

The complaint

Mr W, Mrs W, and Miss W complain that Nationwide Building Society have declined their application to remove Mr W from a mortgage he holds jointly with Mrs W, and add their daughter Miss W.

What happened

Mr and Mrs W took out a joint mortgage with Nationwide in 1992.

Mr and Mrs W separated in 2019, and in February 2023, Mr W, Mrs W and Miss W applied for Nationwide to remove Mr W from the mortgage and add his daughter, Miss W instead.

After considering the income and expenditure of Mrs W and Miss W, Nationwide declined the application as they said the mortgage would be unaffordable.

Mr W complained to Nationwide about the outcome of the application. He said that Mrs W had been making the mortgage payments on her own for the last four years, and so removing him from the mortgage would not make a difference to Mrs W being able to afford it.

Nationwide issued their final response on 23 February 2023. They said as a responsible lender, they're required to consider an applicant's financial details thoroughly before agreeing to commit them to any lending. In this instance, the application didn't meet their lending criteria, and they apologised for any inconvenience caused.

Mr W, Mrs W and Miss W brought their complaint to our service. Our Investigator looked into things and upheld the complaint. He said Nationwide should have considered the transitional arrangements as set out in the Financial Conduct Authority's (FCA's) Mortgages and Home Finance: Conduct of Business Sourcebook (MCOB) when considering Mrs W and Miss W's application. He said that had Nationwide set aside the outcome of the affordability assessment, and thought about whether the change to the mortgage would be in the borrowers' best interests, they should have allowed the change to go ahead.

Nationwide asked some further questions about Mr W, Mrs W, and Miss W's circumstances, and ultimately agreed to consider another application, taking account of what would be in the best interests of the borrowers. They explained that as time had passed since the initial application had been made, they would need to consider the application based on the most up to date circumstances of all parties, but that Mr W, Mrs W and Miss W could be reassured that the application will be considered in their best interests taking into consideration the MCOB rules.

Mr W disagreed and didn't want to have to go through another application as he felt they'd wasted a year trying to get this sorted.

Our Investigator thought what Nationwide had proposed was reasonable, and so the complaint has been passed to me to issue a decision.

My provisional decision

I issued a provisional decision on 5 March 2024. This is what I said.

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

The rules which set out what a lender must consider before agreeing to lend a mortgage are specified in MCOB. In order to ensure lenders are lending responsibly, there are strict affordability checks that must be carried out before a mortgage is agreed.

However, Mrs W and Miss W were not applying for a brand new mortgage. They were applying to remove Mr W from an existing mortgage contract and replace him with Miss W. This meant that Nationwide should have considered the transitional arrangements set out in MCOB when reviewing their application, rather than treating them as new borrowers.

The transitional arrangements allow a lender to forgo an affordability assessment during an application to change the mortgage if it was taken out before 26 April 2014, is a first charge mortgage, there’s been no further borrowing since 26 April 2014, and the proposed change would be in the borrowers’ best interests. Mr and Mrs W’s mortgage met the first three requirements set out in the rule, and so Nationwide ought to have thought about whether the requested change to this mortgage was in the borrowers’ best interests before deciding whether to decline it on affordability grounds.

Nationwide have said they didn’t consider this at the time of the application as the income information provided for Mrs W and Miss W didn’t support their expenditure. The application wasn’t referred to underwriters for review as they didn’t think the transitional arrangements applied as Miss W was not an existing borrower. However, I’m satisfied the transitional arrangements did apply to this mortgage application, as the rules apply to the mortgage contract. They do not apply to each individual borrower. Whilst the borrowers are applying for Mr W to be removed from the contract and Miss W added, Mrs W will remain on the mortgage as an existing borrower.

Since our investigator issued his view, Nationwide now agree they should have considered the transitional arrangements and have offered to look at a new application again taking the borrower’s best interests into account. So what remains for me to decide, is whether it’s reasonable for Nationwide to ask Mrs W and Miss W to go through another application, or whether, as they’ve asked, Nationwide should just change the parties on the mortgage without the need for another application to be made. Having considered everything, whilst I agree Nationwide should have thought more carefully about this application when it was made in February 2023, I think it’s reasonable they want to assess another application before making the requested changes.

The transitional arrangements set out in the regulator’s rules say that a lender doesn’t need to carry out a strict affordability assessment when considering an application to make changes to an existing mortgage as long as the requirements I’ve set out above are met. It doesn’t say the lender must not complete one. Here, Nationwide did complete one but as the affordability criteria wasn’t met, the application didn’t go any further.

There are lots of factors a lender should take into account when deciding whether a change to the mortgage is in the best interests of the borrowers. That will likely include the result of an affordability assessment, as it wouldn’t normally be in the best interests of the borrowers to agree to a change they wouldn’t be able to afford. But the lender should also take into account the circumstances in the round – including the payment history of the mortgage, the reason for the requested change, and any proposed changes to repayment strategies for example. Based on what happened during the first application in 2023, I’m not satisfied

Nationwide have conducted a thorough investigation into Mr W, Mrs W, and Miss W's circumstances and so I don't think they have enough information at present to determine that.

I'm also conscious that since the application was made, interest rates have increased significantly, and Mrs W's income has also changed. So the information submitted and considered in the 2023 application is now out of date. None of this is the fault of Mr W, Mrs W, and Miss W, as Nationwide should have asked the relevant questions at the time of the application. But I'm not persuaded it would be reasonable for our service to direct Nationwide to make the changes requested by the borrowers without them being in possession of all the relevant and up to date information.

In order to progress the changes Mr W, Mrs W and Miss W want to make to the mortgage, they will need to have further discussions with Nationwide in any event, as a mortgage offer will need to be produced, and the legal process started to make the relevant changes with the land registry. Nationwide have given assurances that when considering another application from the parties, they will ensure that they give due consideration to their best interests in line with the rules. I think that's a fair and reasonable way to resolve things for all parties.

However, I recognise this will result in Mr W, Mrs W and Miss W having to spend more time and energy on another application that they wouldn't have had to make had Nationwide handled things as they should have done the first time round. As a result, I think Nationwide should pay Mr W, Mrs W, and Miss W £150 each to recognise the distress and inconvenience caused. I'm also persuaded Nationwide should waive the application fee of £125 as they didn't handle the application fairly."

Responses to my provisional decision

Both parties accepted my findings as set out in my provisional decision.

Nationwide explained that as the application fee is payable on application, they are unable to waive the fee. But they will pay Mrs W an additional £125 upon resolution of this complaint to cover the fee when it's due.

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.

As all parties have accepted my provisional decision, I see no reason to depart from my findings as set out in my provisional decision.

Putting things right

In order to put things right Nationwide should:

- Consider a new application from Mrs W and Miss W to take over the mortgage, and remove Mr W. During that application process Nationwide should apply the transitional arrangements as set out in MCOB and consider whether the change requested is in the borrowers' best interests.
- Pay Mr W, Mrs W and Miss W £150 each for the distress and inconvenience caused.
- Pay Mrs W an additional £125 to cover the application fee.

My final decision

Considering everything, for the reasons I've explained, I uphold this complaint and instruct Nationwide Building Society to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W and Mrs W and Miss W to accept or reject my decision before 22 April 2024.

Kathryn Billings
Ombudsman