

The complaint

This complaint is about a mortgage application Mrs D made to Nationwide Building Society. It was eventually turned down for policy reasons, but Mrs D complains that she should have been informed much sooner than she was. Mrs D is represented here by her mother, Mrs M.

What happened

The broad circumstances of this complaint are known to Mrs D 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 Mrs D being identified. Instead I'll give a brief summary of what led to the complaint, 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 the spring of 2022, Mrs D was planning to sell her existing home and buy Mrs M's. The plan was that she would own the house, and she and her husband would move in alongside Mrs M, who would continue to live there. Mrs D asked Nationwide for a new mortgage, onto which it was intended to port the interest rate product from her existing Nationwide mortgage, a five-year fixed rate taken out in 2019. This would have allowed Mrs D to avoid paying the early repayment charge (ERC) that was otherwise due if the existing mortgage was repaid during the product term.

Nationwide issued a decision in principle (DIP) and then began the process of underwriting the application formally. The application failed Nationwide's underwriting process, and a decision not to lend was finalised on 14 June 2022. Unfortunately, due to a series of service failures (which Nationwide accepts entirely) Mrs D wasn't told of the decision until 21 July 2022. Nationwide apologised and offered Mrs D £200 compensation for the distress and inconvenience caused by the delay.

Mrs D brought the complaint to us; she told us that, believing Nationwide had agreed to offer the new mortgage, she had sold her existing home, repaid the mortgage on it (paying the ERC) and she and her husband moved in with her mother, but effectively as tenants. She wanted compensating for the ERC she paid, and because getting another mortgage would now be more expensive, as interest rates had gone up.

Our investigator asked Nationwide to increase its redress offer to £400. Nationwide agreed to do this, and the investigator told Mrs D that with that enhancement in place, she considered Nationwide had made a fair offer to resolve the complaint. Mrs D 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.

This is not a complaint where I have to decide fault; Nationwide has admitted liability and offered redress to put things right. What remains in dispute, and what I have to decide, is whether Nationwide's offer is fair, or if it needs to do more.

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

That includes listening to recordings of Mrs D's conversations with Nationwide's mortgage advisor. Having done so, what follows are my conclusions and the reasons for them.

The decision not to lend was a matter for Nationwide's commercial discretion, by reference to its lending criteria. My role is not to say what those criteria should be. Rather, it's to assess whether the criteria were applied correctly in Mrs D's case, and I'm satisfied they were. Nationwide's error was in not telling Mrs D of its decision for about five weeks. Nationwide initially offered £200 compensation for Mrs D's time, trouble and upset, but increased that to £400 at the investigator's recommendation. In all the circumstances, I find that to be fair, as far as it goes.

The sticking point is over Mrs D's claim for further losses that she believes are a consequence of the delay. In essence, these are the ERC she's already paid on redeeming the existing mortgage, and the cumulative extra monthly costs she'd incur from taking a mortgage on a higher interest rate than the fixed rate she was hoping to port from the previous mortgage to the new one.

The Bank of England Base Rate increased by 0.25% between 23 May (the date the DIP was issued) and 14 June (the date Nationwide finally rejected Mrs D's application). A second increase of 0.25% occurred before Mrs D found out about the decision on 14 July. Each of these will have prompted a rise of broadly similar proportions in the rates being offered by lenders.

It's possible that the cumulative effect of both increases was enough to push the cost of the mortgage Mrs D wanted beyond what she felt comfortable paying. But one of the increases happened before Nationwide rejected the application, so Mrs D would have been impacted by that even if there had been no delay in telling her.

Also, even if a mortgage had gone ahead with Nationwide at the ported fixed rate, once that expired in 2024 there was always a likelihood that any new rate that succeeded it would be higher. So Mrs D needed to be prepared to pay a higher rate at some stage, and feel comfortable doing so. The prospect of future rates being higher was discussed extensively in the near three-hour conversation on 19 May 2022 in which the advised sale took place, such that the application could begin.

With the overall trend being upwards, Mrs D's best opportunity for securing an alternative mortgage at an interest rate she felt comfortable paying, would have been to do so immediately she found out Nationwide had refused her application. When our investigator first started looking into the complaint, in November 2022, Mrs M told her that Mrs D hadn't applied for an alternate mortgage because interest rates had gone up.

That's understandable, and of course there has been a succession of further Bank of England Base Rate increases since then. So it may be that the moment has now passed for Mrs D. But it does mean the extra cost of borrowing is notional rather than real. I can't fairly order a business to pay compensation for something that might have happened but didn't.

The ERC is a cost that did happen; Mrs D redeemed her existing mortgage, and then didn't have a new mortgage to which the existing interest product could be ported. However, I'm satisfied Mrs D was, or at least should have been, aware that the DIP Nationwide issued was no guarantee that a mortgage offer would be issued. So it's not enough to conclude that Mrs D's payment of the ERC flowed from Nationwide not telling her for five weeks that the mortgage application had failed. To find in her favour on this element of her claim, I'd need to be persuaded that Nationwide wrongly caused her to believe the application *had succeeded*.

Mrs M on Mrs D's behalf said Nationwide had told her this in conversation. Having listened to the recordings of Mrs D's conversations with Nationwide during the relevant period, there's nothing in any of them to suggest Nationwide told Mrs D her mortgage application had succeeded, or said anything that she could reasonably have inferred to that effect.

Mrs M has said there was another call, on either 20 or 21 May 2022. Nationwide hasn't been able to locate a recording from that time period, and there's nothing in its contact notes to suggest a call took place on either of those dates. In any event, I have to decide a complaint on the basis of the evidence that *is* available, and not the evidence that *isn't*. Where that evidence is incomplete or missing altogether, I have to decide what is most likely to have happened on the balance of probabilities.

Even if there was a conversation with Nationwide on 20 or 21 May 2022 – and to be clear, I'm not persuaded there was – that would be a maximum of two days after the near three-hour conversation that preceded the application starting. With such a short lapse of time, it seems unlikely that Nationwide would be in a position to say anything that caused Mrs D to think her mortgage application had been approved for lending. That aside, the dates Mrs M has referenced *precede* Nationwide issuing the DIP specifically informing her of the checks that would need to be carried out before it could approve a mortgage and make an offer.

Mrs M also told us Mrs D interpreted a call made to arrange a valuation on the proposed property as an indication the application had been approved. However, the DIP specifies that a valuation is one of the checks that would need to be satisfied *before* an application could be approved. The other observation I'd make is that a call to arrange an appointment for the valuation is more likely to have been made by the valuer than by Nationwide. If so, that would explain why Nationwide has no record of a conversation from around 20/21 May 2022.

Mrs D committed to selling her home and repaying her existing mortgage without knowing if the new mortgage was going to be provided. I note that in the conversation of 19 May 2022, when asked about when she was likely to sell her existing home, Mrs D, after conferring with Mrs M, indicated that she'd aim to sell and buy at around the same time, but one option she was considering was to sell her current home first.

Putting all the above together, I'm not persuaded Nationwide should pay anything further to Mrs D.

My final decision

I uphold this complaint in part only. In full and final settlement, I direct Nationwide Building Society to pay Mrs D £400 compensation for her time, trouble and upset. 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 Mrs D to accept or reject my decision before 12 June 2023.

Jeff Parrington

Ombudsman