

The complaint

Ms K and Mr M complain that Nationwide Building Society withdrew a mortgage offer shortly before they were due to complete. They ask that it reinstates the offer or pays compensation for their additional interest costs. They also ask for an apology and compensation for their distress.

What happened

Ms K and Mr M's interest rate product was due to expire in July 2023. They decided to re-mortgage and applied to Nationwide.

Nationwide issued a mortgage offer in April 2023. It withdrew the mortgage offer in late July 2023. It said after receiving information from the solicitors regarding an onerous ground rent clause, the valuer said the property wasn't suitable security.

Our investigator said Nationwide hadn't acted unfairly or made an error. He said it was entitled to rely on the expert opinion of the valuer and wasn't aware of the onerous ground rent clause until mid-July 2023.

Ms K and Mr M didn't agree. They said Nationwide should have identified any problems with the lease terms earlier, which would have enabled them to look elsewhere. They said Nationwide is responsible for the solicitors it appoints. They said Nationwide should have been adhering to the new Consumer Duty prior to it being implemented. Ms K and Mr M said this had significantly impacted their lives during a period of economic difficulty.

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.

Nationwide issued a mortgage offer to Ms K and Mr M in late April 2023. Solicitors were appointed to carry out the work required for completion.

In mid-July 2023 the solicitors told Nationwide the property was subject to an onerous ground rent clause. Nationwide referred the matter to the valuer and asked if this affected the valuation.

The valuer issued an amended valuation report which Nationwide received on 25 July 2023. This said the property wasn't suitable security as the lease terms were considered onerous and likely to severely impair future mortgageability. I think Nationwide was entitled to rely on the expert opinion of the valuer, a qualified surveyor and a member of the Royal Institution of Chartered Surveyors.

Nationwide told Ms K and Mr M's broker on 26 July 2023 the property was deemed unsuitable and that the mortgage was declined. This left Ms K and Mr M in a difficult position. They'd expected to complete a re-mortgage soon after this. Their interest rate product with the existing lender was about to expire, meaning they'd be on their lender's

standard variable rate. They had to look for a mortgage elsewhere or take out a new product with their existing lender. They say that interest rates had increased.

I appreciate how upsetting and frustrating this was. But to uphold this complaint I'd have to find that Nationwide made an error or treated Ms K and Mr M unfairly and I don't think that's the case.

The mortgage offer said Nationwide wasn't committed to provide the loan if there was a material change in the value of the property or if the conveyancer raised any issue which made the property unacceptable to it. I can't fairly find, in the circumstances, that Nationwide wasn't entitled to withdraw the mortgage offer.

Nationwide didn't know when it issued the mortgage offer that there would be a problem with the lease. While Ms K and Mr M say it should have been aware of a potential problem, the terms of the lease would be one of the matters Nationwide would expect the solicitors to check prior to completion.

I understand the point raised by Ms K and Mr M about the timescales. The solicitors were appointed at the end of April 2023 and they identified the problem with the onerous clause in mid-July 2023. I can't look into or make findings about the actions of the solicitors, such as whether they followed the correct process to identify the issue within a reasonable timescale. The solicitors are a separate business from Nationwide and it's not reasonable to say that Nationwide is responsible for the way they carry out their professional work. If there were unnecessary delays with the legal work, I can't fairly find that Nationwide was responsible for this without evidence that was the case.

I think Nationwide acted promptly after the solicitors told it about the onerous ground rent clause.

Mr M says Nationwide should have followed the higher standards in the Consumer Duty. The Consumer Duty came into force 31 July 2023, so it didn't apply when the events complained about here happened. I can't fairly find that Nationwide made an error if it didn't follow standards or regulations that were not in place, and so I make no findings regarding the Consumer Duty.

The Financial Conduct Authority's high level principles (which were in place) required Nationwide to pay due regard to the interests of its customers and treat them fairly. I don't think this meant that Nationwide had to offer a mortgage when it had been told the property wasn't suitable security or pay compensation for not doing so. And, as I said, I don't think Nationwide made errors or caused any unnecessary delays in appointing solicitors, when following up information from the solicitors about the onerous ground rent clause or when it relied on the expert opinion of the valuer.

I don't think it's fair and reasonable in the circumstances to require Nationwide to offer Ms K and Mr M a mortgage, apologise or pay them compensation for their interest costs or distress.

My final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms K and Mr M to accept or reject my decision before 2 May 2024.

Ruth Stevenson
Ombudsman