DRN-5608472

The complaint

Mr C and Mr R complain that Nationwide Building Society wouldn't let them move their portable mortgage to a new property, because it was over its exposure limits in that development. Mr C and Mr R said they had to pay to exit their mortgage instead.

What happened

Mr C and Mr R said they took out a mortgage with Nationwide on the understanding that it could be ported to a new property, if they wanted to move house. They said this was based both on the terms of the mortgage, and on verbal reassurance from Nationwide's representative, who told them not to worry, they could take this mortgage with them if they moved.

Mr C and Mr R then did want to move, but Nationwide turned down their application to do so. It said it wouldn't lend money secured on the property they wanted to move to, because it had reached its exposure limit for that building or area.

Mr C and Mr R said some of the properties in the development were already financed by Nationwide, but it wouldn't allow them to move there. Mr C and Mr R said Nationwide told them this was because of high demand in the area and internal lending caps. So it was nothing to do with their ability to repay, the property's risk, or its valuation.

Mr C and Mr R were very unhappy about that. They knew the mortgage offer said porting would be subject to the lending criteria at the time, but they had understood that to mean things like affordability checks, or property risk assessments. Now Nationwide was telling them they'd been turned down because of property acceptance and the internal exposure limit being reached.

Mr C and Mr R said their mortgage agreement hadn't explained that the term "lending criteria" could include internal caps on specific buildings or areas. So they thought Nationwide had moved the goalposts, as it was applying a restriction that was not disclosed at the outset and was not clearly defined in the mortgage terms. They said they had no way of knowing their chosen property would be affected by an internal cap, and they felt their assumption that they'd only be turned down on grounds of borrower eligibility or property risk had been entirely reasonable. They said if they could be turned down on the basis of exposure limits, that should have been mentioned at the time they took this mortgage out.

Mr C and Mr R said when they asked Nationwide how they could have predicted this refusal to lend, Nationwide said they could have conducted a property valuation check before purchase to verify lending eligibility. But they said that was impractical and unrealistic, and Nationwide didn't give any sort of practical way to check the property was eligible for lending before making an offer.

Mr C and Mr R said they were now being forced to pay an Early Repayment Charge ("ERC") to get out of their mortgage with Nationwide, which was over £8,000. They said that was unfair and unjustified. On top of that, they were forced to give up their existing favourable fixed interest rate, and take out a mortgage at a much higher rate. They said they wouldn't have taken a five year fixed interest rate if they'd realise Nationwide could refuse to let them port their mortgage.

Mr C and Mr R said they wanted Nationwide to either waive the ERC entirely, or at least, significantly reduce it. They thought internal exposure limits should be clearly disclosed in the mortgage terms in future. They wanted our service to check if Nationwide had acted reasonably, and order appropriate compensation if we felt it had not.

Nationwide's mortgage offer said this –

> *You have the right to transfer this product to a new mortgage with Nationwide on another property. However, your application will be subject to the lending criteria at that time.*

Nationwide said it wouldn't lend to Mr C and Mr R for the property they wanted to buy, because it had reached its exposure limit in that area. It said there had been high demand, which meant it was oversubscribed, and wasn't able to approve their porting application. Nationwide said it does try to support its customers wherever possible, but it has to make sure its lending decisions align with its policies and capacity limits.

Our investigator didn't think this complaint should be upheld. He said Nationwide is entitled to set its own lending criteria, and our service wouldn't interfere in discretionary matters for Nationwide's own commercial judgement. The suitability of a property is a significant part of the mortgage application. And here, the place Mr C and Mr R were looking to move to, already had too many mortgages with Nationwide. So he said that Nationwide had reached its decision fairly, and had exercised its commercial judgment fairly and reasonably.

Our investigator said he understood Mr C and Mr R felt this information should have been available to them before their application was made, but he said there wasn't really a practical way to do that. And every mortgage application is always subject to a satisfactory valuation, ensuring the property is suitable security for the lender. Our investigator said Mr C and Mr R didn't have to go ahead with their purchase, once they realised Nationwide wouldn't port their mortgage. He wouldn't tell Nationwide it had to lend on the property Mr C and Mr R wanted.

Our investigator said the mortgage offer Mr C and Mr R received in 2021 was clear that if they redeemed the mortgage early they would have to pay an ERC. Those are intended to reflect the cost to the business of borrowers exiting a mortgage deal early. Our investigator said he didn't think it would be fair to ask Nationwide to waive the ERC when he didn't think it had done anything wrong.

Mr C and Mr R disagreed. They said that their mortgage offer talked about "lending criteria". Then Nationwide's decision letter referred to "property acceptance" but we hadn't looked at whether those things were different, or whether Mr C and Mr R should have understood them to be different.

Mr C and Mr R said they thought "lending criteria" was widely understood to refer to borrower affordability, loan-to-value, and creditworthiness. But "property acceptance" as used by Nationwide, referred to an undisclosed internal exposure cap. That was a restriction that wasn't mentioned in the mortgage offer and could not have been anticipated or checked by them. They said that although it looked like our service thought "property acceptance" falls under "lending criteria" they didn't think customers could be expected to know this.

Mr C and Mr R said that the reasonable interpretation of these terms by the customer was central to the fairness of Nationwide's refusal to port and its decision to charge the ERC. They said that at the very least, the term "property acceptance" should appear in the contractual terms if it forms part of the eligibility criteria for porting.

Mr C and Mr R said they were not disputing Nationwide's right to manage lending risk or set exposure limits. But they wanted us to think about whether Nationwide had applied its contract terms transparently and fairly, and whether its refusal to port based on a previously undefined restriction was consistent with its agreement with them.

Mr C and Mr R wanted an ombudsman to consider their complaint, so this case came to me for a final decision.

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.

I understand that this complaint is important to Mr C and Mr R, and they feel very strongly about what has happened here. I also appreciate that they consider Nationwide's decision here means they are worse off, having faced a one-off cost to remortgage and the ongoing impact of a higher interest rate. So I'm sorry to have to tell them that I've reached the same overall conclusion on this complaint as our investigator, and I don't think this complaint should be upheld.

Mr C and Mr R have argued that the application of an additional criterion, which is about managing risk for Nationwide, may not be part of the "lending criteria" referred to in their mortgage offer. I don't agree with that. I don't think it would be fair and reasonable for me to decide that exposure limits, which clearly are part of managing the risk of lending for Nationwide, fall outside of the scope of this term.

Mr C and Mr R argue in the alternative that this isn't how they understood the term, and so they couldn't have foreseen this decision by Nationwide. I think practically it's right to say that it would have been hard for Mr C and Mr R to have foreseen this decision. It's not possible for a customer to know when exposure limits on a large development either of houses or flats, might be reached. But because there's no real way of knowing in advance whether a property which is part of a larger development might be affected by this concern, I think that means it's less important here that Mr C and Mr R hadn't realised "lending criteria" could include things like a decision not to lend on more than a certain percentage of properties on one development. Even if they had realised that's what this term meant, they still couldn't have known that the particular property they wanted would be affected by this.

I appreciate that these are difficult circumstances, so I would like to recognise that neither side has taken an unreasonable starting position here. Mr C and Mr R wanted to move house, and they wanted to port their existing mortgage. That's not unreasonable. But Nationwide didn't want to lend on a high number of properties in the same development. That's not unreasonable either.

I should also say, for the avoidance of any doubt, that I am satisfied Nationwide's decision here was based on its own lending criteria, and that the criteria it had applied here weren't unfair or unreasonable. I don't think Nationwide had to lend on this property.

I appreciate that Mr C and Mr R had put in an offer for the property they wanted, and may have been very keen on going ahead with their purchase, perhaps looking forward to living in their new home, by the time they found out Nationwide wouldn't lend on the property they wanted. But they haven't suggested that they were legally committed to the purchase (which doesn't usually happen before financing is in place).

Part of the reason for our investigator’s view, was that Mr C and Mr R could have changed their minds, once they knew Nationwide wouldn’t lend on the property they wanted. They could have chosen to move somewhere else instead. If Mr C and Mr R really were legally tied in to making this purchase before they found out Nationwide would have lent, I would have expected them to say so then.

So, although Mr C and Mr R may well have been very keen to buy the new property, it’s my understanding that they did have a choice of whether to go ahead with their purchase, knowing they wouldn’t be able to port their existing mortgage, and with the understanding that the ERC they’d agreed to when they took out the Nationwide mortgage, would need to be paid. If they decided to go ahead with their purchase in these circumstances, then I’m not able to say that it’s unfair or unreasonable for Nationwide to charge its ERC in this case.

My final decision

I don’t uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr C and Mr R to accept or reject my decision before 27 October 2025.

Esther Absalom-Gough
Ombudsman