

The complaint

Miss C complains about the way Nationwide Building Society handled her mortgage account whilst she was suffering financial difficulty and ill health.

What happened

Miss C has a mortgage with Nationwide that fell into arrears in 2016. Miss C wasn't working and could not afford to make any payments to the mortgage. She was physically and mentally very unwell and was experiencing financial difficulties. Nationwide agreed payment arrangements and holds on the account to allow Miss C time to resolve her situation. She said she wanted to sell the property but was unable to as it needed repairs that the landlord was responsible for arranging but hadn't done. She was trying to negotiate with the landlord for them to buy the property back from her but that was proving unsuccessful.

After several conversations from 2016 onwards, in September 2021 Nationwide told Miss C that they would be referring her account to their litigation department as no payments had been made to the mortgage since 2017. In April 2022 Miss C asked Nationwide about the possibility of taking out an equity release mortgage to repay her existing mortgage. She acknowledged she would struggle to secure a new mortgage with any other lender as a result of her financial situation. Nationwide told Miss C she wasn't eligible for any of their equity release mortgage products as her property was leasehold and she wasn't over the age of 55. Nationwide signposted her to a website where she could check if there were other providers that might be able to help.

A hearing date was set for August 2022. Before the hearing Nationwide discussed Miss C's circumstances with her again to check if anything had changed. She told them she'd spoken to an organisation who'd helped her understand what benefits she was entitled to. She asked for more time to explore that and make applications. Nationwide said that the court hearing would still go ahead, and she could raise the updated benefits information with the judge. The hearing went ahead but was adjourned by the judge.

In November 2022 Miss C told Nationwide some of her applications for benefits had been successful and some were still being reviewed. On 6 January 2023 Miss C sent Nationwide her updated income and expenditure details and a proposal to capitalise the arrears and extend the mortgage term to make the monthly payments affordable for her. Nationwide agreed to the proposal in April 2023.

Miss C has made several complaints to Nationwide during the above period, and received several final response letters. In June 2023 she asked our service to look into her concerns. In summary, Miss C is unhappy that Nationwide took legal action to repossess the property without exploring all other options. She says despite Nationwide knowing about her financial and health difficulties, they didn't refer her to a free money advice service they're partnered with until 2020. And even after she spoke to that advice service, they failed to give her appropriate advice. It wasn't until she spoke to a different debt advice charity in 2022 that she realised the extent of the benefits she was eligible for. She was also unhappy about the way Nationwide had communicated with her during the above period, and specifically referred to breaches of MCOB (Mortgages and Home Finance: Conduct of Business

Sourcebook) (the rules of mortgage regulation), the pre-action protocol, and the regulator's guidance for firms on the fair treatment of vulnerable customers. Miss C also raised concerns about payments Nationwide had made to her landlord to clear outstanding County Court Judgment debts (CCJs) without her consent, and had added to the mortgage balance.

To resolve her complaint Miss C said she would like a written acknowledgement and apology from Nationwide, compensation for distress and inconvenience, a refund of all legal charges added to the mortgage, compensation for the missed benefit support and lost access to government grants, a refund of interest charged on legal fees and the CCJs paid – with an agreement not to recover future interest on any CCJ balance outstanding.

I issued a decision which said our service only had the power to consider Miss C's complaints about the following:

- The lack of support provided by Nationwide which led to Miss C missing out on benefits she was entitled to.
- Nationwide taking steps to repossess the property through legal action and the way they handled that.
- Nationwide's communication with Miss C during the above periods.

One of our investigators looked into the merits of Miss C's complaint, and said that whilst he empathised with Miss C's situation, he thought Nationwide had offered reasonable forbearance and treated her fairly and reasonably.

Miss C disagreed. Her response was detailed, but in summary she said the following:

- We had failed to consider how Nationwide had breached their obligations as set out in MCOB – specifically in relation to forbearance offered and referrals for Government support (e.g., Support for Mortgage Interest). She also referenced the Financial Conduct Authority's (FCA's) guidance for the fair treatment of vulnerable customers.
- We had disregarded the fact that Nationwide was partnered with the money advice service Miss C had spoken to which had failed to offer appropriate support. She disagreed that Nationwide couldn't be held accountable for that poor support.
- We had failed to address that Nationwide's delayed referral for Miss C to receive support with her benefits has resulted in her losing out financially.
- We had unjustifiably disregarded the events leading up to the court hearing in August 2022, including the absence of appropriate measures given her long term ill health and the impact on her ability to successfully negotiate her circumstances.

Miss C also raised concerns about how we'd dealt with the complaint, including the failure to address specific points, factual inaccuracies made, and procedural unfairness and impropriety. Those concerns have been dealt with by our service outside of this casework process. I'm satisfied both parties have had sufficient opportunity to provide any comments and evidence they'd like me to consider before I have reviewed this complaint.

Miss C has also made further submissions in relation to my jurisdiction decision, and the merits of complaint points that I said we could not consider. I won't be addressing those comments here as I've set out our service's final position on jurisdiction and I've not seen anything to suggest that needs to be revisited.

As the investigator was unable to resolve Miss C's concerns, the complaint has been passed to me to issue a decision on the merits.

My provisional decision

I issued a provisional decision on 11 July 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.

Miss C’s submissions to this service are detailed, and I appreciate the way she has highlighted the particular failings she feels we need to address, referencing the relevant regulations and guidance she thinks Nationwide have breached. I mean no discourtesy by only summarising the relevant events and her submissions above. We are an informal service set up to resolve disputes quickly and so I have not repeated everything both parties have said in this decision. However, I want to assure them I have read and taken account of everything that’s been said.

Whilst I may not address every specific point raised, it’s my role to get to the crux of the complaint and decide whether I think Nationwide have acted fairly and reasonably taking account of all the circumstances. That includes taking account of the relevant law, regulator’s rules, guidance and standards, codes of practice, and what I consider to have been good industry practice at the relevant times. I’ve considered all of this when deciding a fair outcome for Miss C’s complaint. And I’ll set out my findings below.

Did Nationwide fail to ensure Miss C was receiving the benefits she was entitled to?

Miss C is now in a position where she’s able to maintain this mortgage sustainably as a result of the benefits she’s recently claimed and is now in receipt of. Both parties are aware of Miss C’s history of poor physical and mental health and so I won’t go into detail about that here, but Miss C has been unable to work for some time.

MCOB says that firms must make customers aware of the existence of any applicable Government schemes to assist borrowers in payment difficulties. I also consider it to be good industry practice for a lender to discuss exploring the potential for further external financial support when a borrower is struggling to afford their mortgage payments based on their existing income. This is particularly the case when a borrower is vulnerable and unable to work.

Nationwide had many conversations with Miss C from 2016 onwards to discuss her circumstances and plans in relation to the mortgage arrears and future payments. The contact notes for the account record that in March 2017 Nationwide directed Miss C to a number of money advice services and the Department for Work and Pensions (DWP) to see if they could help her in light of her circumstances at the time. The notes say that Miss C said she’d been online to see if she was entitled to any benefits but had found she wasn’t. In the meantime, Nationwide agreed to short term payment arrangements as Miss C had said she was trying to arrange the sale of her property.

The notes show that in August 2017 Nationwide spoke to Miss C about the potential for her to be entitled to benefits again. They asked her if she’d sought advice or looked into her benefits entitlement, and she told them she had looked into what the DWP could do to help but she wasn’t eligible.

In January 2018 Nationwide’s internal notes show that they were concerned Miss C was not receiving all the benefits she might be entitled to. They agreed to refer her to a money advice organisation they were partnered with to check she had applied for the benefits she was eligible for. However, the notes I’ve seen suggest this referral wasn’t made until June 2020. This looks to be a result of an internal communication error and Nationwide failing to

make the referral they said they would make.

When Miss C did discuss her circumstances with that particular organisation in 2020, it appears they found that Miss C wasn't eligible for any further benefits.

Miss C's complaint about this matter is twofold. She complains that Nationwide breached MCOB as they failed to refer her to this particular money advice organisation earlier than they did. And secondly, when she did seek help from that organisation in 2020, they did not provide an accurate assessment of her circumstances and benefits entitlement. She feels it's a result of Nationwide's actions that's meant she's missed out on receiving benefits earlier than she did.

From looking at the evidence I've seen, I'm persuaded it's likely that Nationwide did signpost Miss C to organisations that might be able to help her with her wider financial circumstances when these were discussed in March 2017. Whilst I haven't listened to a recording of the conversation, I think the notes are likely a fair reflection of the conversation that took place based on the detail contained in them. I think it's likely the same thing happened again in August 2017. Miss C had told Nationwide she'd looked into her benefits entitlement and found she wasn't eligible for any more than she was receiving. I'm not persuaded Nationwide acted unfairly or unreasonably by not following that up further at the time.

As Miss C's mortgage lender, Nationwide weren't responsible for ensuring Miss C was successfully claiming all the benefits and support she might have been entitled to. They should have made Miss C aware that further support might be available to her, and signposted her to places that might be able to offer the help and support she needed. I'm satisfied they did that.

Based on the evidence I've seen, whilst Nationwide had signposted Miss C for further support twice in 2017, I do think this conversation should have been revisited again earlier than it next was in 2020. Nationwide's internal notes show they intended to refer Miss C for financial support in 2018, but that didn't happen. They were aware of her vulnerabilities and her overall circumstances at the time, and were concerned she was missing out on potential income she was entitled to. I think they should have discussed this with her in 2018. So I've thought about the impact that delayed referral has had on Miss C.

Miss C had told Nationwide in 2017 that she'd explored her benefits entitlement and found she wasn't eligible for anything further. The same outcome was reached when she was referred to Nationwide's partnered money advice service in 2020 too. It wasn't until late 2022 when Miss C looked into this again that she was able to successfully claim for more benefits. I don't have details of the specific reasons for the outcomes reached during any of those assessments, but I think on balance, had Nationwide referred Miss C for further help in 2018 or 2019 instead of 2020, it's unlikely the outcome would have been any different. As far as I'm aware, there wasn't anything distinctly different about Miss C's circumstances during 2018 that would have resulted in a different outcome to the ones reached in 2017 and 2020. As such, I'm not persuaded it would be reasonable to conclude that Nationwide's delayed referral directly resulted in Miss C missing out on receiving benefits she was entitled to.

Miss C feels that she received incorrect advice from the money advice service in 2020. She says she lost out on benefits she was eligible for as a result. She believes Nationwide are responsible for that advice, but I disagree. The organisation Miss C spoke to are a separate organisation distinct from Nationwide. Nationwide are partnered with the organisation, and they paid for Miss C to receive advice so that she could receive it free of charge. But the organisation was not acting as Nationwide's agent or acting on their behalf. I appreciate Miss C feels strongly about this, and I've considered what she's said. But I'm not satisfied it would be fair or reasonable for me to hold Nationwide to account for the advice Miss C

received from a third party organisation that wasn't acting on Nationwide's behalf. So I'm not upholding this part of Miss C's complaint.

Did Nationwide act fairly and reasonably when taking legal action?

All parties recognise that Miss C was in an extremely difficult situation in regards to her property and her mortgage. This was made much harder by the fact that she was suffering severe ill health and these difficulties also overlapped with the global pandemic. Miss C recognised that the mortgage was not sustainable for her and wanted to sell the property, but she did not want to sell it at a loss caused by the lack of maintenance provided by the landlord, and she was struggling with her negotiations for the landlord to buy the property back under the specific scheme that was in place at the time. Miss C was also trying to pursue legal action against the police service by sourcing legal aid.

There is clear guidance set by the regulator that lenders must follow when borrowers are experiencing financial difficulties and struggling with their mortgage payments. This is set out in MCOB chapter 13. In summary, lenders must ensure they are considering appropriate forbearance to support borrowers with getting the mortgage back on track. And taking steps to repossess the property should only be considered as a last resort.

Having reviewed the extensive contact history between Miss C and Nationwide during the relevant period, I'm satisfied that for the most part, Nationwide did offer appropriate forbearance to Miss C. I say that because throughout the conversations Miss C was clear that her plan was to sell the property and repay the mortgage. She had very little income as a result of her being unable to work, and she was struggling with severe financial difficulties as a result. During the conversations she had with Nationwide she told them she was relying on the sale of the property, and the outcome of her legal claim against the police service, to clear any arrears and the mortgage balance. She wasn't able to make any payments to the mortgage based on her income.

Between 2016 and 2021 Nationwide agreed payment arrangements and put holds on any collections activity on Miss C's account to allow her time to see her plans through. Miss C was not making any payments to the mortgage from 2017 onwards, as she couldn't afford to. So Nationwide were limited in the forbearance options that would have been appropriate in the circumstances. I'm satisfied that, based on Miss C's income and overall situation, there wasn't anything Nationwide could do to make the mortgage affordable for her in a sustainable way, so allowing her time to sell the property was the fairest thing for them to do. I appreciate Miss C has said that Nationwide should have offered her a term extension earlier, but at a time when Miss C was unable to pay anything towards the mortgage, I don't think a term extension would have been appropriate forbearance, as it wouldn't have made the mortgage payments affordable for her.

Nationwide told Miss C they would be starting legal action in September 2021 as there had been no progress in Miss C's negotiations with her landlord, and the legal action Miss C was pursuing to recover funds she felt were owed to her had not yielded any results either. I've said that pursuing legal action should only be considered a last resort, but I'm persuaded that by the point Nationwide started legal action, it's reasonable to say it was.

By that point the mortgage had been in arrears for five years with only a handful of payments made in 2017 and none since. Miss C's overall circumstances hadn't improved in that time, and her health had in fact worsened. I appreciate Miss C was actively trying to pursue options that would have allowed her to repay the mortgage herself by selling the property – but those options had not come to fruition during the five year period, and there was no indication that was likely to change in the near future. Whilst the mortgage was in arrears, the balance was growing as a result of additional interest accruing on the balance that

wasn't reducing. It's not in a borrower's interests to allow such a situation to continue for extended or indefinite periods of time.

Miss C had asked Nationwide about an equity release mortgage, but unfortunately she didn't meet their eligibility criteria. I don't think it was unfair of Nationwide to apply their eligibility criteria to Miss C's request in the way that they did. Her property wasn't one they were prepared to offer that type of mortgage on. I don't think it would be reasonable to expect Nationwide to set that criteria aside and accept a level of risk they weren't comfortable with, even considering the particular circumstances here.

As well as MCOB, I've also considered the FCA's guidance for the fair treatment of vulnerable customers that was issued in 2021. Having done so, I remain satisfied that Nationwide took account of Miss C's particular circumstances and vulnerabilities during the period in which this mortgage was in arrears in the way that I would expect. I appreciate Miss C has raised specific concerns about some of the communication, and I'll come back to that later in this decision. But overall, I'm satisfied that Nationwide treated Miss C fairly and reasonably during the five years they offered forbearance whilst she couldn't afford to pay the mortgage.

However, in August 2022, before the hearing, Miss C told Nationwide that she'd been exploring her benefits entitlements and had discovered that she was eligible to claim for more income. She asked for more time to pursue the relevant applications. Nationwide refused and said that she could provide information about that to the judge at the hearing. I'm not persuaded that was a fair and reasonable response to Miss C's request.

I've concluded above that at the point Nationwide started legal action, I think it's reasonable to say they'd only done so as a last resort. But that changed once Miss C told them about a change in her circumstances that would materially impact her ability to afford the mortgage. Miss C explicitly told Nationwide that it was likely she was soon going to have more income, and asked for more time so that she could apply for that and to see the outcome of those applications and what that meant for her financial situation. Given Miss C's particular circumstances, including taking account of her vulnerabilities and health concerns, I think it would have been fair and reasonable at that point for Nationwide to have allowed that time, rather than force Miss C to attend a court hearing when her circumstances were likely to change.

Whilst it could not have been known to Nationwide at the time, those applications for benefits ended up being successful, and Miss C was able to make an acceptable proposal to Nationwide that allowed her to make affordable mortgage payments sustainably. So after the court hearing was adjourned and Miss C's income increased, further legal action was no longer necessary.

Considering all the circumstances, and what Nationwide knew in August 2022, I'm persuaded they should have cancelled the scheduled hearing to allow Miss C the time she requested to pursue her benefits applications. I think that would have saved Miss C the distress and inconvenience of having to attend the hearing and saved legal costs that were added to her mortgage.

I think Nationwide ought to have continued to engage with Miss C about the progress of those applications rather than continue through the legal process. Whilst the hearing was adjourned, it looks as though legal action continued in the background to apply for further hearings and monitor the progress of the account. All of this has been at the expense of Miss C, when I don't think those expenses were necessary. As a result, I'm persuaded that Nationwide should refund the legal costs that were added to Miss C's mortgage as a result of the hearing, and any further legal work carried out after that. Nationwide should also

refund the interest that's accrued on those costs.

Nationwide's communication with Miss C

In line with the regulator's rules and guidance, Nationwide had an obligation to communicate with Miss C in a way that took account of her vulnerable characteristics, making adjustments where reasonable. Miss C's mortgage account was managed by Nationwide's specialist team for dealing with vulnerable customers. They put a stop to any automated contact about the mortgage position and the arrears on the account, and pro-actively reached out regularly to Miss C to ensure they had an up to date understanding of her circumstances.

Miss C initially asked Nationwide to communicate with her either by email or in a branch, so there would be a record of what was discussed and agreed. Nationwide corresponded by email, and where they wanted to discuss things with Miss C on the phone, they would email and ask for phone contact at a convenient time. I think that was appropriate.

There were some occasions when Nationwide rang Miss C after they'd sent emails with no response. Particularly in 2020 during the lockdown period. Miss C told Nationwide during those calls that she hadn't received their emails as she was struggling with her internet connection and couldn't get to the library. There were also periods where she didn't have any access to a computer. Miss C told Nationwide that they were better off communicating by phone during that period. Nationwide offered to discuss her account with a third party if she'd prefer that. I think that was reasonable.

I've also considered the content of the phone calls and the emails Nationwide sent to Miss C. I'm satisfied that for the most part, Nationwide acknowledged Miss C's circumstances and were empathetic in their tone and approach to how they managed her mortgage and the customer service. Overall, I do think they tailored their communication appropriately to meet Miss C's needs.

However, there are some occasions where I think Nationwide's communication has caused distress or confusion to Miss C.

When Miss C discussed her situation with Nationwide after they'd started legal action, they told her that the only way to avoid legal action was to clear the arrears balance. However, Nationwide later asked Miss C to complete an income and expenditure assessment so they could discuss if there were options available regarding the mortgage. I'm not persuaded it was reasonable of Nationwide to say that the only way the hearing could be cancelled would be for Miss C to clear the arrears in full. I think that was upsetting for Miss C and impacted how she engaged with Nationwide after that. She believed the hearing was inevitable and there was nothing she could do to stop it unless she could find a large lump sum payment.

I'm also persuaded it took Nationwide an unreasonably long time for them to confirm acceptance of Miss C's proposal to capitalise the arrears and extend the mortgage term. It took Nationwide almost four months to tell Miss C they would agree to her proposal and stop the legal action that had been continuing in the background. I'm not persuaded that was adequate customer service. Particularly with Miss C's specific circumstances in mind, and the fact she had the prospect of further legal action looming over her whilst her proposal was being considered. I think Miss C's proposal could have been considered and agreed by Nationwide within one month. I'm satisfied this delay caused avoidable distress and worry for Miss C. I also think this would have impacted the status of Miss C's mortgage account for longer than it should have, and so Nationwide should put the account back in the position it would have been in but for that delay.

Putting things right

For the reasons I've explained above, I'm currently persuaded Nationwide should do the following to put things right for Miss C:

- Refund any fees and charges Nationwide added to Miss C's mortgage account for the legal work associated with attending the hearing in August 2022, and any follow up legal action taken afterwards.
- Refund any interest charged on the above fees and charges.
- Re-work Miss C's mortgage account as if the arrears had been capitalised and the term extended in February 2023. This will include updating how the account was reported to credit reference agencies for the relevant period.
- Pay Miss C £1,000 for the distress and inconvenience caused by Nationwide's service failings I've identified in this decision. I've decided this award based on our service's general approach to these types of awards which can be found on our website, taking into account the particular circumstances of Miss C and the nature of her vulnerabilities."

Responses to my provisional decision

Nationwide said it would put things right as I'd set out in my decision.

Miss C said she still felt Nationwide were responsible for the financial loss she'd experienced as a result of her not receiving the benefits she felt she was entitled to earlier. In summary she's said:

- No reasonable explanation or justification has been given for Nationwide's failure to refer her to their partnered benefits service from 2016 to 2019.
- She doesn't remember having the conversations with Nationwide that I've mentioned, and there was nothing in the follow up emails or letters to support that there'd been comprehensive engagement on available benefit schemes.
- Nationwide's own literature makes clear that they're responsible for ensuring that failures suffered from third party service providers are recorded, addressed and where appropriate rectified by the parties.
- Nationwide may not have initially been responsible for the losses suffered due to the flawed service received from the money advice organisation they're partnered with, however once they became aware of it, they failed to take any action to remediate within a reasonable timeframe.
- We have failed to address the fact Nationwide didn't tell her they did not offer equity release on leasehold properties before she agreed to this mortgage. She said it's not in any of their public literature either. She said this information should have been disclosed at the point of sale.

Miss C also asked that compound interest be added to the sums I'd said should be refunded to her.

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.

Having considered the additional comments Miss C has made, I remain satisfied that the outcome I reached in my provisional decision is a fair and reasonable outcome to this complaint.

I said in my provisional decision that I think Nationwide ought to have referred Miss C to their partnered money advice organisation earlier than they did. But I've still not seen anything to

suggest that had they done so, the outcome would have been different to the one reached in 2020 when she was referred to them. So I'm not satisfied Nationwide are responsible for the fact Miss C wasn't receiving more benefits before her successful applications in 2022.

I've also addressed Miss C's points about whether I can hold Nationwide responsible for any advice she received from the money advice organisation she spoke to. What she's said hasn't changed my mind about that. Nationwide were not responsible for ensuring Miss C was maximising her own income. That was Miss C's responsibility. They signposted Miss C to places she could get help with that, and I'm satisfied that was fair and reasonable in the circumstances.

Miss C has said that Nationwide failed to tell her that they don't offer equity release products on leasehold properties before she agreed to the mortgage. That isn't something that we considered as part of this particular complaint. But I will say that we wouldn't generally expect a lender to explain what products they may or may not offer in future years when offering a mortgage product to a borrower. The products a lender offers, and the lending criteria for those products, are always subject to change.

In relation to Miss C's point about compound interest, the refunds I've said Nationwide should make to the mortgage account will include the compound interest that was charged on the relevant amounts. Our service doesn't award compound interest on payments for distress and inconvenience because that's not a financial loss Miss C has suffered.

Putting things right

- Refund any fees and charges Nationwide added to Miss C's mortgage account for the legal work associated with attending the hearing in August 2022, and any follow up legal action taken afterwards.
- Refund any interest charged on the above fees and charges.
- Re-work Miss C's mortgage account as if the arrears had been capitalised and the term extended in February 2023. This will include updating how the account was reported to credit reference agencies for the relevant period.
- Pay Miss C £1,000 for the distress and inconvenience caused by Nationwide's service failings I've identified in this decision. I've decided this award based on our service's general approach to these types of awards which can be found on our website, taking into account the particular circumstances of Miss C and the nature of her vulnerabilities.

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 Miss C to accept or reject my decision before 10 September 2024.

Kathryn Billings
Ombudsman