

## **The complaint**

Ms G's complaint is that Nationwide Building Society wouldn't agree to her proposals for the property her mortgage with it is secured on. She wants to convert the property into two separate houses, sell one and use the proceeds to repay the mortgage with Nationwide and provide for her retirement. Ms G doesn't think Nationwide has properly and fairly considered her proposal and its rejection on the basis of risk isn't valid, as she doesn't think there are any risks involved.

## **What happened**

Ms G has an interest-only mortgage with Nationwide, which is due to be repaid in 2028. She has explained that due to her family circumstances, selling the property to repay the mortgage would have a significant negative impact. As such, she was looking for an alternative option and hit upon the idea of splitting her home into two smaller properties. She would then live in one of the properties, sell the other and use the funds to clear the mortgage. Ms G approached Nationwide about the idea in early 2022. She explained the value of the two properties, plus the development costs, would equate to the then current value of the property as it was. Nationwide referred the request to the relevant team for assessment, but it did not agree to the proposal. Ms G was not happy about the decision.

Ms G has told us she spoke to a former Nationwide employee who suggested she speak to a mortgage adviser at Nationwide, as her proposal could be escalated by this route. She did so and was told that the decision would be made based on an assessment of the risk of the project to Nationwide. Nationwide subsequently confirmed her proposals had already been referred to the relevant team when Ms G had originally asked, and it again confirmed it would not agree. It said that if she wanted to make the alterations to the property she proposed, she would need to repay her Nationwide mortgage first. This was November 2022.

A complaint about Nationwide's decision was made by Ms G.

Nationwide responded to the complaint in a letter of 11 January 2023. It said it had considered Ms G's proposals in March 2022 and rejected them. This was because it required a property to be a habitable single dwelling unit. Nationwide had concluded what Ms G proposed would likely render the property uninhabitable during the conversion works. In addition, it explained that it didn't lend on properties that had been converted into multiple self-contained units. As it didn't lend on such properties, it didn't agree to properties it had already given a mortgage on being converted to that property type. Nationwide recommended Ms G seek borrowing from a lender that did allow that type of development on their security.

Subsequently it confirmed that it did sometimes allow part of a property to be released from its security. However, each request was considered individually and there is no guarantee that an application would be accepted. It was reiterated that in Ms G's case the relevant team had assessed her request and declined it.

Ms G was not satisfied with the response and referred her complaint to the Financial Ombudsman Service. When she did she said she hadn't received a substantive response to her concerns, and she was in the dark as to why Nationwide would not allow her to do what she wanted. As such, she could not accept the decision that she could not complete her project. Ms G also highlighted that information she was sent about charges indicated that Nationwide allowed what she wanted to do as a charge was detailed for *'If you want to remove part of the property or land from the mortgage.'*

One of our Investigators considered the complaint, but she didn't recommend that it be upheld.

Ms G didn't accept the Investigator's conclusions as she thought they were wrong. She highlighted that the complaint did not relate to borrowing. Rather the complaint was about repaying the borrowing she already had, for which she needed a change in the terms of that existing borrowing. Ms G reiterated her explanations about why she wanted to split the house and the benefits it would provide her family with.

In relation to Nationwide's reasons for declining the proposal, Mrs G highlighted that Nationwide allowed such things to be done and felt that it refusing her proposal raised *'questions about transparency in terms of criteria and process, equality and prejudice.'* Ms G said she thought the reasoning Nationwide had given for refusing her proposals would apply to any proposal for splitting a property, but other customers had been allowed to do so, which she considered was prejudicial treatment.

Ms G raised concerns about what she considered was Nationwide's lack of compliance with the Equality Act 2010, Article 17 of the Human Rights Act 1998, the Mental Capacity Act 2005 and the Financial Conduct Authority's guidance for vulnerable customers. Essentially, Ms G considered that the Acts and guidance meant that Nationwide should agree to her proposal as it was the best course of action for her and her family, as it would stabilise her family situation going forward and provide funds for her retirement. Ms G also again confirmed she didn't consider there was any risk to Nationwide from her proposal. She also said that had Nationwide engaged with her, rather than just flatly refusing her proposal, she would have been able to assure it as to the viability of the project and how little would need to be done. She considered Nationwide should be taken to task for not engaging with her.

Nationwide was asked for some further comment and it explained that having reviewed the proposal again it was confirmed the development was simply not within its policy or risk appetite. It explained that one concern was the potential for complications in the development – costs being underestimated, the availability of funding for it, inadequate professional supervision, delays and the inconvenience of completing the project on Ms G and her family while living in the property. It said that it was not clear that Ms G had considered these issues fully. Nationwide then said that it needed to consider the future saleability of the property if it had to step in and sell it as a part completed project or even wholly completed.

Having considered Nationwide and Ms G's further comments, alongside the initial submissions of both parties, the Investigator confirmed that she hadn't been persuaded to change her view of the complaint. Ms G remained unhappy with the Investigator's opinion and asked that the complaint be referred to an Ombudsman.

### **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 appreciate Ms G's strength of feeling regarding this complaint. Ms G has been very open with us about her personal and family situations, and I thank her for her frankness and honesty. She has clearly been through some very difficult times, and continues to have difficulties and challenges. I appreciate it has not been easy telling us about these situations as part of this complaint. I won't detail everything she's told us to protect her privacy, but I can reassure Ms G that I have read and considered everything she's told us.

However, I trust Ms G won't take it as a discourtesy that I have condensed this complaint in the way that I have. Although I have read and considered the whole file I will keep my comments to what I think is relevant. If I don't comment on any specific point it's not because I haven't considered it but because I don't think I need to comment on it in order to reach the right outcome.

I would at this point confirm to Ms G that I must assess the situation as it was at the time Nationwide declined her proposals. I am aware that while she still wants to split the property into two separate dwellings, having thought more about the situation and received advice, she plans to 'scale down' the proposals in order to ensure they are achievable. However, I cannot take those changed plans into account when considering this complaint, as that's not what Nationwide was asked to agree to. If Ms G wants to put forward a different plan, she will need to put that proposal, with appropriate supporting evidence to, Nationwide for its consideration.

Ms G has raised the Equality Act 2010, Human Rights Act 1998, the Mental Capacity Act 2005 and the FCA's vulnerable customer guidance. All of these Acts and guidance apply to Nationwide, but it is not for me to make a finding on matters of law in my decisions. That is a matter for the courts. Nor is it for me to act as a Regulator and decide if Nationwide breached relevant regulations. However, in deciding what's fair and reasonable in all the circumstances I have taken into account all relevant law, rules and guidance, as well as what I consider to have been good industry practice at the time. As part of that I have considered the Equality Act and discrimination in the wider sense. I have thought about whether Ms G has been treated unfairly, and if she has, whether that unfair treatment was because of who she is and her family situation.

The relevant legislation requires Nationwide to make reasonable adjustments to ensure people with protected characteristics (disability being one such characteristic) are able access to the services it provides without disadvantage.

I don't think the Mental Capacity Act is likely to be relevant, because there is no suggestion Ms G lacks capacity. In addition, the Human Rights Act doesn't apply to Nationwide because it's not a public body – and in any case the protection she refers to is against arbitrary seizure of a home, which isn't the case here. It doesn't mean that mortgage lenders can't have rational lending criteria.

The FCA's guidance for vulnerable customers is relevant. I think Ms G's wider circumstances mean that she has characteristics of vulnerability. The guidance seeks to ensure that such customers do not receive worse outcomes than other customers. However, that doesn't mean that Nationwide has to change its lending or risk policies, or apply them differently, such that a person who is considered vulnerable or has a protected characteristic (or is associated with someone who does) receives a more favourable outcome than someone without that characteristic or vulnerability.

Furthermore, a financial business needs to know about vulnerabilities or protected characteristics to be able to take it into account. In this case, Nationwide was not made aware of Ms G's family situation until she complained about its decision, and it was not until after our investigation had been underway for some time that Ms G made us aware that she

had protected characteristics herself. Quite simply, a business can't act on information it is not aware of. However, I have also considered whether, in light of what it now knows, it's fair for Nationwide to maintain its objection to Ms G's plan.

When the mortgage was granted to Ms G it was on terms that both she and Nationwide were satisfied with and agreed to. So if one of the parties wants to do something that is not specifically provided for in the existing contract, both parties need to be happy with that change and agree to it.

Ms G has highlighted that the information she was sent regarding charges shows that Nationwide allows development similar to what she wants to make. Nationwide has confirmed that it does allow part of a property to be released from its security. However, that can take many forms, commonly the sale of part of the grounds/garden to a neighbour or developer, or the sale of outbuildings.

In this case, Ms G asked to make a material change to the structure of the residential building. In the letter she sent to Nationwide asking for permission to split the property, she told Nationwide that the resulting two properties, plus the costs of the development works, would equate to the then value of the property as it was. In other words, she told Nationwide that each of the two properties would be worth less than half the value of the existing one. In order to sell one of the proposed converted properties, the title Nationwide had security over for the money it was owed, would need to be split. While Ms G has said this would be done at the point the sale completed, that would not be the case; it would need to be done by the point the property was marketed for sale. So the proposal Ms G made to Nationwide was that she wanted to split the property, which would entail the value of its security reducing by over 50%. The same amount of borrowing would be secured over a property worth less than half as much as before. This is not what Nationwide agreed to when it lend the mortgage. So while Ms G considers her proposals would have not represented an increased risk to Nationwide, that is not what the information she gave Nationwide indicated.

Nationwide has detailed various reasons for the proposal not being in line with its risk appetite and lending criteria:

- The security for a residential mortgage needs to be a habitable single dwelling, so it does not lend on properties that have been converted to multiple self-contained units.

The proposal Ms G put forward would have complied with this requirement until after the conversion was completed and the property title was split. It is also possible that the development works, which might be more complicated than Ms G then thought, might make the property(s) uninhabitable.

- Concerns about the potential for complications that might mean the conversion would not be completed.

Nationwide detailed its concerns relating to this. These were that the costs may have been underestimated, whether the source of funding was adequate, adequate professional supervision, delays and the affect the works would have on Ms G and her family. Nationwide was concerned that Ms G had not fully considered the detail of the project.

I don't consider that Nationwide's concerns were unreasonable. It would be usual when a consumer proposed significant alterations to a property, such that they would require a lender's agreement, they would have researched the requirements and provided plans, costings and schedules. Ms G didn't provide any of this information when she made her proposals and hadn't done the research/obtained professional opinions at the time. I don't consider Nationwide was wrong to have concerns about how realistic and thought through

her proposal was when it declined it.

- Saleability of the property before the title was split.

While lenders make every attempt to avoid repossession, sometimes it is what needs to happen. As such, a lender has to think about the worst-case scenario when considering requests to alter a property. Nationwide was concerned that if possession had to happen before the title was split, there would be difficulties selling the property(s). This was on the basis that there would be two properties on one property title, which could cause difficulties for a sale, as it would restrict buyers to the commercial part of the market or cash buyers. This issue would then be increased if the works had not been completed, again reducing the potential purchasers to commercial/cash buyers who were willing to complete the development. Difficulty selling usually leads to a lower sale price. Furthermore, complications in selling would increase costs – which would increase Ms G's debt.

Ms G has said that had Nationwide engaged with her she could have assuaged its concerns. However, I am not persuaded of that. I am also satisfied from what Ms G has said during our investigation into her complaint that she hadn't obtained architect or engineering advice, drawn up plans, obtained costings for the works, dealt with planning applications etc or carried out steps that might have supported the feasibility of her the request. In situations like this, it's up to Ms G to prepare detailed plans – it's not for Nationwide to advise her on the management of the project.

In summary, Nationwide explained that the apparent lack of planning relating to the project worried it and it was concerned the project would change the nature of the security for the mortgage to something that was outside its lending criteria. In addition, Ms G had confirmed the proposal would then reduce the value of the security by more than 50% once the title was split and its mortgage was secured over only one of the new homes. All of these factors would materially change both the amount and nature of the risk associated with Ms G's borrowing, which Nationwide has confirmed was outside of what it was comfortable with. In light of that, I am not persuaded that Nationwide acted unreasonably or unfairly when it declined the proposal. As I have said above, both parties to the mortgage have to be happy with any changes to the contract proposed, and in this case Nationwide was not.

Having considered all the available information in this complaint, I am also not persuaded that Ms G was discriminated against because of the personal circumstances that affect her. No-one is disputing the serious health concerns Ms G lives with, nor the effect on her of her family situation. This has ultimately meant that Ms G has not been able to put in place provision for repaying her mortgage at the end of the term. However, that doesn't mean that Nationwide acted unreasonably or treated her unfairly. At the time it made the initial decision Nationwide was unaware of Ms G's situation. However, if it had been aware I don't think the outcome would have been any different. Ms G's proposals would have fundamentally changed the nature of the mortgage agreement between them, and as such, Nationwide was entitled to refuse to agree.

That said, as I have mentioned above, Ms G has revised what she wants to do with the property, which is significantly different to the proposal Nationwide rejected. As such, if Ms G puts forward a new proposal, with a full plan and suitable supporting evidence about what would need to be done to comply with building regulations, costings, and planning etc. I would expect Nationwide to give it appropriate consideration. However, given the difficulties that would still exist even if she does have a fully costed proposal with the relevant plans and permissions in place Nationwide might still not agree – so Ms G might want to think carefully before incurring substantial expense in preparing it.

**My final decision**

My final decision is that I do not uphold this complaint. Under the rules of the Financial Ombudsman Service, I am required to ask Ms G to accept or reject my decision before 27 March 2024.

Derry Baxter  
**Ombudsman**