

The complaint

This complaint is about an interest-only buy-to-let (BTL) mortgage Mr D holds with Nationwide Building Society. The essence of the complaint is that Nationwide began possession proceedings, and applied the costs of doing so onto the mortgage debt, after telling him that wasn't about to happen.

What happened

The above summary is in my own words. The basic background to this complaint is well known to both parties so I won't repeat the details here. Instead I'll focus on giving a brief summary followed by the reasons for my decision, rounding any figures to avoid the risk of identification by including information that is overly specific. If I don't mention something, it won't be because I've ignored it. It'll be because I didn't think it was material to the outcome of the complaint.

Mr D took this mortgage out in 2005, on the advice and recommendation of a third party intermediary. The mortgage was for just over £191,000, including fees, on an interest-only basis, over a ten-year term. The mortgage offer specified that Mr D must make his own provision for repaying the balance at the end of the term, and records an ISA and the sale of the property as the intended repayment vehicle.

Since the mortgage fell due for repayment, Nationwide has agreed a succession of term extensions, the most recent of which was until the end of December 2023 to repay the mortgage. In March 2024, the property had still not sold, albeit Mr D was still trying to do so. Nationwide told Mr D on the phone that no more extensions would be given and it was thinking of moving the management of his account from its end of term team to its litigation team. It also told him that this didn't mean litigation action would immediately follow; however, it did, and the costs of doing so, a little under £1,500, was added to the mortgage balance.

Mr D complains that the litigation and associated costs are unnecessary and unfair. Other than giving him wrong information, for which she considered an offer of £100 compensation Nationwide had made to be fair, our investigator didn't think Nationwide had treated Mr D unfairly. Mr D has asked for the case to be reviewed by an ombudsman.

What I've decided – and why

I'll start with some general observations. We're not the regulator of financial businesses, and we don't "police" their internal processes or how they operate generally. That's the job of the Financial Conduct Authority (FCA). We deal with individual disputes between businesses and their customers. In doing that, we don't replicate the work of the courts.

We're impartial, and we don't take either side's instructions on how we investigate a complaint. We conduct our investigations and reach our conclusions without interference from anyone else. But in doing so, we have to work within the rules of the ombudsman service.

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

My starting point here is that this mortgage was originally due for repayment in 2015; Nationwide has granted Mr D more time to pay the money back; it didn't have to do that. It seems Mr D's sole strategy for repaying the debt is to sell the mortgaged property. That's not what Nationwide understood his strategy to be when it lent him the money in 2005. But accepting that a property sale is Mr D's strategy now, it was neither unfair nor unreasonable that Nationwide expected him to expedite the sale.

I have to say that Nationwide showed remarkable patience towards Mr D. It wasn't obliged to remain patient indefinitely and I can't say it was wrong of Nationwide when its patience finally ran out and it declined any further extension. That decision may have been unwelcome but it wasn't unfair which is the test I have to apply. It's unfortunate that a staff member misled Mr D about the intention to begin litigation. It clearly shouldn't have happened, but in all the circumstances, I consider Nationwide made a reasonable offer of £100 compensation for setting Mr D's expectations falsely.

As far as the litigation costs are concerned, the underlying mortgage contract permits Nationwide to add these to the mortgage balance. Insofar as the action itself wasn't unfair, I don't consider Nationwide has done anything wrong by invoking the power in the contract to debit the costs to the mortgage account.

I said at the outset that I wouldn't be commenting on every single point, and I haven't. I have, as I said I would, confined myself to those matters that I consider have a material effect on the outcome. I can see how strongly Mr D feels. That's a natural, subjective reaction, and entirely understandable in the circumstances. Be that as it may, I have to take a different approach. I'm impartial and I have to look at things objectively. That's what I've done.

That begs the question of what happens next. I don't know what Nationwide's intentions are regarding continuation of its litigation action over the mortgaged property. But clearly that is something it can consider as a next step. It's important to explain here that lenders will generally agree not to pursue recovery action whilst we look at a complaint, but they don't have to and we can't force them to.

If the Financial Ombudsman Service had that power it would undermine our impartiality between the parties to a complaint. It would also create the potential for consumers to use our service to bring complaints with the intention of having any legal action put on hold, thereby obstructing businesses that were trying to take action through the courts to recover money legitimately owed by the consumers.

I do not wish to alarm Mr D but I would not want him to be under any misunderstanding that we would tell Nationwide that it must delay recovery action in the event of any new complaint being raised about the mortgage. It is a matter for a court to decide whether it is appropriate to adjourn or suspend any legal action, not this service.

I know this isn't the outcome Mr D wanted. He is now faced with the prospect of having to find a significant sum of money to repay his mortgage, or else sell his property. If he does neither, Nationwide could potentially enforce its security. It might help Mr D to have some advice from an independent financial adviser to discuss his options. Mr D can find details of advisers on the Financial Conduct Authority's website at www.fca.org.uk.

My final decision

My final decision is that I don't uphold this complaint, or make any order or award against Nationwide Building Society.

My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 24 June 2025.

Jeff Parrington

Ombudsman