

## **The complaint**

Mr and Mrs S's complaint is about their mortgage account with Nationwide Building Society. Mr S, who has dealt with the complaint throughout, has complained about the following issues.

- In 2017 they were led to believe they could extend the mortgage term and have 95% on an interest-only basis. When the application was made in 2021, they were only offered a term extension on a full repayment basis over a 23-year term, subject to meeting affordability criteria.
- In 2021 Nationwide failed to provide the original product literature from the time the mortgage was taken out in 2006.
- Mr S queries whether £200 compensation offered by Nationwide is fair.

I have today issued a decision relating to other matters Mr S has complained about explaining that those matters are outside the jurisdiction of the Financial Ombudsman Service. I will therefore make no comment on those matters and will confine this decision to the points listed above.

## **What happened**

I will summarise the complaint in less detail than it's been presented. There are several reasons for this. First of all, the history of the matter is set out in detail in correspondence, so there is no need for me to repeat the details here. I will instead concentrate on giving the reasons for my decision. In addition, our decisions are published, so it's important I don't include any information that might lead to Mr and Mrs S being identified. So for these reasons, I will keep my summary of what happened quite brief.

Mr and Mrs S's interest-only mortgage with Nationwide was due to reach the end of its term in February 2022. In 2017 Nationwide said that any application to extend the term would need to be assessed against lending and eligibility criteria in place at the time of the application, and that at least 5% of the mortgage would need to be converted to a repayment basis. (I will refer to this as the 95% option.)

In 2019 Nationwide provided information about its Later Life mortgages, but didn't mention that the 95% option was no longer available.

In 2021 Mr S asked Nationwide to provide original product literature from the time of the mortgage application in 2006. Mr S said that Nationwide never provided this at the time. Mr S wants this product literature because he believes it will provide evidence of his contention that there was a flexible feature for this mortgage of a 40-year mortgage term.

When the term end date was approaching, in 2021 Mr and Mrs S applied to extend their mortgage term. They were unhappy to find that the 95% option was no longer available and complained about this. In its final response letter, Nationwide explained that this was no longer available. Nationwide also explained that the length of the mortgage term wasn't a

flexible feature. Nationwide said that transferring part of the mortgage onto interest-only was a forbearance measure and wasn't something it was able to offer to Mr and Mrs S.

Nationwide had initially declined a capital repayment term extension because Mr S's income didn't meet Nationwide's acceptable income criteria. However, an exception was made and in February 2022 the mortgage balance of £312,169 was switched onto a capital repayment basis over a remaining term of 22 years 11 months, at the same lifetime tracker rate of 0.18% above base rate as the original mortgage.

In May 2022 Mr S complained to our service about these – and other – issues. Our investigator explained which parts of the complaint she thought we could consider, and in relation to the issues that were in jurisdiction, she didn't uphold the complaint. Mr S asked for an ombudsman to review the complaint.

### **Provisional decision of 28 February 2023 and responses**

I issued a provisional decision in which I found that the complaint points listed at the start of this decision are within jurisdiction. In relation to those matters, I reached the following conclusions.

Nationwide is entitled to set its own lending criteria, including those that relate to term extensions. Decisions that Nationwide makes in respect of what those criteria are, its attitude to risk involved in this particular lending assessment, and whether it should lend and if so, on what terms are clearly discretionary matters for Nationwide's own commercial judgement that I would not interfere with.

In the absence of a satisfactory repayment vehicle, Nationwide was under no obligation to extend the mortgage term on an interest-only basis. Although Mr and Mrs S had the means to repay the mortgage in full at the end of the term in February 2022, they didn't want to do so. Given this, I don't think it was unreasonable for Nationwide to want any term extension to be on a capital repayment basis.

Although Mr S's income source fell outside the acceptable criteria for Nationwide, an exception was made to offer a capital repayment term extension. I think this was reasonable in all the circumstances.

I agree with the investigator that Nationwide hadn't made it sufficiently clear at an earlier stage that a full application would be necessary and so Mr and Mrs S may have misunderstood the position.

Nationwide has offered £200 compensation in total for its lack of clarity. It is proportionate to any error made, and I'm satisfied that it is fair and reasonable in all the circumstances.

Nationwide hasn't been able to provide original product literature from the time of the mortgage offer in 2006. Mr S says this was never provided to him at the time, but I think on balance that it would have been provided with the mortgage offer. Nationwide isn't required to keep product literature indefinitely, so there is nothing sinister about a document from 2006 no longer being available.

However, I understand Mr S wants this documentation to prove his point that a 40-year mortgage term was allegedly a 'flexible feature' of his mortgage. Nationwide has confirmed that the product literature did not contain any information about the maximum mortgage term. I wouldn't expect it to, because this can change from time to time, as lending criteria are varied. (Mr S's complaint about believing he had a 40-

year term has, as I said above, previously been considered by our service and ruled out of time.)

In all the circumstances, I'm not persuaded that it is unreasonable or unfair for Nationwide to no longer have this document. I don't uphold this part of the complaint.

As I said above, Nationwide is allowed to change its lending criteria from time to time. Lending criteria are confidential, because they're commercially sensitive. This means that there's no requirement for Nationwide to let customers know when its criteria have changed.

Where an error has been made, what I have to do is consider the impact of that error. Here the mistake was Nationwide not explaining explicitly in 2019 that putting only 5% of the mortgage on capital repayment was no longer an option. I think if Nationwide had explained clearly in 2019 that this had been withdrawn, Mr and Mrs S wouldn't have thought for the next two years that it was something they'd be able to apply for when their mortgage was reaching the end of its term.

But that doesn't mean that Nationwide was under any obligation to offer Mr and Mrs S a 95% interest-only term extension once it came to light in late 2021 that Mr and Mrs S had misunderstood and thought this was still available. They couldn't have applied for this in 2017, as their mortgage term still had several years to run, and by the time they *could* apply for a term extension, this option no longer existed. So there's been no actual detriment caused to Mr and Mrs S, other than disappointment that they couldn't put 95% of their mortgage onto interest-only.

I think for not explaining this clearly enough in 2019 that this option was no longer available, Nationwide should pay Mr and Mrs S compensation for their disappointment of £75.

Nationwide accepted my provisional decision. Mr S made further detailed submissions, much of which relate to issues that are out of jurisdiction or that are not relevant to the complaint issues. In, Mr S says:

- a full application was made over the phone in August 2021;
- when they tried to put a capital repayment option in place as a *“backstop whilst we continued discussions on the interest-only option”* they were told this was subject to manager approval.
- in January 2022 Nationwide offered compensation of £200 for trying to *“backtrack on an unconditional offer that they had previously made and not for not informing us about any formal application process... backtracking amounts to pure deviousness...”*
- the £200 offered does not and cannot possibly cover the further significant hassle Nationwide caused later in January and February 2022;
- no product literature was provided in 2006;
- at what point did Nationwide withdraw the 95% option, and why wasn't he told about this?

### **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.

I've reviewed the file from the outset, including all the points Mr S has made in response to the provisional decision.

It has already been explained to Mr S that it is not the role of an ombudsman to be dictated to by either consumers or businesses about the way in which a complaint should be decided, or to answer questions put to them by the parties to a complaint. So whilst I've read everything Mr S has said in response to the provisional decision, I will not be answering his questions or following his directions.

Our service is independent and impartial; we do not represent the interests of businesses, nor are we consumer champions. So without intending any discourtesy to Mr S, I will decide this complaint in the way I see fit, without influence or favour being shown to either party. It is up to me to decide what the relevant issues are and to focus my decision on those issues. Our enabling legislation provides for this.

Product literature: Mr S believes that the product booklet will support his contention that there was a flexible feature that would have allowed him and Mrs S to have a 40-year term on their mortgage when they took in 2006. Mr S's complaint about the mortgage term has previously been ruled out of jurisdiction, and so the only issue I can consider here is whether Nationwide was required to retain and later provide a copy of a leaflet from 2006.

Nationwide has not been able to produce the 2006 product leaflet. I reiterate the point I made in my provisional decision, which is that Nationwide isn't required to keep historic documentation indefinitely. I don't uphold this part of the complaint.

Term extension and 95% option: Mr S says that the application for a capital repayment term extension was a back-up, while he was continuing to discuss an interest-only option with Nationwide. But Nationwide had made it sufficiently clear, in my opinion, that Mr and Mrs S couldn't have a term extension on an interest-only basis, other than one of its Later Life mortgages.

When considering a mortgage application, Nationwide is entitled to decide what type of income it will accept from the applicants. Here I can see that an exception was made to allow pension income to be considered, following which Mr and Mrs S accepted a new contract from Nationwide for the mortgage to be switched onto a capital repayment basis. This is a legally-binding contract, and not a back-up while Mr S tried to persuade Nationwide to give him an interest-only mortgage.

With regard to the 95% option, although that was something Nationwide could have offered in 2017, it was later withdrawn. Mr S insists that I should find out exactly when this was, and that Nationwide must explain why didn't tell him at the time that it had been withdrawn. As I have already said, I don't take instructions from either party to a complaint.

Nationwide can change its lending criteria and the products it offers to customers at its own discretion. Such decisions are made at corporate level. Operational staff, dealing either with account administration, applications or complaints, wouldn't be privy to such decisions. There is also no requirement for Nationwide to tell random customers – or indeed any existing or potential customers – about policy changes decided at corporate level that might apply to future potential applications.

Where a customer is looking for a contract variation, such as a term extension, it will be on the basis of what is available to the customer at the time of the application. So although I appreciate Mr and Mrs S wanted the 95% option, they could never have had this in 2021 when they made their application, as it wasn't available.

As I explained in the provisional decision, I think Nationwide could have been clearer in 2019 that the 95% option was no longer available. Nationwide has agreed to pay the £75

compensation I recommended in the provisional decision for this lack of clarity.

Mr S is unhappy that a switch to part-interest-only and part-capital repayment is an option for customers in financial difficulty as a forbearance measure, but not for existing customers wanting a new mortgage contract. That is a decision Nationwide is allowed to make, as part of its regulatory obligations under the Mortgages and Home Finance: Conduct of Business Sourcebook (MCOB). MCOB 13 requires lenders to help customers who have fallen into arrears, and one of the ways it can do that is by a switch – often temporary – onto an interest-only basis. That situation doesn't apply to Mr and Mrs S.

Fairness of compensation offered: Nationwide offered £200 compensation for lack of clarity around the process required to extend the mortgage term. I think this is fair and reasonable in all the circumstances.

I appreciate Mr S disagrees – although he does say the money is not the issue. I agree, I don't think compensation is Mr S's main focus. I think the issue here is that Mr S sees error or wrongdoing in everything Nationwide has done (or not done), even in circumstances where Nationwide has gone outside its normal lending criteria to make an exception so that it could take into account Mr S's pension income. I think Nationwide has done its best to help Mr and Mrs S as their mortgage term was coming to an end. I know Mr S sees it differently, but looking at what has happened impartially, I think Nationwide has treated Mr and Mrs S fairly in offering them a new mortgage contract.

Overall, I am satisfied that the £200 compensation, plus the additional £75 I have directed Nationwide to pay, is fair, reasonable and proportionate to the customer service errors I have identified.

Other matters: It seems the only outcome with which Mr S will be satisfied is if Nationwide was to offer him the 95% option. But as I've already explained that option was withdrawn by Nationwide long before the mortgage reached its term end.

However, it is important to note that Mr and Mrs S aren't being forced to have a mortgage with Nationwide. They are free to move their mortgage at any time to another lender whose products and customer service might be more to their liking. It was their choice in February 2022 to enter into contract to change their mortgage onto a capital repayment basis. If Mr and Mrs S no longer want this mortgage, they can switch to another lender whenever they like; there is no early repayment charge applicable if they want to end this mortgage contract.

More recently Mr S has said that, until Nationwide has resolved a complaint he made about what he perceives to be Nationwide's failure to have reviewed a complaint he made in 2017 (an issue which I have already decided is outside the jurisdiction of this service) he and Mrs S will unilaterally vary their mortgage contract to pay only the interest on the mortgage. This would, of course, be a breach of the contract terms. Mr S also said that he will reclaim any additional amount Nationwide might take by direct debit under the direct debit indemnity guarantee.

Although this is technically a new issue, it would be remiss of me if I did not clarify that the contract Mr and Mrs S entered into in February 2022 is for a capital repayment mortgage, under which they are required to make payments each month to cover both capital and interest. Any shortfall in payments will accumulate as mortgage arrears and may impact on Mr and Mrs S's credit files. I am explaining this because I think it's important Mr S is aware of the potential implications before he decides that he will no longer adhere to the terms of the binding contract he and Mrs S have entered into with Nationwide.

I will also explain that I think Mr S has misunderstood the terms of the direct debit guarantee. The guarantee provides that if a direct debit payment has been collected in error (that is, outside the terms of the contract – so for the wrong amount or at the wrong time) a claim can be made under the guarantee. However, if the direct debit collected is for the amount set out in the contract and on the date which was agreed, there is no error and the direct debit guarantee doesn't apply.

### **Putting things right**

In addition to the £200 already offered by Nationwide Building Society for customer service issues, I direct Nationwide Building Society to pay Mr and Mrs S £75 compensation as detailed above. I make no other order or award.

I know this isn't the outcome Mr S wanted. I appreciate from the very detailed correspondence he's provided that Mr S has devoted considerable time to this matter and I don't underestimate his strength of feeling. It appears from what Mr S has said that neither Nationwide nor the Financial Ombudsman Service are able to provide Mr and Mrs S with the service or outcomes which they feel they deserve.

Mr and Mrs S don't have to accept my decision if they disagree with it. Noting Mr S's comments about what he perceives to be the shortcomings of the Financial Ombudsman Service, if Mr and Mrs S decide not to accept my final decision, they will be free to pursue their grievances against Nationwide in court, should they wish to do so. Mr and Mrs S might consider taking legal advice before embarking on any such action.

### **My final decision**

My final decision is that I partly uphold this complaint. In full and final settlement, in addition to the £200 already offered, I direct Nationwide Building Society to pay Mr and Mrs S a further £75 compensation for distress and inconvenience. I make no other order or award.

This final decision concludes the Financial Ombudsman Service's review of this complaint. This means that we are unable to consider the complaint any further, nor enter into any correspondence about the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S and Mrs S to accept or reject my decision before 14 April 2023.

Jan O'Leary  
**Ombudsman**