

The complaint

Mrs J complains that Nationwide Building Society caused delay and then withdrew a mortgage offer, which caused her to lose the property she wanted to buy.

What happened

Mrs J applied, through a broker, for a mortgage with Nationwide. She was looking to sell her existing property and purchase another one.

A valuation was carried out and Nationwide issued a mortgage offer on 14 April 2022. Mrs J instructed solicitors and the conveyancing process began. Mrs J's mortgage offer was due to expire in October 2022, and she was involved in a property chain, so it was important to Mrs J that the mortgage completed on time.

During the conveyancing process, Mrs J's solicitors noticed that the property she was purchasing, which was a leasehold flat, was subject to a ground rent review every five years. The solicitors reported this to Nationwide, and following further queries and answers, Nationwide instructed a revised valuation report. The valuer reviewed the property and said that it wasn't acceptable security because of the ground rent provision. The valuer also said that an EWS1 form would be required because the block the flat was in had timber cladding and stacked balconies (balconies placed on top of each other can be a fire risk if they are made of, or include, combustible material such as timber).

On 7 October 2022, having received and considered the valuation report, Nationwide withdrew the mortgage offer. It said the property was no longer suitable security for the lending.

Mrs J complained. She said she was in danger of losing her sale and purchase and that this should have been raised much sooner. Nationwide said it couldn't lend on this property. But if Mrs J was able to find another property which did meet its lending criteria, it would honour the interest rate included in the April 2022 offer rather than interest rates available in October, which were much higher. It also offered £200 compensation. It said this was to recognise the fact that it could have asked for the EWS1 sooner. But it also told us that ultimately the delay in asking for an EWS1 made no difference – because the mortgage would never have gone ahead because of the ground rent provision, which only came to light during the conveyancing.

Mrs J then found another property. But again it was a leasehold flat, and again the ground rent provisions fell outside Nationwide's lending criteria. So Nationwide rejected this application too. Mrs J brought her complaint to us. She said that Nationwide hadn't treated her fairly. It ought to have made clear much sooner that it wouldn't lend. The result was that she was now paying 4.73% with another lender, as opposed to the 2.09% Nationwide had offered in April 2022, for a mortgage on the second property. She had suffered the stress of having her chain collapse, and had ended up selling her property for £10,000 less than it was worth. The whole process had a significant impact on her health, which had meant she had to take time off work. Mrs J said Nationwide should pay £150,000 compensation.

Our investigator said that Nationwide was entitled to refuse to lend where a property fell outside its lending criteria. But she said that Nationwide should have realised that sooner, and asked it to increase the offer of compensation to £500 to recognise the delay in doing so. Neither party accepted that, so the case was referred to me for a decision.

I issued a provisional decision setting out my thoughts on the case.

My provisional decision

I said:

“Following the issue of the mortgage offer on 14 April, the conveyancing process began. The solicitors acting for Mrs J wrote to Nationwide on 24 May 2022, drawing its attention to the problem with the cladding and balconies on the first property Mrs J wanted to buy. They enclosed a copy of the fire risk assessment for the building, but it seems no EWS1 was available.

The solicitors asked Nationwide how it wanted to proceed; Nationwide didn’t reply. The solicitors then wrote to Nationwide on 22 August 2022 telling it about the issue with the ground rent. Following some further questions, Nationwide referred back to the valuer, who confirmed that the property was outside Nationwide’s lending criteria.

Nationwide then withdrew the mortgage offer. Under the rules of mortgage regulation, a mortgage offer is binding on the lender and can’t be withdrawn – unless there are conditions in the offer document which allow the lender to withdraw it.

The offer letter says:

“We are committed to making this loan before the offer expires unless:

- There is a material change in your personal or financial circumstances
- There is a material change in the value of the property
- We have reason to believe you’ve given false information about you or the property
- The conveyancer raises any issue which makes the property unacceptable to us”

Nationwide has given different reasons for withdrawing the offer at different times. In its response to the complaint, it said the withdrawal was because it learned about the issue with the ground rent – which is an issue raised by the conveyancer which made the property unacceptable.

However, it had previously told Mrs J that it was because of the issues with the cladding and balcony and lack of an EWS1. For example, an email from a complaint handler on or around 17 October says:

“Unfortunately, an EWS1 is still needed.... As a lender, we reserve the right to define our own lending criteria, and in this case require an EWS1 before we will proceed. Consequently, as per our phone call, I’m very sorry, but your offer has been withdrawn and no further extensions will be possible.”

This too is an issue raised by the conveyancer which makes the property

unacceptable.

Finally, Nationwide's internal notes give a third reason – which, it seems, wasn't ever communicated to Mrs J. At the same time as the checks on the ground rent, Nationwide did a further credit check on Mrs J to see whether anything had changed since the offer was issued some months ago. Its notes record that it found that she had taken out a new personal loan of around £5,000 in August 2022 and increased her credit card debt from around £700 to almost £15,000 since the application. The notes record that this meant Nationwide no longer considered the mortgage to be affordable, and that the offer was withdrawn both because of the EWS1 and ground rent, and also because of a material change in Mrs J's financial circumstances.

Nationwide would have been justified in withdrawing the mortgage offer for any or all of these reasons. The conditions in the offer allowed it to withdraw the offer where Mrs J's financial situation had changed or where the conveyancer had flagged issues with the property which meant it no longer met Nationwide's lending criteria.

I don't therefore think that Nationwide did anything wrong in withdrawing the offer. The conditions entitled it to do so, and material new information had come to light both about Mrs J's finances and about the property. Had it known any of those things at the time of the application, Nationwide would never have issued the mortgage offer and in those circumstances it was entitled to withdraw the offer.

However, I don't think it acted fairly and reasonably in the time taken to do so. The issue with the cladding, balcony and EWS1 would have been enough for the offer to be withdrawn on its own. Nationwide was told about this by the solicitor on 24 May 2022, yet it took no action until it was told about the ground rent in August, referring back to the surveyor in September and withdrawing the offer in October.

Had Nationwide dealt with the solicitor's letter in May, I think it's likely the offer would have been withdrawn in around mid-June rather than mid-October.

But Nationwide didn't take any action in May. The result was that Mrs J continued with the conveyancing process, in the expectation that she'd be able to move in around October – when that was never going to be the case. Nationwide should have made that clear sooner than it did.

It did recognise this when she first complained, and offered to allow Mrs J to retain the interest rate from April 2022 if she found another property – only to reject the second property because of a similar issue with the ground rent.

I don't think it was unreasonable that Nationwide rejected this second property. It's entitled to have lending criteria which mean that it won't lend on certain types of property. Just because another lender did offer Mrs J a mortgage on the second property, that doesn't mean Nationwide was wrong to refuse to do so. Different lenders can legitimately take a different view about which properties are acceptable and which aren't.

I think that means Mrs J would never have ended up with a Nationwide mortgage. Neither of the properties she had found was acceptable to Nationwide. So she hasn't lost out by not getting the 2.09% interest rate on her mortgage that was in the April 2022 offer – that interest rate would never have been available to her because, sooner or later, Nationwide would have declined to lend on both properties.

Where I think Mrs J has lost out is that the delay in withdrawing the offer in October

2022 rather than in June has meant that she ended up going to the other lender four months later than she would otherwise have done. At a time when interest rates rose substantially, this means that she ended up with a higher interest rate than she would otherwise have done.

We've checked with the other lender, and it's confirmed that Mrs J took a tracker rate, of 0.73% above the lender's base rate – which, in practice, is the same as the Bank of England base rate. The offer is dated 30 December 2022 and the mortgage completed on 3 February 2023. The tracker rate will expire on 30 April 2025. There was a product fee of £995. Mrs J borrowed £187,995 – compared to the £190,000 on the Nationwide offer.

Mrs J has explained the importance of moving to her – for health reasons, she wanted to live nearer to where she worked and reduce her commute. The delay in completing her purchase not only impacted her financially (because she continued to pay higher commuting costs) but also impacted her health. She also says that the stress of the mortgage being withdrawn and her purchase collapsing caused her great stress, which made her unwell – and having time off work has caused problems and means she's worried about losing her job.

Mrs J says Nationwide should pay her £150,000 – she says she will pay around £25,000 on her mortgage more than she would have done with the Nationwide mortgage over the five years of the Nationwide interest rate; she has spent around £5,000 more in commuting costs than she would otherwise have done; her annual salary is £52,000; and she thinks £70,000 is fair compensation for the emotional distress and health impacts caused.

I've thought carefully about this, but I'm not persuaded that would be a fair award.

As I've explained above, if nothing had gone wrong the first mortgage offer would have been withdrawn in June 2022 rather than October, and Nationwide would still have rejected the application for a mortgage on the second property. That means Mrs J would never have ended up with the 2.09% fixed rate Nationwide offered her – and her loss is not therefore the amount by which her current mortgage exceeds 2.09%. Rather, what should have happened is that Nationwide withdrew the first mortgage in June 2022. It would still have rejected the second property and Mrs J would still need to have gone to the other lender – but would have done so four months sooner than she did.

The other lender has confirmed to us that Mrs J took a tracker rate of 0.73% above base rate. The lender has told us that if she'd applied four months sooner, it had no tracker rates available at that time. So I can't say that Mrs J would have ended up with a rate directly equivalent to the one she took.

At that time, the lender only had fixed rates available. It's confirmed that the equivalent fixed rate, over two years and with a £995 product fee, was 3.36%. That rate would have expired on 30 November 2024. I think it's likely this is what she would have taken, based on it being the closest available equivalent to what she ended up taking.

Mrs J's loss as a result of Nationwide's delay in withdrawing her mortgage offer is therefore the difference between the amount she would have paid at a fixed rate of 3.36%, compared to the amount she has paid and will pay first on her old mortgage and then at a tracker rate of 0.73% above base rate, until 30 November 2024.

Some of this is future loss, and the exact amount depends on movements in base rate between now and November 2024. So it's not possible to precisely quantify the full loss at the moment.

I think that Nationwide should therefore make two calculations – one up to the point at which I make a final decision, quantifying Mrs J's loss to that point. It should refund that amount to her. And it should make a second calculation in December 2024, quantifying the additional loss between the first and second calculations, paying that amount to Mrs J at that time. I don't know the exact date Mrs J's mortgage would have completed but for the delay. I will take 3 October 2022 as a fair starting point, being four months before she actually completed.

After 30 November 2024 the fixed rate she would have taken would have come to an end and she would have been able to move to another rate. If Mrs J moves her mortgage to a new interest rate which is cheaper than the tracker rate at the end of what would have been the fixed rate period on 30 November 2024, Nationwide should also pay the early repayment charge (0.25% of the balance) she will incur in doing so. If Mrs J does not move her mortgage to another rate at that point and elects to remain on the tracker rate, Nationwide will not be required to compensate her after that date. I've included this because had Mrs J taken her mortgage four months earlier – as she would have done but for Nationwide's mistake – the fixed rate would have expired at this time and she would have had the opportunity to take another rate at that point. So that's the position I put her back in.

I've noted Mrs J's health conditions and reviewed the medical evidence provided. But I don't think it would be fair to say that Nationwide is responsible for her health conditions, or for the period of sick leave she took off around this time.

The medical evidence says she was signed off work with stress. But it doesn't identify the cause of the stress. And I have to bear in mind that buying and selling property, applying for a mortgage, and moving house are all stressful at the best of times, even if nothing goes wrong – and that Mrs J had pre-existing health conditions making it likely she would be more susceptible to such stress. In this case, even if Nationwide had acted fairly, Mrs J would have had to deal with a mortgage offer being withdrawn (in June rather than October) and the stress of having to find another property or another mortgage lender or both – just as she did anyway. This would always have been a stressful and difficult time, and it's likely that would have had much the same impact on her health. I don't think I can fairly find that Nationwide is solely responsible for the stress Mrs J experienced or the health concerns she experienced at this time; I think it's more likely than not they would have happened anyway.

For the same reasons, I don't think it would be fair to require Nationwide to pay Mrs J a year's salary. To the extent that she had to take time off work because of stress, I think it's more likely than not that would have happened anyway. And while Mrs J believes her job was at risk as a result, as I understand it she didn't actually lose her job at this time and so there is no loss in this respect.

I do however think it's reasonable for Nationwide to pay the additional costs Mrs J had to pay for commuting a longer distance for a longer period than she otherwise would have done. Had it withdrawn the offer when it should have done, four months earlier than it did, it's reasonable to expect that Mrs J would have completed her purchase sooner. I don't propose to direct a specific figure – but provided Mrs J can evidence the commuting costs from both her old address and her new address, Nationwide should pay her the difference between the two amounts for four months.

Finally, I don't think £70,000 is a reasonable amount to reflect the upset caused – in addition to the stress and inconvenience Mrs J would always have experienced even if Nationwide had done nothing wrong. I've had regard to the sorts of awards the Financial Ombudsman Service makes for distress and inconvenience – more information is available on our website – and I agree with our investigator that £500 is fair compensation. Nationwide's mistake here was withdrawing the mortgage offer four months later than it should have done. But the offer would always have been withdrawn. It should have happened in June 2022. And so it is only the delay, not the consequences of withdrawal, for which Nationwide should compensate Mrs J."

Nationwide didn't make any further arguments or provide any further evidence. It asked for information about Mrs J's costs.

Mrs J did not accept my provisional decision. She said that Nationwide had failed to make timely decisions which had caused her great difficulty. She said that compensation of £500 was "rubbing salt to my injuries" and "peanuts". She said that because of the stress caused she was unable to focus on her work and received a written warning. She was concerned that she might lose her job, and £52,000 salary, as a result. She said that Nationwide should pay her that amount, and £70,000 for emotional and mental stress, as well as her financial losses in additional interest and commuting costs of £4,800.

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 also considered my provisional decision again, in light of the responses to it. But I haven't changed my mind. I'm satisfied, for the reasons I gave (reproduced above) that Nationwide would never have lent to Mrs J because neither property met its lending criteria. And I'm satisfied that Nationwide had information it ought to have acted on four months sooner than it did showing that Mrs J's first property wasn't suitable. But for that delay, I think Mrs J would have been able to complete her purchase with her new lender four months sooner than she did. In those circumstances it's fair and reasonable that Nationwide compensates her for the financial and other losses that resulted.

I've thought about what Mrs J has said about fair compensation. She's reiterated what she said to our investigator, but hasn't provided any new evidence or arguments that would persuade me to change my mind.

I don't think it would be fair to require Nationwide to pay Mrs J one year's salary. She hasn't in fact incurred this loss, because she hasn't lost her job. And I'm not persuaded that even if she's right that her job is at risk, that's because of Nationwide's failings. The evidence she's provided shows that she has had significant time off and her employer has taken action over excessive leave. But the medical and sick note evidence shows that some of that time was due to physical health conditions which I can't see any basis for ascribing to Nationwide. And while some of the time off was for stress the sicknotes don't directly correlate with the time relevant to this complaint. And as I explained in my provisional decision I think it's likely Mrs J would have experienced significant stress and the impact of that even if Nationwide hadn't done anything wrong. She would still have had the stress of Nationwide fairly withdrawing a mortgage offer (albeit promptly rather than at the last minute) and having to find another property, another lender or both. She would still have experienced the normal stress associated with a house move. I'm not persuaded that but for Nationwide's delay Mrs J wouldn't have experienced significant stress or needed time off work as a result.

I'm also not persuaded that it would be fair to require Nationwide to offer compensation of

£70,000 for her distress. That's a sum far in excess of the sorts of awards the Financial Ombudsman Service makes even in the most extreme cases. I'm sorry that Mrs J feels that my proposed award is insignificant and insulting. However, having had regard to the impact on her of Nationwide's mistake – separate from the stress and upheaval she would have experienced anyway – and having had regard to our published guidance on fair awards,¹ I remain of the view that £500 is fair compensation in this case.

Finally, Mrs J provided evidence that her additional commuting costs – that she would not have had to pay had she moved sooner – were £699.70 per month. This is the cost of a monthly rail season ticket that would not have been necessary had Mrs J been able to move closer to her place of work. She's said that Nationwide should pay her £4,800 in this respect. But for the reasons I gave in my provisional decision, I will require Nationwide to pay her four months' costs only.

Putting things right

To put matters right, Nationwide should compensate Mrs J as follows now.

- Non-financial loss - £500
- Commuting costs - £669.70 per month for the months of October 2022 to January 2023. It should add simple annual interest of 8% on each monthly amount running from the first of the month to the date of refund. Nationwide may deduct income tax from the 8% interest element of my award, as required by HMRC, but should tell Mrs J what it has deducted so she can reclaim the tax if she's entitled to do so.
- Mortgage interest to date – the sum of:
 - The difference between interest on Mrs J's previous mortgage, and interest on the same balance at 3.36%, between 3 October 2022 and 3 February 2023 (Mrs J has not given us details of her previous mortgage but will need to give those details to Nationwide to allow it to make the calculation. If the interest rate on her previous mortgage was less than 3.36% this part of the calculation will produce a saving to be offset from the losses in the rest of the calculation);
 - The difference between interest at 3.36% fixed (the mortgage Mrs J ought to have had) and interest at a rate tracking 0.73% above base rate (the mortgage she actually ended up with) from 3 February 2023 to the date of calculation, based on a repayment mortgage with a starting balance of £187,995 and a term of 21 years. In months where as a result Mrs J would have been out of pocket, Nationwide should add simple annual interest of 8% on that monthly difference running from the first day of each month to date of refund. Nationwide may deduct income tax from the 8% interest element of my award, as required by HMRC, but should tell Mrs J what it has deducted so she can reclaim the tax if she's entitled to do so.

In addition, subject to Mrs J providing evidence of her mortgage situation in December 2024, at that time Nationwide should calculate and pay the following:

- The difference between interest on the mortgage she should have taken at 3.36% and interest at the tracker rate of 0.73% above base rate, running from the end of the

¹ <https://www.financial-ombudsman.org.uk/businesses/resolving-complaint/understanding-compensation/compensation-for-distress-or-inconvenience>

first calculation to 30 November 2024. In months where as a result Mrs J would have been out of pocket, Nationwide should add simple annual interest of 8% on that monthly difference running from the first day of each month to date of refund. Nationwide may deduct income tax from the 8% interest element of my award, as required by HMRC, but should tell Mrs J what it has deducted so she can reclaim the tax if she's entitled to do so.

- If Mrs J has re-mortgaged to a new rate taking effect on or around 1 December 2024, the ERC she will have had to pay to end the tracker rate, adding simple annual interest of 8% on that monthly difference running from the first day of each month to date of refund. Nationwide may deduct income tax from the 8% interest element of my award, as required by HMRC, but should tell Mrs J what it has deducted so she can reclaim the tax if she's entitled to do so.

My final decision

My final decision is that I uphold this complaint. Nationwide Building Society should put matters right as set out above, paying the first redress payment within 28 days of Mrs J providing evidence of her previous mortgage, and the second payment within 28 days of Mrs J providing a mortgage statement for 2024 and evidence of any re-mortgage around 1 December 2024.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J to accept or reject my decision before 24 April 2024.

Simon Pugh
Ombudsman