lending money;
- paying money by plastic card; and
- ancillary banking services.

In addition, we can consider complaints about ancillary activities carried on in connection with the above, such as advice, payment processing or account administration. However, complaint-handling is not a regulated activity, and isn't ancillary to a regulated activity.

What that means is when a complaint (or, as here, *part* of a complaint) is about how the underlying complaint was handled, separate from the matter complained of in the first place I won't be looking into that. My review is confined to the underlying complaint about how Nationwide handled the redemption of Mr and Mrs M's mortgage with it.

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, what follows are my conclusions and the reasons for them.

This is not a complaint where I have to decide fault; Nationwide has accepted it made mistakes and has offered redress to put things right. What I have to decide, is whether Nationwide's offer is fair, or if it needs to do more.

Nationwide initially offered £100 compensation for time, trouble and upset, but increased that to £350 in its response to the second complaint. In all the circumstances, I find that to be fair, as far as it goes.

The sticking point is over the claim for financial losses that Mrs L believes are a consequence of the delay. In essence, these are the cumulative extra monthly costs Mr M will incur from taking a mortgage on a higher interest rate than that which he was originally offered by A.

At the root of this claim is Nationwide's mistake in taking off the legal charge. Clearly that was wrong. But having done that, registering the restriction was a reasonable step for Nationwide to take to protect its interest in the mortgaged property pending repayment of the money it was owed. The alternative was to do nothing and allow the re-mortgage to go through, but the downside of that is that if anything went wrong and the re-mortgage for any reason didn't happen, Nationwide would be left with a debt and no security.

So Nationwide protected its position by putting the restriction on, undertaking (via its solicitors) to remove it simultaneously with the redemption. A solicitor's undertaking is a binding promise, and whilst it's not for me to say A, or K on its behalf, had to accept it, I think Nationwide had reasonable grounds to expect that the undertaking *would* be accepted when it was given.

An undertaking to remove the restriction on repayment of the debt isn't so very different from an undertaking to remove the original legal charge on redemption – it's unusual, but the effect is broadly the same. Nationwide created the problem by removing the charge, but then in my view acted reasonably in proposing a course of action that could have allowed the re-mortgage to go ahead at the same time as protecting its position in the event the re-mortgage didn't complete.

The timeline that Mrs L has sent us, which came from E – Mr M's solicitors – suggests that Nationwide made this proposal a few days before the original mortgage offer from A expired. But even if that were not the case, the available evidence doesn't suggest Nationwide was on notice of when the mortgage offer would expire. That being the case, it could not reasonably foresee a new offer having to be issued at a higher rate.

Put all of the above together, and I'm not persuaded I can fairly find Nationwide responsible for the extra mortgage costs Mr M will now pay going forward.

### **My final decision**

My final decision is that I order Nationwide Bank UK PLC to pay Mr M £350 in full and final settlement of this complaint. I make no other order or award.

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 Mr M to accept or reject my decision before 31 July 2023.

Jeff Parrington  
**Ombudsman**