

## **The complaint**

Miss H has complained about how Nationwide Building Society has treated her whilst she's been in financial difficulties with her mortgage. She's said she's a vulnerable customer and Nationwide is taking legal action to take possession of the property, which will make her and her children homeless.

Whilst the mortgage is held in joint names, the co-mortgagor (who I'll refer to as Mr M) left the property and isn't party to this complaint. Any reference to Mr M is simply to provide context to this complaint.

## **What happened**

Miss H and Mr M bought the property in 2010 and took out this mortgage with Nationwide in 2014. The mortgage offer shows they were borrowing £134,000 on a repayment basis over a 25-year term. The interest rate was fixed at 3.29% for 60 months, after which it would revert to Nationwide's Standard Mortgage Rate, which was 3.99% at the time of the offer. The fixed rate ended in June 2019, at which time the account moved to the Standard Mortgage Rate.

Miss H has told us that she and Mr M separated in 2016, with Mr M leaving the property.

The mortgage account went into arrears in 2018, with no payments made for a period of around two years. Due to the level of arrears on the mortgage account Nationwide commenced legal action in February 2019, with a court hearing taking place in April 2019. I understand an order was granted giving Miss H and Mr M 56 days to sell the property themselves, otherwise it would be taken into possession by Nationwide.

Over the next few years there were conversations between the parties, with various promises to pay being made as well as times when the property was said to be going to be actively marketed for sale. Although payments resumed in 2020, the contractual monthly payment hasn't been made in full and on time every month and so the position of the account has continued to deteriorate.

In July 2023 Nationwide said it was going to enforce the 2019 court order, and an eviction date was set for September 2023. That was cancelled and I understand the position, as at November 2024, was that Miss H and Mr M were selling the property themselves and whilst a solicitor had requested a redemption statement in September 2024 the mortgage hadn't yet been redeemed.

Nationwide responded to the first complaint on 4 August 2021. In its response it summarised the complaint as:

‘As I understand it, you’re unhappy your Term Extension was declined.’

Nationwide didn’t uphold the complaint and said Miss H had six months from the date of the letter to refer the complaint to us, and if she didn’t refer the complaint in time it said we wouldn’t have its permission to consider the complaint. That meant Miss H needed to refer that complaint to us by 4 February 2022.

A second complaint response was issued by Nationwide on 7 December 2022. In its response it summarised the complaint as:

‘My understanding of your concern is you’re unhappy we actioned field agents to intervene, when we were aware of your difficult circumstances.’

Nationwide again said that the complaint needed to be referred to us within six months of the date of the letter otherwise we wouldn’t have its permission to consider the complaint. That meant Miss H needed to refer that complaint to us by 7 June 2023.

The third complaint response letter was sent on 6 September 2023, with that complaint summarised as:

‘I’m sorry to hear how upset you are regarding the eviction notice on your property.’

Again, the six-month referral deadline warning was given, meaning the complaint needed to be referred to us by 6 March 2024.

The complaint was referred to our service on 5 March 2024.

Our Investigator said we couldn’t look at the first two complaints because they hadn’t been referred to us in time, so her Investigation would be limited to looking at the fairness of the eviction action in 2023. In relation to that she said she was satisfied Nationwide had taken Miss H’s vulnerability into account. But the mortgage had been in arrears for a long time, with the situation worsening, the property had been on and off the market for several years, and Nationwide had given a reasonable amount of time for the property to be sold by Miss H and Mr M. She said it would never be a good time for the property to be taken into possession, but she had to consider that Nationwide couldn’t be expected to wait indefinitely for the mortgage to be repaid.

Miss H didn’t agree with the Investigator’s findings about either the limitation of the investigation, or on the outcome reached. She said, due to her personal circumstances at the time, she barely had the capacity to complain, fill in forms, attend court and write statements. She also said that she genuinely did not see the option set out in the letters to refer the complaints to us.

Our Investigator said that, because Miss H had remained in contact with Nationwide in the six-month periods after the first and second final response letters, she couldn’t say that exceptional circumstances applied as to explain the delay in the complaints being referred to us.

Miss H reiterated her request that the whole period be considered and said she wanted to make some further submissions. That was on 26 September 2024.

Our Investigator referred the complaint to an Ombudsman and said Miss H had until 24 October 2024 to make any final submissions. On 23 October Miss H asked for a further two weeks, which was granted, and a chaser was sent on 13 November as we'd not heard anything more from Miss H.

We can't keep cases in abeyance indefinitely and so I'm now deciding the case based on what we already hold.

I issued a decision about our jurisdiction earlier this month, in which I said:

'We can't consider a complaint about the issues that were dealt with in the August 2021 and December 2022 final response letters as those complaints weren't referred to us in time.

That means all I'll be considering here is the September 2023 final response letter.'

### **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.

Although I've read and considered the whole file I'll keep my comments to what I think is relevant. If I don't comment on any specific point it's not because I've not considered it but because I don't think I need to comment on it in order to reach the right outcome.

I'm aware of Miss H's circumstances, and I'm sympathetic to the considerable impact they have - and have had - on her. I've not gone into any detail about that in this decision to protect Miss H's privacy once the decision is published. But I'd seek to reassure her that I've read and taken into account everything she's said about her vulnerability and personal circumstances.

It's important to keep in mind here that Miss H is only one of the two customers Nationwide has on this mortgage. Nationwide has a responsibility to listen to both customers as they are jointly and severally liable for the mortgage. This means they are both responsible for maintaining the monthly payments and repaying the balance overall. While I have made reference to Mr M, I can't comment on Nationwide's interactions with him directly as part of this complaint brought only by Miss H because we don't have his consent to do so. But I can comment on whether overall, Nationwide's actions resulted in Miss H being treated unfairly.

The account has been in arrears for a number of years and a possession order had been granted in April 2019, following which Nationwide gave Miss H and Mr M time to try to sell the property themselves.

We'd expect a lender to look at offering help to consumers going through a temporary problem, especially in situations where it can be seen their situation is likely to improve. The difficulty here is that Miss H's situation was anything but temporary. There's no doubt Miss H has gone through some very difficult times, and the pressure to make the mortgage payments against such a backdrop must have been immense for her. But my impartiality means I must also have regard for Nationwide's point of view.

Since the court had granted a possession order in Nationwide's favour in 2019 the situation hadn't improved. In the subsequent years there had been various broken promises to pay, and promises to sell the property. And whilst payments resumed in 2020 after a two year break, the payments weren't made in full and on time and by April 2024 the arrears were around £33,500, having been around £16,300 in August 2020.

Where the mortgage isn't being repaid, the lender is entitled to take action to enforce payment, and ultimately to repossess the property to recover its money. However, this is a drastic step to take, and so the rules of mortgage regulation – and the requirements of good practice and fairness – say that this should be a last resort.

A lender should try to work with the borrower to try and get things back on track – including offering help and support. There are various options open to a lender, including temporary reduced payment arrangements, extending the term of the mortgage, or changing its type. But in every case the ultimate aim is for the borrower to bring the mortgage back up to date and avoid the need for the lender to take possession.

As I explained in my decision about our jurisdiction, I can't consider a complaint about earlier issues, such as a term extension being turned down, as those complaints weren't referred to us in time. And as I've said this wasn't a short term issue, various payment arrangements had already failed, and there seemed little prospect of things getting back on track.

Whilst I understand it was a shock to receive notification of the resumed legal action, Nationwide had shown forbearance for a number of years and it couldn't allow the situation to continue as it seemed it would only keep worsening. Nationwide had given a reasonable amount of time to allow the property to be sold by Miss H and Mr M and, having considered everything very carefully, I don't think it was unreasonable to decide to move back to litigation.

As I've said, repossession should be a last resort and forbearance should be explored first. But the purpose of forbearance is to give breathing space so a borrower can get the mortgage back on track. Given all the history, and what it knew, it was reasonable for Nationwide to conclude that was unlikely.

I do understand Miss H's upset and worry for the future. But for the reasons I've given I don't think Nationwide acted unfairly, and so I can't fairly uphold this complaint.

### **My final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 7 January 2025.

Julia Meadows

**Ombudsman**