

## **The complaint**

Mr and Mrs Y complain about the way Nationwide Building Society (Nationwide) handled their application to port their lifetime mortgage to a new property. They also complain that they were not made aware that the fund provider for the mortgage would also have a restriction registered on the title for the property.

Mr Y has some health issues, so Mrs Y has been the person corresponding with this Service in respect of the complaint and the person dealing with Nationwide in the main. For that reason, although the complaint is brought by both Mr and Mrs Y, in some parts of my decision I may refer to actions taken solely by Mrs Y. I mean no disrespect by doing so.

## **What happened**

Mr and Mrs Y took out a lifetime mortgage for £40,000 in January 2021. In around June 2024, Mr and Mrs Y wanted to move to a new property to enable them to obtain support from their son due to Mr Y's health conditions.

Mrs Y contacted Nationwide to inform it of their intention to sell the property and that they wished to port the mortgage to their new property. Mrs Y says that they understood that they would be allowed to transfer the mortgage to their new property, provided that it was not of a lower value, and that they were not made aware that this would be subject to new lending criteria.

When they went to sell the property, Mr and Mrs Y discovered that the fund provider for the mortgage had also registered a restriction against the title of the property. They say that they were not made aware that this would happen when they took the mortgage out and that this prevents them from disposing of the property without the fund provider's consent.

Mr and Mrs Y sold their existing property subject to contract for £500,000 and the value of the new property they wanted to purchase was £540,000. They were intending to borrow the additional £40,000 from their son in the short-term, until the sale of a second buy-to-let (BTL) property belonging to them had completed. However, Nationwide would not accept part of the deposit as coming from the loan from their son. Mr and Mrs Y say that the funding for the new property would ultimately be from the sale of both the existing property and the BTL property and that their son was simply helping them to bridge the gap between the sale and completion of the BTL property to allow them to move into their new home quickly. They say that this would have no adverse effect on the value of their home and Nationwide's security.

Mr Y has a Lasting Power of Attorney (LPA) appointing both Mrs Y and their son as attorneys to act on his behalf. Nationwide would not accept Mrs Y as an attorney in Mr Y's place and it also asked her son to visit a branch to register the LPA with Nationwide to see if the fund providers would allow him to proceed in Mr Y's place. However, Mrs Y says that Nationwide told her that this would take 12 weeks, which meant that they lost the sale.

Mr and Mrs Y say that they have lost the property they hoped to purchase, along with the cost of the Homebuyers' Survey (£720), a report on the roof (£300), local search fee and unnecessary legal costs. They say that the issue has put mental strain on Mr Y due to his health conditions, along with on Mrs Y as his wife and main carer.

Nationwide says that Mr and Mrs Y's signed mortgage deed shows the restriction in favour of the fund provider. It says that when the mortgage is redeemed both restrictions will be removed from the title.

Nationwide says that documentation provided to Mr and Mrs Y when they took out the mortgage referred to any porting application being subject to its lending policy at the time. For Mr and Mrs Y's son to provide funds in respect of the porting, he would have needed to do so as an unconditional gift. As their son wanted the funds to be repaid from the sale of a second property, this was not an unconditional gift, therefore Nationwide would not allow the application to proceed on this basis. Nationwide said that its policy for all mortgages is that a joint borrower may not act as attorney for the other borrower. It says that it approved their son to act as Mr Y's LPA and apply on his behalf on 19 August 2024. As Mr Y's LPA had been registered by Nationwide in Mrs Y's name only, it asked their son to go into a branch with identification so it could register him on its systems as an attorney. Nationwide says that it did not tell Mrs Y that registering her son as Mr Y's LPA would take 12 weeks, but that it would take 12 weeks for the whole process.

Nationwide accepted that its call agent could have handled Mrs Y's call better on 16 September 2024 and paid her £50 to apologise for this.

Our Investigator looked into Mr and Mrs Y's complaint. He was satisfied that the fund provider's rights over the property were documented in the mortgage deed and that both restrictions would be removed when the mortgage was repaid. He believed that Nationwide was entitled not to accept the part of the deposit being paid by Mr and Mrs Y's son, as this was in line with its policy that a gifted deposit could only be accepted where there were no conditions attached to the gift. The Investigator was satisfied that Nationwide had acted in line with its lending criteria in not allowing Mrs Y to act as Mr Y's LPA, as she was also named on the mortgage. He was satisfied that the 12 weeks quoted to Mrs Y on the phone was a guide for how long it would potentially take for the whole application to complete. The Investigator was also satisfied that Nationwide had made Mr and Mrs Y aware that it would need to establish that it could still lend to them at the time of any application to port the mortgage. He thought that the £50 compensation paid by Nationwide for the poor service provided was fair.

Mr and Mrs Y disagree with the Investigator's view, so the case has come to me to make a decision. They say that their son was not paying the deposit but contributing towards the purchase price, and that he had agreed to help them, but the money was totally unconditional. However, they say that they had mentioned to Nationwide that they would repay their son from the proceeds of the sale of the BTL property to avoid him being out of pocket. As Nationwide would not accept this, Mr and Mrs Y say that they had no alternative but to tell their buyers that they would have to wait for the sale of the BTL property, which meant they terminated their offer. Mr and Mrs Y ultimately decided to redeem the mortgage with the proceeds of the sale of the BTL property.

Mr and Mrs Y say that their complaint about the LPA is that Nationwide should not have insisted on having a paper copy to scan, as the Court of Protection had given an authorisation code to see the summary online. Mr and Mrs Y say that they were aware that the application to port was necessary and subject to the usual checks. However, they believed that there would be no difficulty in them porting in the circumstances, including the value of the new property being greater than their existing property and their financial status not having changed. They say that they were not in any doubt that the 12-week period was for the whole application and not just the approval of the LPA. Mr and Mrs Y accepted the Investigator's decision in respect of the fund provider's restriction on the title.

### **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 looked at the evidence, I agree with the Investigator's view for broadly the same reasons, and I've explained my reasons further below.

In respect of the funding provider, having looked at the mortgage offer, I am satisfied that this sets out that the mortgage would be provided by Nationwide but that it would be funded by a different company. I have also looked at the Mortgage Deed signed by Mr and Mrs Y, which refers to a restriction in favour of both Nationwide (section 4) and the fund provider (section 5) being registered in the charges register of the title to the property.

I am satisfied that Mr and Mrs Y were made aware that a restriction would be registered on the title by both the fund provider and Nationwide. In any event, the funding arrangements would have no impact on Mr and Mrs Y as both restrictions would be removed from the title register when the mortgage was redeemed.

In respect of the porting application, Mr and Mrs Y have said that they weren't made aware that this would be subject to new lending criteria.

Lenders will often allow customers to port their existing mortgage to a new property in order to avoid them having to pay an early repayment charge (ERC). However, this is usually subject to them fulfilling the relevant lending criteria at the time the mortgage is ported, as the lender needs to ensure that required checks are carried out before any new mortgage is agreed.

In the mortgage recommendation sent to Mr and Mrs Y on 10 December 2020, it states "*You can port your Lifetime mortgage, which means if you move home you can take your Lifetime mortgage product with you, as long as the new property is suitable and we are able to lend to you at the point you wish to move*".

In section 19 of the Mortgage Conditions, which relates to transferring the debt to a new property, it states "*If you wish to sell the property and transfer the debt to a new property you must notify us and we will consider whether we are prepared to agree to this. This is explained in more detail in the mortgage offer*".

I have also looked at the Mortgage Offer dated 26 January 2021. This states "*If you buy a new home, you may be able to transfer your lifetime mortgage to your new home, or you may be able to get a new lifetime mortgage*". The Offer also states "*If you move home and want to transfer this lifetime mortgage to the new property, you can do so if the new property meets our lending criteria at the time... You may have to pay additional fees (for example, legal fees) in connection with the transfer. We may ask you to repay part of the amount outstanding on the lifetime mortgage if, for example, the new property is of a lower value. If the new property does not meet our lending criteria and you take out a mortgage with a different lender, you will have to repay the amount you owe us and any applicable early repayment charge*".

So I am satisfied that Nationwide made it clear when Mr and Mrs Y took out the mortgage that any application to port would be subject to its lending criteria at the time, and that this was not solely dependent on the new property being of a higher value than the existing property. As this was essentially dealt with as a new application, I don't think a period of 12 weeks was unreasonable for the whole process to be completed.

In respect of the funds coming from Mr and Mrs Y's son, Nationwide would not accept this as part of the deposit as it was classed as a loan.

Nationwide's policy sets out that a gifted deposit is "*where the applicant has been given a sum of money to help them purchase a property*". The policy states that there must be no conditions attached to the gift.

Mrs Y has said that this was not a deposit, but part of the purchase price. However, I am satisfied that it would have formed part of the deposit, as it was required to purchase the

new property in addition to the capital value of the existing property and the existing mortgage.

Mr and Mrs Y have also said that the money from their son was unconditional.

I have listened to the initial call between Mr and Mrs Y and Nationwide on 10 June 2024. During the call, it was established that Mr and Mrs Y would need around £65,000 in cash to cover the fees as well as the shortfall. Mrs Y explained that they were awaiting the sale of the BTL property but that their son had agreed to lend them £40,000 if they hadn't sold this before they came to exchange of contracts. The adviser asks, "*would you class it as a gift or a loan from your son?*" and Mrs Y replies "*oh no, it's a loan, it's repaid from the proceeds of the flat*". The adviser explained that if money was being gifted then Nationwide would normally expect the donor to confirm that this was an unconditional gift with no expectation of repayment. Mrs Y reiterated that she did not really want their son to give them £40,000.

In light of the above, I am satisfied that the money from Mr and Mrs Y's son was intended to be repaid once the BTL property had been sold. Therefore, this was not an unconditional gift and was a loan with the condition that it would be repaid from the sale of the BTL property. Whilst I can appreciate that this was frustrating for Mr and Mrs Y, I do not think that Nationwide has treated them unfairly in not accepting this in line with its policy. In any event, I understand that this issue was resolved as Mr and Mrs Y were able to sell the BTL property and the funds would have been released prior to completion.

In respect of the LPA, as Mr Y has a power of attorney in place, Nationwide was unable to accept an application from him. Nationwide's policy sets out that an LPA for an applicant cannot also be party to the mortgage and that in a joint application neither borrower could appoint the other as attorney. Mrs Y has clarified that she was never intending to act as attorney for Mr Y herself, and that her issue related to the fact that Nationwide required her son to attend a Nationwide branch to register the LPA.

As their son was going to act on Mr Y's behalf in this application, Nationwide required him to go into a branch with identification so that he could act as LPA in this transaction (and future transactions with Nationwide). At the time of the initial application, Mrs Y had previously attended the Nationwide branch to register the LPA to act on Mr Y's behalf. So I don't think it was unreasonable for Nationwide to require Mr and Mrs Y's son to do the same to provide his identification so that Nationwide could confirm that he was able to act on Mr Y's behalf.

Nationwide has accepted that it provided poor service to Mrs Y on the phone and paid £50 in respect of the distress and inconvenience caused. I have listened to the call and agree that the agent who spoke to Mrs Y was abrupt and didn't explain the process very clearly to her. However, in my view, the offer made by Nationwide is fair to recognise the distress and inconvenience caused to Mrs Y. And I'm not going to ask it to increase this.

I know my decision will come as a disappointment to Mr and Mrs Y, and I can appreciate that the situation was stressful for them. However, other than the telephone call referred to above, I can't say that Nationwide has acted unreasonably in the circumstances of this case, and I don't uphold this complaint.

### **My final decision**

For the reasons I've explained above, I don't uphold this complaint and don't require Nationwide Building Society to do anything further.

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

Rachel Ellis  
**Ombudsman**