

The complaint

Mr T complains Nationwide Building Society (“Nationwide”) didn’t set up a regular overpayment on his mortgage.

What happened

Mr T took out a repayment mortgage with Nationwide in 2007.

In August 2017, Mr T reviewed his account and applied for a new fixed rate. Mr T says he told the representative he wanted to make overpayments in order to clear his mortgage before retirement. He understood Nationwide was setting this up for him and up until 2022, he thought he’d been making overpayments every month.

Nationwide looked into Mr T’s concerns and agreed Mr T intended to make overpayments, but it said it wasn’t clear who was supposed to set that up. Nationwide offered £60 to say sorry for any worry or distress caused and an additional £25 for the delay in investigating his complaint.

Mr T remained unhappy, so our investigator looked into his concerns and thought his complaint should be partially upheld. They said Nationwide should adjust Mr T’s account to show that overpayments were made up to the point Mr T ought reasonably to have been aware he wasn’t making overpayments – around two and a half years after the event. As Nationwide disagreed, the complaint was passed to me to decide. I issued a provisional decision on 16 February 2023. Below is an extract of what I said:

“Mr T has explained that the new fixed rate product he applied for was on a better rate than his previous product. This meant his contractual monthly payments (“CMPs”) reduced, and he was able to afford overpayments. The notes recorded at the time confirm this was discussed and the representative calculated whether Mr T could reduce his mortgage term. As this option wasn’t affordable, the representative agreed Mr T could make overpayments of £145 per month instead.

Mr T was sent a letter on 15 August 2017 detailing what was discussed. The letter referenced overpayments a few times as follows:

- *“you would like to make small overpayments add [sic] hoc onto your mortgage account as and when you have disposable income”*
- *“overpayment set up at 145 per month”*
- *“you hope that you may even be able to clear the mortgage within 10 years by overpaying as and when you can”*
- *“CUSTOMER HAPPY TO SET UP AN OVERPAYMENT OF £145 EXTRA”*

Mr T says he never saw the adviser’s notes, but the letter was addressed to him correctly, and I’ve not seen any reason to suggest it wouldn’t have been received at the time.

The notes can be interpreted as contradictory, as there is a suggestion a regular payment was set up, but the notes also say the overpayments would be made as and when, which wouldn't be possible if a regular payment was to be arranged. The notes don't confirm who was supposed to set up a regular payment, but I think they were written in order of discussion and the final reference is that the customer, Mr T, was happy to set up an overpayment.

Considering everything, I think it's more likely than not Mr T was supposed to arrange the payment himself and this wouldn't be surprising given this type of payment would usually be made by standing order. That means it would be under Mr T's control, as opposed to a direct debit which would have been more suitable for Mr T's CMPs. I also haven't seen anything to suggest Mr T signed an agreement to put a standing order in place for overpayments, and Mr T hasn't said that he did either.

So, I don't think the above notes confirm the representative was supposed to set the overpayments up. That means I don't think Nationwide is responsible for the overpayments not being made. In any case, even if Nationwide was responsible, I don't think it's reasonable to ask it to cover the cost of all the overpayments now. I say this because I think Mr T would have had multiple opportunities to realise something had gone wrong and I think he should have brought this to Nationwide's attention much sooner than he did.

Mr T wanted to reduce his debt by making overpayments on top of his CMPs. Mr T was aware how much his CMP was, and he would have seen this amount being debited from his current account. So, I think Mr T ought to have realised, fairly quickly, that no additional sum was being taken from his account. And if those funds weren't being taken, then I would have expected him to have those funds available still.

In these circumstances, if Mr T had accrued the funds on his current account instead, I would have asked Nationwide to allow Mr T to make a lump sum payment to make up for the missed overpayments. But it doesn't appear as though Mr T has the funds available, and I don't think it's fair to ask Nationwide to make his overpayments for him. There's no guarantee Mr T would always have made overpayments, if any. I note the CMP with the overpayment he wanted to make was greater than his previous CMP, and the notes at the time refer to him making overpayments as and when.

In addition, the annual mortgage statements clearly set out the cost of the CMPs expected in one column and the credits to the account in another. These figures matched each other every month and clearly show that no overpayment was being made. Mr T would have received the statement every year between 2017 and 2022.

I know Mr T has referred to wording on the annual statement that says:

"This payment doesn't include any overpayments that you may be currently making. We'll continue taking any overpayments you've arranged, as well as the payment that's due."

Mr T says he took this to mean his overpayments weren't included on the statement. I've thought about this carefully, but I think he's referred to this comment out of context. Looking at the placement of this wording, I think it's very clear this comment is made in relation to the monthly cost of the mortgage going forward – the CMP. The statement then goes on to set out all credits and debits and Mr T would have expected to see his overpayments there.

Mr T didn't phone Nationwide until 7 June 2022 to query why the overpayments weren't in place – almost five years later. And for the reasons I've given above, if Mr T thought the overpayments had been set up by the representative at the time, I would have expected him to have raised this with Nationwide much sooner than he did. Particularly as there were a number of ways Mr T could have noticed that the payments weren't being made. So, I think it's more likely than not Mr T was supposed to arrange the payments himself and I can't ask Nationwide to make his overpayments for him if he didn't do this.

I appreciate this will be disappointing for Mr T, I understand he was hoping to have paid off his mortgage sooner so he could retire earlier. But I don't think Nationwide should be expected to pay for that. As I've said above, if Mr T kept the funds aside and wanted to pay them off now and continue with overpayments going forward, I'd expect Nationwide to accommodate that in the circumstances. But I don't think it would need to do anything more than that.

Nationwide has offered Mr T £85 compensation though, so if he wants to accept that now he still can."

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.

Following my provisional decision, Nationwide responded and confirmed it had no further comments.

Mr T responded and reiterated that he didn't receive the letter dated 15 August 2017. Mr T says, if he had seen the letter he would have contacted Nationwide to clarify who was going to set up the overpayment. Mr T has asked if Nationwide can prove the letter was received. I don't think it would be possible for Nationwide to prove this. But even if Mr T didn't receive the letter, I have explained why I think Mr T had a number of reasons to notice the payment wasn't in place within the first few months. For example, Mr T ought reasonably to have noticed there was no additional regular payment leaving his bank account every month.

Mr T says Nationwide agreed it had no reason to disbelieve what he's said, and that contradictory information was given. I appreciate Nationwide's response implied that, but regardless of what Nationwide has said, I have to form my own decision based on the evidence and information I've seen as an impartial party. And I don't think Nationwide saying it doesn't disbelieve Mr T means it agrees with him. Nationwide is accepting that Mr T may have had the impression he did, but that doesn't mean it agrees it's responsible for the payments he didn't make.

Mr T has also said he still thinks the wording on his statements meant that overpayments wouldn't be shown. As I explained in my provisional decision, the comment Mr T's referred to on his statements only confirmed that the figure shown was his contractual payment. And that it didn't include anything else such as overpayments. It also explained that there wouldn't be any impact on *any* overpayments in place if his contractual payment had changed. This was true and I don't think it was misleading. Any overpayments would still have been reflected on the overall outstanding balance of the account and would have been listed under the section which showed credits and debits to the account. In Mr T's case, none of that information was visible and so I still think Mr T had reason to query this much sooner than he did.

I've considered everything Mr T's said, but my reasons for not upholding his complaint remain the same. Mr T wanted to make overpayments to his account, but this didn't happen. Given the circumstances I think it would be fair to expect Nationwide to accept the funds from Mr T now, as a lump sum. But I can't ask Nationwide to pay a substantial sum off Mr T's mortgage for him. Mr T had multiple opportunities to realise a regular overpayment hadn't been set up, yet he didn't inform Nationwide of this until around five years later.

Ultimately, Mr T took out a mortgage with Nationwide and agreed to repay it. He was entitled to make overpayments to reduce his debt sooner if he wanted to, but he didn't do this. Mr T had the benefit of those funds, and it wouldn't be fair to ask Nationwide to write off a substantial portion of his mortgage for the legitimate debt he still owes.

So, for the reasons explained above, I don't uphold Mr T's complaint.

If Mr T now wants to accept Nationwide's offer of £85 compensation he can sign and return the settlement form attached.

My final decision

For the reasons explained above, I don't uphold Mr T's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 14 April 2023.

Hanna Johnson
Ombudsman