

The complaint

Mr and Mrs K complain that when they asked Nationwide Building Society to use the drawdown facility to borrow back some of the money they'd overpaid on their mortgage, it refused, on the basis of an internal policy that Mr and Mrs K couldn't have been aware of.

What happened

Mr and Mrs K had an interest only mortgage with Nationwide. They said they had overpaid almost £300,000 over the years they'd held this mortgage. And at various times, they had given the required 10 days' notice and taken back some of those overpayments.

Mr and Mrs K told us they contacted Nationwide to discuss doing the same thing again, but it said it wouldn't let them borrow back overpayments in the final year of the mortgage term. Mr and Mrs K said Nationwide had agreed that this rule wasn't written anywhere in the terms of the mortgage, and that they weren't warned about it before entering the final year of lending. Mr and Mrs K said they didn't understand how Nationwide could apply a policy that they couldn't have known about.

Mr and Mrs K said fortunately they didn't need the overpayment back, but this had become a matter of principle. They still thought they should be given the right to withdraw some or all of their overpayment, if they wanted to, and should then be able to choose and negotiate a mortgage deal in September on the new outstanding balance.

Nationwide said Mr and Mrs K weren't eligible for a borrow back because they had less than twelve months remaining on their mortgage. And it said this was a product policy, so it wasn't published externally. Nationwide said this was designed in order to protect its customers from accruing an unaffordable repayment on their mortgage account, within the final months of a mortgage product.

Nationwide had understood Mr and Mrs K intended to extend the term of their mortgage, but it said they have an interest only mortgage, and Nationwide doesn't offer a term extension on those. Nationwide had told Mr and Mrs K that they could apply to transfer their mortgage account from interest only into a capital repayment mortgage, and could then apply for a term extension. But Nationwide said that would have to go through the application process, and there would be no guarantee they would be accepted for either of these things.

Nationwide then wrote again to Mr and Mrs K, to respond to their comments that any policy which affects them should be put in writing to them. Nationwide said it isn't quite as straightforward as that, as there are a number of different scenarios that could determine what it would need to tell customers. Not all mortgages have a borrow back facility, and for those that do, Nationwide treats different types of mortgages differently.

Nationwide said that Mr and Mrs K have an interest only mortgage, and Nationwide doesn't offer that sort of mortgage any more. It could look at converting the mortgage to a repayment mortgage, which would then allow a term extension, and then it might be able to agree the borrow back, subject to other lending criteria being met. Nationwide said it would still suggest that Mr and Mrs K spoke to a mortgage advisor if they wanted to go ahead with this.

Nationwide said that it does review this situation on a case by case basis and it has a discussion, where relevant, with customers who are looking to borrow back funds within the last twelve months of their mortgage term.

Nationwide didn't think it had to put this policy in writing to affected customers. It said it would never want to put its customers in a position where they'd borrowed back some of the overpayments they'd made with only a short term remaining, as this could mean the monthly repayments would be unaffordable. So it said that when customers ask for borrow back, it will discuss the options available and relevant to them at that point.

Our investigator thought this complaint should be upheld. He said there were two key points here, one was the reason Nationwide didn't tell Mr K of the final year borrow back conditions. The other is why Nationwide doesn't permit customers to borrow back in their final year.

Our investigator didn't accept that Nationwide couldn't have sent account specific information to Mr and Mrs K. He didn't think Nationwide could just withhold this information because it was an internal product policy. So he thought they could have been told that the borrow back facility was no longer available to them.

Our investigator also said Nationwide had justified the policy on the basis of responsible lending. But he said that there was no attempt to account for Mr K's actual financial circumstances or ability to afford repayments, which our investigator thought would only have been the payments he was making before the voluntary overpayment anyway.

Our investigator said Mr K had made his overpayment on a false premise, and was unable to access those funds later, should he have wished to. So our investigator thought Nationwide should allow Mr and Mrs K to use the borrow back facility, if they wanted to do so. And it should pay Mr and Mrs K £250 in compensation.

Mr and Mrs K agreed with this solution, but Nationwide didn't.

Nationwide said Mr and Mrs K's mortgage was due to finish shortly (I understand it has since ended). And when Mr K asked about borrow back, he wanted to borrow an additional £80,000 or £90,000. Nationwide said if Mr and Mrs K had been approaching the end of their interest only mortgage, and had a large balance still outstanding, the relevant team would have been discussing this with them for some time. So Nationwide was concerned about putting Mr and Mrs K in that position, suddenly, just before their mortgage ended.

Our investigator asked Mr and Mrs K if they still wanted to use the borrow back facility, and they said they had changed their mind about the appropriate resolution to the complaint. They wanted Nationwide to pay them £1,000, which they could then use to clear this mortgage entirely. They also wanted a personal apology from a named contact at Nationwide. They said they understood they wouldn't be offered a long period to pay back £300,000 of borrowing, but they believed they were entitled to ask for as much time as Nationwide's mortgage policy made possible.

Our investigator asked again if Mr and Mrs K intended to use the borrow back facility, and they said it was now too late to do what they had needed to do with the money. So they confirmed they no longer wanted to draw down extra funds. They still thought they should be paid more compensation, for the missed opportunity of using the money which belonged to them and which our investigator had agreed should have been made available to them.

Nationwide said that once Mr and Mrs K had confirmed they didn't want to borrow back more money, it would agree to a payment of £250 in compensation. But because Mr and Mrs K no

longer agreed to that, this case came to me for a final decision.

I then reached my provisional decision on this case.

My provisional decision

I issued a provisional decision on this complaint and explained why I only proposed to uphold it in part. This is what I said then:

Our investigator thought there were two points to this complaint, that Mr and Mrs K weren't made aware that they couldn't borrow back on their mortgage in the final year, and why Nationwide doesn't allow customers to borrow back in their final year.

I think it's important to note that I'm not making a decision here on the overall policies that Nationwide has in place. Our service isn't a regulator, and my role here is to look only at the issues raised in Mr and Mrs K's case. And, in applying this approach, I see this case somewhat differently.

It seems that Mr and Mrs K have previously understood that they have a right to take back any overpaid amount on their mortgage, and that they have done so, without any formalities, in the past. However, I also note that Mr and Mrs K have held this interest only mortgage for many years, and the overpayments they have been making have been in order to reduce the capital owed, so that they don't have a large amount outstanding at the end of the mortgage. So I don't think our investigator was right to say that any borrowing back would only leave Mr and Mrs K making the monthly payments they had made before they overpaid. A large borrow back in the final months of Mr and Mrs K's mortgage might, as Nationwide said, leave them with a large amount to pay back at the end of the term.

Mr and Mrs K did want to borrow back quite a large sum. Nationwide said they mentioned either £80,000 or £90,000. And I understand that they didn't envisage paying this amount off at the end of the mortgage term, around nine months later. They also wanted to extend their mortgage term, and they seem to have understood that this would all be part of their borrow back request. But I don't think it is. I can't see anything in Nationwide's published documentation about borrow back, which suggests that there's also a right to extend the term to allow the borrower time to repay the money that's been borrowed back.

So I don't think Mr and Mrs K were ever asking solely to borrow back money they had overpaid, within the original term of their loan. They were also asking to extend the term, so they then had more time to pay that off.

Nationwide said no to just allowing the borrow back. But as I've explained, I don't think that's what Mr and Mrs K were asking for.

I understand that Nationwide has said from the start, that it would consider an application from Mr and Mrs K to change their loan type (as it no longer offers interest only lending) and to extend the term of their loan, so they could borrow more. But Nationwide said these were new lending decisions, and they would have to be the subject of an application.

I do think that there have been communications failings here. I think it was unhelpful for Nationwide to say that it wouldn't, in any circumstances, allow Mr and Mrs K to borrow back in their last year. It is possible to speculate about different circumstances, in which this would have been an unreasonable response to a request for borrow back in the last

year. And I think Nationwide's blanket response, based on a policy Mr and Mrs K weren't aware of, has contributed to Mr and Mrs K's feeling that this is a matter of principle which ought to be pursued, even though they have said that they don't need this borrowing.

But I've explained that I do have to look at the circumstances of this case, and I do think it was reasonable for Nationwide to say that it wouldn't simply agree a large borrow back request for Mr and Mrs K in the last year of their interest only mortgage, when they seemingly had no way of paying off that lending by the end of the existing mortgage term. I think that was a responsible lending decision, and it was reasonable. It was also reasonable for Nationwide to suggest that Mr and Mrs K should talk to a mortgage advisor, to discuss whether Nationwide could make the changes to their mortgage which would allow them to access extra borrowing - importantly, in circumstances where all parties could be confident they could pay this back.

Because I do think there have been communications failures here, I think Nationwide should pay Mr and Mrs K some compensation. And I think the amount of £250, which Nationwide has agreed to pay, does provide a fair and reasonable outcome to this part of Mr and Mrs K's complaint. But, looking at all the circumstances of this particular complaint, I don't think that it was unreasonable for Nationwide to refuse Mr and Mrs K's request to borrow back a large amount of money in the final months of their interest only lending, where Mr and Mrs K didn't appear to have a way to pay off that lending at the end of the term, and apparently didn't envisage doing so. So I don't think Nationwide has to do that now.

I invited the parties to make any final points, if they wanted, before issuing my final decision. Both sides replied.

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 said it had nothing further to add. Mr K sent a substantive reply.

Mr K said he thought that I still had some misunderstanding of this complaint, which he felt was caused by Nationwide's misinformation. Mr K said he'd deal with the issues in the same order as in my provisional decision, so he would address in turn the monies to be borrowed, the repayment issue, then the purpose of the borrow-back and compensation.

Monies to be borrowed – Mr K said he wanted to borrow back the overpayment, so he didn't know where I'd got the reference to "*an extra £80,00 or 90,000*" from. I used this figure because Nationwide said that when Mr K first asked about borrow back, this was the sum he'd been looking to borrow, not the full overpayment of around £300,000.

Repayment – Mr K said I was right to say that Nationwide made no attempt to ask how they intended to pay the monies back. He said it should have asked.

But Mr K said I was wrong to say that he and Mrs K "*..seemingly had no way of paying off that lending at the end of the term*". Mr K said that he and Mrs K were comfortably off. He'd used borrow back before to keep his business afloat. He said that this was their money, and provided they gave Nationwide the ten days' notice required, there was no quibble whatsoever on any previous borrow-back occasion. He'd expected the same this time.

The use of the proposed borrow -back – Mr K said there were two important questions – how would they pay back £300,000 if Nationwide had given it when they asked, and what would they have done with the £300,000 that makes them feel that the £250 compensation is disproportionate to the lost opportunity?

Mr K said that they could have paid back the £300,000 in cash, and Nationwide only didn't know about this because it didn't ask. He said the flows of cash through their accounts were consistent with this.

Mr K set out the investment they would have made with £300,000. He said this would have produced around £25,000 net income in the time since they first requested this borrow back. So he said compensation which represented only 1% of that was wholly disproportionate.

Compensation – Mr K said I'd suggested £250 was fair and reasonable compensation, and I didn't want to award more, because I *"do not think it was unreasonable for Nationwide to refuse Mr and Mrs K's request to borrow back a large amount of money in the final months of their interest free lending, where Mr and Mrs K didn't appear to have a way to pay off that lending at the end of the term, and apparently didn't envisage doing so"*. Again, Mr K said that was inaccurate, and he thought it was Nationwide who had misled me.

Mr K said it was almost a year before the loan period was due to end, not *"the final months"*. He said the fact that the loan was interest only was irrelevant – that was their choice of what was on offer from Nationwide when they took out the mortgage. He said they did have a way of paying back the money but Nationwide didn't ask. And finally, he wanted to know who had said they apparently didn't envisage paying back the borrow-back at the end of the term? He said they never had that conversation with Nationwide. Mr K said that much of Nationwide's story here was pure conjecture.

In summary, Mr K said he and Mrs K had overpaid Nationwide. They had no reason to believe Nationwide would not let them borrow back the monies, as it had done so previously. He said Nationwide not telling them about its internal rule on borrowing in the final year had been addressed. It was wrong. They could have used the money to invest, and they were denied that opportunity. They felt the current £250 award was insufficient and unfair. And they wanted me to reconsider.

Mr K also said that they hadn't asked for a personal apology from a named individual at Nationwide, as I'd suggested in my provisional decision. Mr K said he had written to someone who leads on Nationwide's relationship with its customers. He said he didn't understand why this person wasn't directly referred to in my published report. He said this person had been courteous and had passed his complaint on to their team. What he wanted now was for the same person to be made directly aware of my ruling and of the outcome of the case, so that if they chose, they could instruct the relevant team to respond differently to customers who may have the same complaint in the future.

Having summarised Mr K's reply to our service, I'd like to respond. And I should start by saying that I don't think I have been misled by Nationwide in this case. Rather, the comments I relied on in reaching my provisional decision were taken from Mr K's communications with our service. I understand that cases can take some time to work through our service, and that by the end of this process, recollections may not always be clear, but Mr K's earlier representations to our service do appear to me to be somewhat different to what Mr K says now.

Our service's complaint form asks a direct question – *"how have you been affected – financially or otherwise?"* Here, Mr K told us that *"What has affected us is the stress of the original complaint."* And similarly, when Mr K referred his complaint to the named individual

at Nationwide, he said *"I don't need the overpayment back but it has become a matter of principle."* So there appears to have been no suggestion before now that Mr and Mrs K had incurred any financial loss, even though our complaint form includes a direct question on this.

For that reason, I don't think Mr K has set out for our service before now that he planned to make a large investment with this money, or that he thought Nationwide ought to compensate him and Mrs K for the lost income that this investment would have provided.

Our service's complaint form then asks *"How would you like the business to put things right for you?"*. Mr K's response started with *"An apology from..."* the individual employee of Nationwide, referred to above. And in a later response to our investigator, Mr K said what he wanted was *"A personal apology..."* from this named employee.

So I do think Mr K did ask for an apology from a named Nationwide employee.

I shall pause here to respond to Mr K's comments about why I haven't named this individual. That's partly because this complaint is brought against the organisation as a whole, and it's based on the collective responsibility of that organisation. But it's also because naming any individual Nationwide employee simply doesn't appear to me to be necessary for the resolution of this complaint.

Returning to Mr K's communications with our service, in the complaint form section titled *"How would you like the business to put things right for you?"*, Mr K then continued *"The right to withdraw some or all of the overpayment should we choose, and to negotiate a mortgage deal in September on the new outstanding balance."*

Mr K also said I was wrong to say that he had no way to pay back Nationwide at the end of the mortgage term. He said Nationwide had simply never asked him this.

I accept that Nationwide didn't ask Mr K this, but our service did. Our investigator initially upheld Mr K's complaint, and Nationwide then raised concerns about how the mortgage would be repaid, if it was to allow Mr and Mrs K to borrow back their overpayment very shortly before the mortgage was due to be repaid. So our investigator wrote to ask Mr K how he planned to repay. That letter set out Nationwide's concerns as follows *"They are, however, looking to clarify whether you're still intending to complete a borrow back, and, if this is this case, they have asked for details of plans to repay it at the end of the term (which I understand is quite soon)."*

In response to what I consider was a direct question about how he would repay the mortgage at the end of the term, Mr K said he didn't anticipate that he and Mrs K would *"...be offered a lengthy period over which to pay back c.£300,000 drawback to Nationwide. I do believe we are entitled to ask them for as much time as their mortgage policy makes it possible."*

It appears that it was only when I explained that any right to draw down overpayments would not automatically entitle Mr and Mrs K to extend the term of their mortgage, that Mr K suggested he could always have repaid, and indeed, would have explained this to Nationwide if it had asked. But he didn't explain this to our service, when we did ask.

Unfortunately, I think that Mr K's more recent recollections are not clearly on all fours with what he has previously said to our service. So I do think it was reasonable to assume that Mr K didn't have a plan to repay his mortgage at the end of the term, not only because he didn't seem to think he needed to, but also because he didn't offer this plan, when our service asked about this.

I do think it's generally most likely that Mr K's recollections closer to the time are more likely to be accurate. So I'm afraid I'm not able, at this stage, to adopt his revised case, and decide that it's most likely that Mr K could have repaid his mortgage once it was due, and would indeed have set this out for Nationwide if it had asked about this.

And that, in turn, means I still think that, in the circumstances of this case, Nationwide didn't have to allow Mr and Mrs K to borrow back the money they had overpaid, within the final twelve months of their mortgage term.

For the above reasons, I haven't changed my mind in this case. So I'll now make the decision I originally proposed.

My final decision

My final decision is that Nationwide Building Society must pay Mr and Mrs K £250 in compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K and Mr K to accept or reject my decision before 20 December 2022.

Esther Absalom-Gough
Ombudsman