

complaint

This complaint is about a mortgage Miss O holds with Nationwide Building Society (Nationwide). Miss O, who has mental health problems, complains about the treatment she has received since her mortgage fell into arrears in early 2013. She says it has caused her a great deal of distress, to the point where she has had suicidal thoughts.

background

For health reasons, Miss O has been unable to work for several years. During 2012, she began experiencing financial difficulty and by December of that year, her Nationwide mortgage was in arrears. With the help of a third party Miss O contacted Nationwide in January 2013 to explain her financial situation. Miss O also told Nationwide that she suffered from mental health issues and the worry of the arrears was causing her distress.

Miss O says she didn't find Nationwide at all sympathetic, or mindful of her mental health issues. She says it continued to pursue her for the arrears using its standard collections process. The conversations she had with Nationwide staff inevitably focussed on how the arrears would be repaid.

It appears that the Department for Work and Pensions (DWP) started making contributions toward the mortgage interest in May 2013. In June 2013 Nationwide put a 'do not telephone' marker on Miss O's account at her request as she was finding telephone calls about the arrears distressing.

Later that month Nationwide also said it might be possible to transfer Miss O's account to its Specialist Support Team (SST). Nationwide asked Miss O to provide a letter from her doctor explaining her condition and how it made it difficult for her to deal with her finances.

Miss O provided medical documentation in late June 2013. In early July 2013 she telephoned Nationwide and was initially told that her account would not be transferred to the SST. However Miss O then spoke to a more senior staff member who reversed this decision, agreeing that Miss O's account *could* be handled by the SST. Unfortunately, what then happened is a new payment plan agreed with Miss O in September 2013 wasn't set up correctly. Additionally, there was some confusion about when, and for how long the plan would be in place.

Miss O didn't think that the service she was receiving from the SST was adequately meeting her needs and, with the help of a third party, she complained to Nationwide. She said she was still receiving automated letters about the arrears and Nationwide was not properly taking account of her mental health issues.

Miss O remained unhappy with the responses she received from Nationwide and brought her complaint to us. Miss O raised a number of detailed points, saying she wanted a response to each point she had raised.

Nationwide accepted it could have dealt with things better; specifically, it should have transferred Miss O's account to the SST sooner than it did. Nationwide apologised for this and confirmed that Miss O's account was still with the SST. It also said that additional indicators had been placed on her account. This meant any advisers looking at it would be aware of Miss O's mental health issues.

The adjudicator explained to Miss O that we aren't required to respond to every point raised in a complaint. She also said she didn't think Nationwide was required to either. However, she confirmed that she had considered everything Miss O had said and provided. She recommended that Nationwide pay Miss O £400 to settle her complaint, which the society agreed to do.

Miss O had told the adjudicator she didn't know how the arrears had come about. The adjudicator sent Miss O a breakdown of her account which showed when the arrears started and how they had continued to accrue.

Miss O wasn't satisfied with our response and sent a very detailed letter, again setting out all her concerns about the shortcomings in the service she had received from Nationwide. The letter also said that Miss O felt Nationwide had discriminated against her, by failing to make reasonable adjustments to take account of her mental health issues.

By way of a provisional decision dated 30 June 2015, I set out, with reasons, how I thought the complaint should fairly be resolved. I said:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I've summarised the complaint considerably. That's partly to avoid providing too much detail that might risk compromising Miss O's privacy, something of which she is, understandably, very protective. It's also a reflection of the informal nature of the service we provide.

We've said in previous correspondence that we're not required to investigate and make individual findings on each and every point a consumer makes, or question they raise. That much is true, but just because we don't have to do something doesn't mean we shouldn't, or that we mustn't. We have to look at the circumstances of the particular complaint – and of the person bringing it - and decide what is appropriate in each case.

I'm aware from listening to the recording of her conversation with one of our adjudicators, that Miss O attaches some importance to the questions she asked. But it seems to me that her greater need still is for some form of reassurance that what she has experienced in the past is not what will happen in the future. I'm not convinced the former will help with the latter, but that is not to say I have disregarded Miss O's questions. I haven't, but what I have done is take a slightly broader approach to events as a whole, and assessed whether or not they amount to fair treatment.

As a starting point, Nationwide has a regulatory duty to treat all consumers fairly, but particularly those in financial hardship. Separately, but alongside that, it has a statutory duty (under the Equality Act 2010) to make reasonable adjustments to ensure those customers with protected characteristics are not disadvantaged in their dealings with it. In Miss O's case, she has said that her mental health problems fall within the Act's definition of a protected characteristic and she made Nationwide aware of them. Her dealings with Nationwide – at least as far as the scope of this complaint is concerned – relate to how it treated her when her mortgage fell into arrears.

Before I go there, however, Miss O has asked for an explanation of her arrears, so here seems like an appropriate point to address that. We asked Nationwide to describe how arrears are calculated. It has told us:

“As per the terms and conditions of the Mortgage Offer, an instalment is required to be paid to the mortgage account each calendar month. All mortgage payments are due on 1st of each month however, the Society does allow the full calendar month for the contractual payment to be made. If the instalment is not received to the account by the last working day, the account will fall into arrears. Therefore, the full contractual payment is classed as arrears and will remain outstanding until they are repaid either in full or, by way of a repayment plan or, if agreed, consolidation. The Society charges daily interest, when a monthly instalment is paid the balance on which we charge interest is reduced. Naturally when a monthly instalment is missed, the balance on which we charge interest does not reduce.”*

**What is implied here, but not specified, is that the account will fall into arrears by an amount equal to the difference between the amount due and the amount paid in each month; i.e. if the instalment is not paid at all, then the account will be in arrears by the full amount of the instalment. If part of it is paid, the account will be in arrears by the unpaid part of the instalment. When there are arrears, interest will be charged on a higher amount than when the monthly payments are being made. Nationwide has also provided a statement showing the accumulation of arrears on Miss O's account.*

I now turn to the crux of the complaint; whether Nationwide treated Miss O fairly. I have taken into account the requirements of the Equality Act 2010 to make reasonable adjustments but this isn't the only test for me to consider. I say this because it's quite possible for Nationwide to meet its statutory obligations under the Act (by, for example, setting up the SST) but still breach its regulatory duty in its dealings with an individual consumer.

In my view, that's what has happened here. Not only that, it seems to be common ground that it's happened. I say that because Nationwide does accept that it has let Miss O down. I've said earlier that Miss O needs some sort of reassurance that this can't happen in future, and I will get to that in due course. But Miss O also wants explanations of what happened and why. That's entirely understandable. Miss O's mental health problems mean she is very vulnerable to emotional pressure, to a far greater degree than might normally be the case.

Additionally, it seems to me that her responses to such unwelcome pressures are more sensitised, and this informs her reactions when things don't happen the way she's been led to think they will. For example, in conversation with our adjudicator, Miss O describes several occasions where Nationwide staff have said they will do one thing, and have then done something else, or done nothing at all. To Miss O, these events are indicative of staff lying and deceiving her.

I don't in any way belittle the effect such incidences have on Miss O, but I have a different view point on why they happen. Nationwide, like all financial businesses, has a largely automated system for managing its accounts and communicating with consumer who are behind with their mortgage payments. When it makes adjustments to accommodate those whose situations require something less automated and more bespoke, these are invariable manual arrangements reliant on human input rather than a computer programme. Computers can't think; they can only follow programmed instructions. Humans can think, but sometimes they think, say or do the wrong thing. The two elements sit side-by-side, somewhat uneasily, and invariably at times they collide. That is what I think has happened in Miss O's case.

Examples include, but aren't limited to:

- *Nationwide not identifying several months earlier than it did that Miss O should be put in touch with SST;*
- *someone telling Miss O she couldn't be transferred to SST, only for someone else to tell her a short time later that she could;*
- *someone agreeing a payment arrangement with her, but then keying it into the computer incorrectly;*
- *someone telling her she won't receive letters when in fact a computer is still programmed to send them.*

So, where Miss O sees events like these – and others – as lies and deceit, I see them as the result of the unfortunate combination of the automated element and the error-prone human element. The motivation is less sinister, but the effect on Miss O is, of course, still the same; that is, very severe distress leaving her, at times, contemplating suicide. That, by any reasonable analysis, is not fair treatment of a customer. Miss O is entitled to be compensated for that, and I will return to the point shortly. But before I do, there is the very pressing issue of what happens going forward.

I said earlier that probably the greatest concern for Miss O – or at least that's what it seems from listening to her conversation with our adjudicator – which is that what she has experienced previously should not happen again. It would be perfectly normal for anyone who has suffered a bad experience to want reassurance that there won't be a repetition. That's particularly the case for Miss O, because the effects of such problems are so much more severe in her case.

The difficulty here – and to be anything other than totally honest with Miss O would be to do her a great disservice - is that "future-proofing" her against further problems is not something I have the power to deliver. I'm neither a regulator nor a legislator, so it's not in my remit to order Nationwide to change its processes and procedures for the better. It may be that the Financial Conduct Authority or the Equalities and Human Right Commission can offer something more substantive in this regard. We regularly engage with those organisations to highlight issues that we are seeing in our complaints, but I can't speak for them. Meanwhile, we've taken note of the issues raised in this case.

Nor, human nature being what it is, can I order Nationwide to make sure its staff never say or do the wrong thing again. The most I and the Financial Ombudsman Service generally can do is point out its shortcomings, and express the importance that it learns lessons from them going forward. If it doesn't, then there is always a possibility that something will go wrong again. I appreciate it will be of little comfort to Miss O, but if that did happen, she could complain again. But I very much hope that won't be necessary.

Neither can I say that Nationwide is precluded from ever using more serious steps to recover the money Miss O owes it. Nationwide's duties to treat Miss O fairly and to make reasonable adjustments for her don't mean it cannot, ultimately exercise its legal remedy. That should always be a last resort, however.

That leaves my view of how Miss O should be compensated for the events leading to this complaint. Nationwide has offered £400, which our adjudicator thought was reasonable. Miss O didn't agree, and I don't either. There is a temptation to use phrases a little too glibly at times, especially those that originate from our complaint handling rules. So we talk of consumers having suffered "distress and inconvenience" in a situation where something altogether more serious has happened. It's important that this is recognised, both in the way

we communicate with Miss O, and in our assessment of fair compensation for the effect on her of Nationwide's shortcomings.

I've considered all that has happened, as well as the wider circumstances that mean the potential impact the poor treatment Miss O has experienced has on her is so much greater than normal. When I do that, I'm minded provisionally to direct Nationwide to pay Miss O £1,000 compensation for the very severe effect its handling of her mortgage arrears has had on her health and wellbeing".

Nationwide accepted my provisional finding, agreeing to pay Miss O the compensation I proposed. Also, in anticipation that the complaint might be resolved promptly, Nationwide set out some proposals for how it and Miss O might move things forward. Miss O asked for more time to consider my provisional decision with her mental health advocate, once he had returned to work following a personal injury.

We have now heard from Miss O. She has rejected my proposed award. She believes she could obtain up to £10,000 compensation, and has instructed solicitors to pursue a claim against Nationwide. We have spoken to her legal representatives who tell us they are preparing a pre-action protocol letter to send to Nationwide.

my findings

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'm not persuaded I should divert from my provisional conclusions.

Miss O hasn't challenged my findings on what happened, and why. Nor has she taken issue with the comments I made about the practical difficulties of influencing what might happen in future. So, what remains to be decided here is the level of compensation Nationwide should pay Miss O for its past treatment of her. I've assessed that at £1,000, and overall, I remain of the view that that's a fair amount in all the circumstances. I fully understand that Miss O believes she's entitled to more, and she has taken steps to pursue a legal remedy.

That's her prerogative, of course, and if she rejects my final decision, then subject to any restrictions a court might impose, her right to take legal action against Nationwide won't be prejudiced by our consideration of her complaint. Alternatively, Miss O can bring matters to a conclusion now by accepting my decision. But if she does do that, it will be in full and final settlement of the complaint, and both she and Nationwide will be bound by it. Meanwhile, our rules don't permit us to look at a complaint whilst legal action is ongoing.

We normally give consumers one month to decide whether or not they wish to accept a final decision. Once we've done that, the deadline can't be extended afterwards. However, I have the discretion to allow a longer period when issuing my decision, if the circumstances justify giving the consumer more time to decide what they want to do. In my view, that applies here. So, I've allowed Miss O two months to decide, presumably in consultation with her legal representatives, whether she wishes to accept my decision or reject it and continue with the legal action.

my final decision

For the reasons set above, my final decision is that I uphold this complaint. In full and final settlement, I direct Nationwide Building Society to pay Miss O £1,000.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss O to accept or reject my decision before 9 December 2015.

Jeff Parrington
ombudsman