

## **The complaint**

Mr and Mrs W complain that Nationwide Building Society hasn't fairly compensated them for wrongly recording a CIFAS marker in relation to their mortgage.

Mr and Mrs W instructed solicitors (who I'll refer to as S) to represent them.

## **What happened**

Mr and Mrs W took out a mortgage with Nationwide in 2014 when they bought a property to use as a second home. In 2018 they asked Nationwide about its criteria for using the property as a holiday let for short periods

In early 2023 Mr and Mrs W applied for further borrowing. The purpose of the borrowing (to buy another property) was outside Nationwide's criteria. And Nationwide was concerned Mr and Mrs W were letting the property in breach of the mortgage terms and conditions. It said it would apply a 1% letting fee. Mr and Mrs W made a complaint which Nationwide didn't uphold.

In October 2023 Mr W discovered Nationwide had recorded a marker with CIFAS. Mr and Mrs W instructed S, who contacted Nationwide. Initially Nationwide said the marker was correctly recorded. The solicitors asked CIFAS to review the matter in mid-2024. CIFAS said the marker should not have been recorded. In July 2024 Nationwide agreed to remove the marker.

Nationwide offered £1,500 compensation to Mr and Mrs W. It said it would cover their legal costs for writing a letter after 30 July 2024.

Our investigator said the marker shouldn't have been recorded. It stayed in place for over a year. This caused distress and embarrassment to Mr W and Mrs W, and Mrs W suffered from anxiety that needed medical treatment. Our investigator said Nationwide's offer was fair given the distress caused over a sustained period.

Our investigator didn't recommend that Nationwide refund all of Mr and Mrs W's legal costs. She said Mr and Mrs W could have raised a complaint with Nationwide and with us directly. She said she couldn't require Nationwide to pay compensation for any losses experienced by a limited company owned by Mr and Mrs W.

S responded on behalf of Mr and Mrs W. S said it was reasonable for Mr and Mrs W to instruct solicitors, given their anxiety about the reputational damage caused. S said it was unlikely Mr and Mrs W would have obtained the same outcome without its help and persistence and the weight given to its correspondence. S said Mr and Mrs W couldn't wait for this service to investigate, given the seriousness and urgency of the matter, and needed a more direct and effective method of dealing with it. S said Nationwide had initially offered to cover their legal fees and it should be held to this.

## **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.

Nationwide has accepted it made an error when it recorded the marker with CIFAS. What I have to decide is whether it has done enough to put matters right.

Nationwide says it removed the marker in July 2024. It offered compensation of £1,500 and to cover Mr and Mrs W's legal costs for a letter written in September 2024.

S says Mr and Mrs W can't accept an offer from Nationwide unless it covers their legal costs for the work required to have the CIFAS marker removed. By the time the complaint came to us, Mr and Mrs W had incurred legal fees of about £18,000.

I've set out the relevant events, in brief.

Early 2023: Mr and Mrs W applied for further borrowing. Nationwide declined the application. The purpose of the borrowing was outside Nationwide's criteria. And Nationwide was concerned Mr and Mrs W were letting the property in breach of the mortgage terms and conditions. It said it would apply a 1% letting fee. It didn't uphold Mr and Mrs W's complaint about this. Unknown to Mr and Mrs W, it filed a marker with CIFAS.

October 2023: Mr and Mrs W found out that Nationwide had recorded a CIFAS marker. They contacted S for advice. S submitted a Data Subject Access Request (DSAR) to Nationwide.

January 2024: S wrote to Nationwide about the CIFAS marker. Nationwide issued a final response in March 2024 saying it hadn't made an error.

June 2024: S contacted CIFAS which responded in July 2024 to say the marker should not have been recorded.

July 2024: Nationwide accepted it made an error and would remove the marker. It offered compensation of £400 plus legal fees. Mr and Mrs W didn't accept the offer. At this point S says its legal fees were about £10,000.

August 2024: Nationwide issued a final response which said it should have done more to solve the issue which led to the marker, and had it done so the marker would have been removed in April 2023. It offered £600 compensation and asked for information about any additional impact this had on Mr and Mrs W.

October 2024: Nationwide issued a final response in which it offered compensation of £1,500 and to cover Mr and Mrs W's legal costs for a letter written after July 2024. This final response superseded any previous final responses issued by Nationwide, which had changed its position regarding the complaint. S says between July 2024 and November 2024 its legal fees were about £450.

Correspondence about the compensation continued after this. The complaint was brought to us in April 2025, within our time limits (six months from the October 2024 final response letter).

### *The legal fees*

We provide an informal dispute resolution service as an alternative to the courts. While we take relevant law, regulation and good industry practice into account we make decisions

based on what's fair and reasonable in all of the circumstances.

Complainants don't need any specialist knowledge or representation to bring a complaint to us. So, while a consumer can choose to instruct solicitors, I wouldn't usually consider it fair to require a respondent to pay their costs for doing so. I can require a respondent to pay reasonable legal costs if I consider the particular circumstances make it fair and reasonable to do so.

I don't think it's fair and reasonable to require Nationwide to compensate Mr and Mrs W for all of the legal fees they incurred. I've explained why below.

- Mr and Mrs W could have raised a complaint directly with Nationwide in October 2023. I'm not persuaded they needed to instruct solicitors to do this on their behalf, or that they needed to instruct solicitors to raise a DSAR for them.
- Having received the final response from Nationwide in March 2024, Mr and Mrs W had options as to their next steps. CIFAS's website says the next step is to ask it for an independent review. Or Mr and Mrs W could have contacted this service about their complaint. Nationwide's final response told them they had the right to do this.
- Mr and Mrs W asked CIFAS for an independent review. They had to provide a copy of the final response from Nationwide and any other correspondence that supports their case. In some cases, the circumstances and evidence might be sufficiently complex that legal representation is needed. I don't think that was the case here.
- I don't think Mr and Mrs W needed S to contact Nationwide on their behalf after receiving the response from CIFAS. They only needed to provide the response from CIFAS and ask Nationwide to review its position regarding the marker.
- Nationwide agreed to remove the CIFAS marker. Since July 2024 correspondence has been about the amount of compensation Nationwide should pay to Mr and Mrs W. I'd expect Nationwide to take into account how Mr and Mrs W were impacted by its error. I think Mr and Mrs W could have discussed this more effectively directly with Nationwide. The evidence here suggests that when Nationwide asked S how Mr and Mrs W had been impacted, it said it would have to contact them to find out.
- S says the CIFAS markers would not have been removed if Mr and Mrs W hadn't instructed them. Of course, we can't be certain what the outcome might have been if Mr and Mrs W hadn't instructed S. But this service has the power to uphold complaints about CIFAS markers when we find a lender didn't act fairly and in accordance with the relevant rules. Our powers mean we can require Nationwide to provide the evidence necessary for us to reach a fair decision, and to take whatever steps we consider fair and reasonable to put matters right.
- While Mr and Mrs W understandably wanted the matter sorted out quickly, I'm not persuaded they needed to instruct solicitors, or that this meant the matter was sorted out sooner. Mr and Mrs W could have raised a complaint with Nationwide in October 2023 and contacted us if they weren't happy with its response. There was no need for them to wait for a response to a DSAR as we can require Nationwide to provide relevant information and evidence to us. As it was, Nationwide agreed to remove the CIFAS marker in July 2024 – some nine months after Mr and Mrs W instructed S. The matter is now with our service as the dispute about the amount of compensation has not been resolved.
- S says Mrs W was unwell due to the stress and couldn't have dealt with the complaint. S

hasn't said there was any reason why Mr W couldn't have contacted Nationwide and this service and dealt with the complaint.

- I can't fairly say that Nationwide is bound by an offer made in July 2024 which Mr and Mrs W didn't accept, and which was superseded by later offers. I don't agree with S that Mr and Mrs W relied on this offer: they instructed S and incurred legal fees prior to this.

Mr and Mrs W can of course choose to instruct solicitors, to help them understand their legal position and correspond with Nationwide or this service on their behalf. But, for the reasons I've given, I don't think this was reasonably necessary and I don't think it's fair and reasonable to require Nationwide to cover these costs.

Nationwide offered to cover the legal costs charged for writing a letter after 30 July 2024. Having looked at S's costs breakdown and the correspondence between the parties, I believe this to be the letter dated 20 September 2024 in which S set out the impact of this matter on Mr and Mrs W. Mr and Mrs W will need to provide evidence of the legal costs for writing this letter to Nationwide.

I've considered whether Nationwide should fairly cover Mr and Mrs W's reasonable legal costs incurred between the call on 30 July 2024 (when it said it would cover their legal costs) and 31 October 2024 (when it issued a final response saying it would not cover their legal costs). It's possible that Mr and Mrs W might have incurred legal costs during this time on the basis they'd be covered by Nationwide. S said fees during this period were about £440 (plus VAT). However, Mr and Mrs W continued to incur legal costs after they were told Nationwide would not cover them. So I don't think they'd have acted differently if Nationwide hadn't said in July 2024 that it would cover their legal costs.

#### *Impact on Mr and Mrs W*

The CIFAS marker was recorded in March 2023 and removed in July 2024.

S says Mr W tried to open an account in 2023 and was declined. Presumably this was in late September 2023 when Mr W was told to check his records with the credit reference agencies and CIFAS. It seems likely in the circumstances the CIFAS marker recorded by Nationwide was the cause of the application being declined. This would have been inconvenient and worrying.

S has told us that Mr and Mrs W were upset and worried about the CIFAS marker and how it might affect them. It didn't provide evidence of actual financial loss or impact – for instance that Mr W lost income or was demoted or that their local community treated them differently or were even aware of the CIFAS marker.

It seems the main impact on Mr and Mrs W was their embarrassment about the fraud marker and their worry about the effect this might have. This was over about 10 months, from late September 2023 (when Mr W was told to check his records with CIFAS) to July 2024 (when Nationwide said it would remove the marker).

S says Mr W works in a regulated industry and the CIFAS marker could have had a serious detrimental effect on his work and livelihood. He had to inform his employers about the CIFAS marker. I can understand this was embarrassing and worrying for Mr W.

Mrs W volunteers locally and was worried about her standing in the community. She was prescribed medication for anxiety and difficulty sleeping.

Mr and Mrs W own a limited company that owns and lets out property. S says the company's

bank account was closed in mid-2023, which made it difficult for the company to collect rent and pay bills. S says this was due to the CIFAS marker, but can't provide evidence to support this. S says the company was able to open an account but this is basic and isn't part of the deposit protection scheme.

The limited company is a separate legal entity, and S didn't provide evidence it had suffered an actual financial loss. But it's reasonable to think that the CIFAS marker could have caused problems with the company's bank account. As the owners and directors of the company, Mr and Mrs W would have had to sort out its bank account and this would have added to their worry and inconvenience.

Taking all of this into account, I think Nationwide's offer of £1,500 compensation is fair and reasonable for the distress, worry and inconvenience caused to Mr and Mrs W over about a year.

S says Mr and Mrs W were still having difficulties opening bank accounts in late 2024. They provided evidence from a bank that this was due to concerns about information from credit reference agencies and fraud prevention databases.

Nationwide said it had removed the CIFAS marker in July 2024. S didn't provide evidence that the marker was still in place after this or that any problems after July 2024 were due to a marker or adverse data wrongly recorded by Nationwide.

### **My final decision**

My decision is that Nationwide Building Society should pay £1,500 to Mr and Mrs W plus (subject to Mr and Mrs W providing evidence to Nationwide of the cost) the cost of legal work charged for writing the letter dated 20 September 2024, as it offered to do.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W and Mr W to accept or reject my decision before 10 December 2025.

Ruth Stevenson  
**Ombudsman**