

## **The complaint**

This complaint's about a mortgage Mr H used to hold with Nationwide Building Society. Mr H applied for a new mortgage to buy another home, hoping to port the interest rate product from the existing mortgage to the new one. However, Mr H's application for a new mortgage with Nationwide was turned down, as the amount he wished to borrow didn't pass Nationwide's affordability assessment, when taking into account all of his existing credit commitments. He ended up taking a mortgage with a different lender at a higher interest rate; meanwhile he incurred an early repayment charge (ERC) on redemption of the Nationwide mortgage.

Mr H complained that the decision to refuse him a new mortgage was unfair.

## **What happened**

I don't need to set out the full background to the complaint. This is because the history of the matter is set out in the correspondence between the parties and our service, so there is no need for me to repeat the details here. In addition, our decisions are published, so it's important I don't include any information that might lead to Mr H being identified.

So for these reasons, I will instead concentrate on giving a brief summary of the complaint, rounding the figures, followed by the reasons for my decision. If I don't mention something, it won't be because I've ignored it; rather, it'll be because I didn't think it was material to the outcome of the complaint.

Mr H tells us he's had a mortgage with Nationwide for around 17 years. In 2017, he took a ten-year fixed rate on a balance at the time of around £93,000. In 2024, Mr H applied to Nationwide for a new mortgage of £105,000 to fund the purchase of a new property; his objective was to port the fixed rate product from the existing mortgage to the new one. Nationwide turned the application down.

Initially, it was thought this might be due to an adverse entry on his credit file lodged by another creditor by mistake. Nationwide assess the application again, but it still failed on affordability, and Nationwide rejected the application. Mr H went ahead with his house move, using a mortgage with another lender, but incurred an ERC on repaying his Nationwide mortgage.

When Mr H complained, Nationwide rejected the underlying complaint, but paid Mr H £50 compensation for handling the complaint poorly. When it came to us, our investigator didn't recommend the complaint be upheld. He thought Nationwide had considered the porting request fairly and in accordance with its lending policy.

Mr H remain unhappy so the case has come to me for review.

## **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, and the remit those rules give us.

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

Having done so, I've set out my conclusions and the reasons for them below.

My starting point here is that no one is entitled to borrow money; and even when they've borrowed before, they're not automatically entitled to borrow again and a lender isn't obliged to lend again. But a lender must treat customers fairly. In the context of an application for a new mortgage for a larger amount, that means assessing it in accordance with the business' lending criteria and being mindful of what mortgage regulation requires of it, which includes considering what is in a customer's best interests.

There are regulations in place that have flowed from the Mortgage Market Review (MMR) carried out by the Financial Conduct Authority (FCA) which took place after the financial crash in 2008. This has led to a series of major changes, effective since 2014, in the way residential mortgages are regulated. MMR regulations have brought about requirements for stricter lending assessments, aimed at protecting consumers and encouraging mortgage lenders to act more responsibly.

The FCA recognised though that existing borrowers who wanted to make changes to their mortgages might have difficulties with this if they had passed tests under the old rules but wouldn't under the new ones. So, it introduced certain rules to address this. The rules are contained in the Mortgages and Home Finance: Conduct of Business Sourcebook (MCOB). MCOB says a lender doesn't have to carry out an affordability assessment if a borrower wants to vary or replace an existing mortgage and there is no additional borrowing (other than for product fees) and no change to the terms of the mortgage that is material to affordability.

There are also transitional arrangements which say that a lender need not carry out an affordability assessment if:

- the borrower has an existing mortgage taken out before 26 April 2014, and is applying to vary that mortgage or replace it with a new one;
- the application wouldn't involve any additional borrowing except for essential repairs to the property, or to add product fees to the balance;
- there's been no further borrowing (with some exceptions) since 26 April 2014; and
- the proposed transaction is in the borrower's best interests.

So, under this rule, even where a change material to the affordability of the mortgage takes place, the lender can, *if it chooses*, waive an affordability assessment. If the lender decides to carry out an affordability assessment, it shouldn't use that as a reason to decline an application if allowing the application would otherwise be in the customer's best interests. But the lender can take the assessment into account as part of its consideration of best interests.

This means there are two routes that an application for an existing borrower can go down. If there's no change to the terms of the mortgage contract material to affordability, there's no obligation to carry out an affordability assessment at all. And if there is a change to the terms of the mortgage contract material to affordability, a lender could still decide to allow an application without an affordability assessment if doing so would otherwise be in the borrower's best interests.

A borrowing increase is a material change to the mortgage, and so it's reasonable for Nationwide to want to carry out an affordability assessment, and to decide whether the application meets its general lending criteria. And whilst the regulations provide that Nationwide can, if it wishes, dispense with an affordability assessment, it isn't obliged to, and here I don't think the wider circumstances were such that it should have. Mr N was looking to increase his mortgage borrowing by around 17%. Plus he had other existing credit commitments that Nationwide, legitimately in my view, was concerned might render the new borrowing unaffordable.

Lenders' criteria are commercially sensitive and not generally made public. That said, under the Consumer Duty introduced by the FCA in July 2023 a lender needs to provide an explanation that supports a consumer's understanding of why their application has been declined. In my view, Nationwide met that obligation here. It communicated its decision to Mr H in a manner that I'm satisfied would have supported his understanding, even though he clearly didn't agree. It could have done so more swiftly, but overall I think the £50 it has paid for that is reasonable and proportionate compensation. Considering all of the circumstances, I think Nationwide assessed Mr H's application for a new mortgage fairly.

The issue in this case was that Mr H wanted to borrow more money than he already owed. Taking into account his other credit commitments, Nationwide assessed his request as unaffordable, which it was legitimately entitled to do. The fact that another lender was prepared to lend Mr H the money he wanted to buy another property has no bearing on the fairness or otherwise of Nationwide's decision not to lend. Every lender's appetite for risk is different, and this will be reflected not just in the different criteria they apply to their lending decisions but sometimes also to the interest rates they charge.

The effect of this was that Mr H was left with the choice of aborting his house move or finding another lender willing to lend him the amount he wanted, thus incurring the ERC on repaying his Nationwide mortgage. Mr H chose the latter. I appreciate that was a choice between two unwelcome alternatives, but it was still a choice.

Mr H made his choice knowing that a consequence of not being accepted for a new mortgage with Nationwide, and borrowing elsewhere, was that the existing mortgage with Nationwide was repaid when Mr H sold his former home without a new Nationwide mortgage taking its place. With no new mortgage available to port the terms of the fixed rate onto, an ERC was charged on redemption of the old mortgage. As Nationwide fairly assessed Mr H's application, charging the ERC in these circumstances wasn't unfair.

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 important this is to Mr H. That's a natural reaction, and entirely understandable when you're as close to a situation as she is here.

But I have a different remit. I have to be objective, and impartial, and sometimes that means stepping back from the fine detail, taking an overview and deciding what is fair, reasonable and pragmatic in all the overall circumstances of the case. It also means that I'm not required to provide answers to every specific question that comes up if I don't consider doing

so will affect the overall outcome. Having done that, and having considered everything that both parties have said and provided, I don't find that Nationwide has treated Mr H unfairly.

### **My final decision**

My final decision is that I don't uphold this complaint.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 14 July 2025.

Jeff Parrington

**Ombudsman**