

complaint

Mr and Mrs M complain that Nationwide Building Society has removed their ability to “borrow back” payments made to their mortgage. They want to be able to do so.

background

Mr and Mrs M had a mortgage with Nationwide which let them overpay the mortgage and then “borrow back” the overpayments. Later, their fixed interest rate period ended and Mr and Mrs M remortgaged with Nationwide online. Mr and Mrs M continued to overpay their mortgage.

When Mrs M contacted Nationwide years later to find out how to access their overpayments, she was told the new mortgage didn’t allow them to borrow back the overpayments. Mrs M said she was told if she’d remortgaged over the phone, she would’ve been told about the change, but as the remortgage was done online, Nationwide said they should’ve read the terms and conditions on the website. Mrs M said she had called Nationwide before remortgaging and no-one warned her that “borrow back” was no longer available for new mortgages. She also pointed out overpayments and the possibility of a refund of those overpayments was mentioned on their new mortgage statements. They kept overpaying due to this.

Mr and Mrs M complained to Nationwide. It said Mr and Mrs M had chosen their new mortgage – it hadn’t advised them about it. Nationwide also said the new mortgage offer didn’t mention “borrow back” was available. It said Mr and Mrs M had agreed to the terms and conditions of the new mortgage and it had stopped offering “borrow back” mortgages years earlier. Nationwide said its website at the time made it clear the “borrow back” option wasn’t offered on new mortgages. Nationwide also told the adjudicator that all its statements mentioned overpayments, but this didn’t mean the “borrow back” option was available to all.

Mr and Mrs M complained to us. They pointed out Nationwide gave them £100 to switch their mortgage online, which they thought suggested Nationwide was trying to “trick” them into losing the “borrow back” option. The adjudicator thought Nationwide hadn’t made it clear enough the new mortgage didn’t have the “borrow back” option, particularly in light of the statements which kept referring to it. She didn’t think consumers should have to look for information about changes – they should be told clearly as Nationwide’s own policy required. But as Nationwide didn’t do “borrow back” any more, the adjudicator recommended it allowed Mr and Mrs M to do it once only.

Mr and Mrs M agreed, but Nationwide didn’t. It said the Financial Ombudsman Service had previously found the information available online was enough to warn consumers the “borrow back” option was no longer available for new mortgages. The adjudicator considered that decision, but felt in the circumstances of this case justified a different view as Nationwide couldn’t show her a copy of the information from the website. Nationwide also said there was no evidence Mrs M had called it to discuss remortgaging as she had said. But it hadn’t dealt with the remortgage over the phone so couldn’t tell Mr and Mrs M about the change. It said the policy referred to by the adjudicator only applied to telephone applications.

my findings

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

Nationwide says that the information that "borrow back" was no longer available for new mortgages was shown clearly on its website. But it can't show me that information. Nationwide has shown that its policy required changes to be made to its website, but I think it's more likely than not that the specific warning to be given to consumers over the phone wasn't put on the mortgage application and any other document consumers must read to go ahead with the remortgage.

And having seen what Mr and Mrs M have to say, I think they honestly believed the "borrow back" option was still available to them as they continued to overpay. The mortgage statements don't in my view make it clear enough that the option is no longer available to Mr and Mrs M, despite telling them they have an overpayment reserve.

Nationwide says that the new mortgage offer didn't tell Mr and Mrs M they still had a "borrow back" facility. I agree. But the loss of the option was seen as important enough for Nationwide to require its staff to tell consumers about it over the phone. It isn't fair and reasonable to expect consumers to look around a lender's website to find such a warning – either the warning is to be given to all consumers in the same position whether or not the switch is done online or over the phone, or given to none. It is even more important that the warnings are the same when a lender is paying the consumer money to use the online method to take out a new mortgage. I think Mr and Mrs M were treated differently to consumers who switched over the phone, and I don't think it's fair and reasonable to now refuse to let them borrow back their overpayments.

I can't tell a lender to offer a particular product. Nationwide is able to use its commercial judgement about what products to offer, but I agree with the adjudicator that it is fair and reasonable for me to require Nationwide to allow Mr and Mrs M to use the "borrow back" option once.

my final decision

My final decision is that I uphold the complaint and Nationwide Building Society should allow Mr and Mrs M to borrow back from their overpayment reserve once. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs M to accept or reject my decision before 12 February 2016.

Claire Sharp
ombudsman