

The complaint

Mrs H complains that Nationwide Building Society has mis-sold her additional borrowing on her mortgage and she has lost out as a result.

What happened

Mrs H owns a leasehold property with an interest only mortgage. The mortgage term is due to end in 2026 and the current interest rate product is due to end in late 2024.

In 2022, Mrs H received an invoice for works completed by the freeholder to her property. This was for just over £19,000. Mrs H called Nationwide and asked whether this could be added to her mortgage at the same rate as her current interest rate product. The adviser Mrs H spoke with needed to confirm with another department that this could be done and then advised Mrs H on what she needed to provide Nationwide to allow it to do this.

After calling Nationwide again to confirm where to send the information to, Mrs H sent in the documents required and she believed the invoice was paid and added to her mortgage balance on the same terms and interest rate as her existing borrowing – so Mrs H believed this would be on an interest only basis like the rest of her mortgage. And on 3 May 2022, Nationwide confirmed via email the arrears would be added to the mortgage and the interest rate it was currently on would be applied. Mrs H believed this was the case until she received a letter from Nationwide in March 2023 which explained her account was in arrears by more than £800.

When Mrs H enquired with Nationwide about the arrears, it explained the additional borrowing provided when it paid the invoice for the works completed on her property had been provided on the same interest rate as her existing mortgage. But that this was done on a capital and interest repayment basis, not interest only.

Mrs H complained to Nationwide. She explained that she would not have asked Nationwide to pay the invoice had she been aware that it was going to add the borrowing as a capital repayment and not interest only mortgage. She said she had the option to borrow the money from the council and this was on an interest only basis, but the Nationwide rate was lower which is why she enquired with it about the borrowing being added to her mortgage. She didn't think it had been made clear at any point that the borrowing was to be on a repayment basis and not interest only. When this wasn't made clear, she feels Nationwide mis-sold the additional borrowing.

Our investigator looked at this complaint and didn't think Nationwide had been as clear as it could have been about the additional borrowing. He didn't think there had been a specific question asked at any point on whether it would be on a repayment or interest only basis. But he understood why Mrs H was shocked when it became apparent that the mortgage was not all on interest only and that arrears were outstanding.

He explained the mortgage terms and conditions allow Nationwide to vary the repayments and to cover the cost of any leaseholder fees if these are unpaid. So he didn't think it had done anything wrong when it had provided the borrowing on a repayment basis. But to

recognise the impact of not managing Mrs H's expectations as well as it could have, he asked Nationwide to pay Mrs H £200.

Nationwide accepted the recommendation but Mrs H did not. She didn't think it had been recognised that the lack of clarity on the repayment type and monthly payment meant she wasn't provided with clear information about the product she was taking out. She maintains that she has been mis-sold and it isn't fair that the borrowing is on repayment basis and not interest only.

This complaint was referred for decision and I wrote to Nationwide to ask it for more information. I explained that I didn't think it had correctly understood Mrs H's request when this has been made. It hadn't treated the request for additional funds as a further advance but had instead thought it was a payment Nationwide needed to make to Mrs H's freeholder to avoid any risk of the freeholder looking to take possession. And I didn't think Nationwide made it clear how the borrowing was to be added to Mrs H's mortgage or that the payment would be on a repayment basis.

I thought the lack of clarity meant Mrs H was not aware of how Nationwide had set up the additional borrowing. But it was also unclear whether Nationwide would have been able to provide the additional borrowing Mrs H wanted on an interest only basis had this been applied for when Mrs H contacted it. So I asked Nationwide to confirm what it could have done to understand what would be fair when looking to put things right with this complaint.

Nationwide accepted it didn't make it clear how the request for additional funds was being treated and that Mrs H was not given the opportunity to consider other options if the borrowing couldn't be offered on an interest only basis.

To put things right, it said it was willing to convert the additional borrowing to interest only and remove any arrears on Mrs H's account which had been added because of the increased payments with capital and interest repayments being taken. But it would need to be satisfied that Mrs H had a repayment strategy to cover the additional borrowing so it could be assured it was acting in her best interests with this change. It also agreed to pay the £200 previously offered for the distress and inconvenience, as recommended by our investigator.

Mrs H has not accepted this offer as she feels Nationwide needs to go further with the compensation it is offering. She has said she has been impacted by the higher repayments in a number of ways and this needs to be recognised.

Mrs H feels an award of £10,000 for the error itself is warranted. She has said Nationwide has continued to chase and harass her for monthly and arrears repayments, despite the complaint being considered by the ombudsman and this has prolonged the emotional suffering of the complaint. She feels an award of £5000 is appropriate for this impact.

Mrs H has also said a further award of £5000 should be made to recognise the damage to her reputation and credibility due to incorrect false data being published against her. And a further £3000 should be awarded for Nationwide failing to engage with her constructively on this complaint.

Mrs H also provided some information to demonstrate that her credit file and reporting by Nationwide on this had an impact on her being able to take over a number of mortgages from her husbands buy-to-let portfolio as part of their future financial planning.

Because Mrs H didn't accept the offer made by Nationwide, the complaint was passed back to me to consider.

I issued a provisional decision on this complaint on 11 March 2024. I explained I was planning on upholding the complaint as I was satisfied Nationwide had failed to do what it needed to when dealing with Mrs H's request for the additional borrowing to pay the invoice she'd received. But I explained my recommendation for the award for distress and inconvenience was lower than the figure Mrs H had set out.

I said the following in my provisional decision:

I am planning on upholding this complaint but Mrs H may still be disappointed by this as my recommendation does stop somewhat short of what she is hoping for based on her assessment of the loss.

Mrs H has quoted case law within her responses and this is one of the things highlighted when she has set out what she feels is fair compensation for the error and impact of this error on her. I need to highlight that this Service is not a court and the awards we make in reference to distress and inconvenience are modest by comparison. And when thinking about any award, I've taken account of what I would normally expect a business to do on a fair and reasonable basis.

It is not disputed that Nationwide failed to understand what Mrs H was looking to do when she asked it about increasing her mortgage to cover the invoice she'd received from her freeholder. Mrs H was looking to add this to her mortgage in line with how the existing borrowing was working, with an interest only repayment and the balance to be paid at the end of the term. In effect she thought she was making a request for additional borrowing on the same rate and terms as her existing mortgage.

Instead of treating this as a request made by Mrs H for additional borrowing, Nationwide treated the invoice as a bill from the freeholder that she was unable to pay and it covered this cost as it is able to do so, through the mortgage terms and conditions and passed this on to Mrs H.

Normally, a request for additional borrowing would be considered and any new lending offered, provided at the rate available at that point in time. But Nationwide increased the borrowing on the same interest rate as the remainder of Mrs H's mortgage so on the fixed rate of 1.04% until November 2024. It was this being placed on capital and interest repayment over interest only which caused the issue.

Nationwide has now said it will convert the additional borrowing amount to interest only for the remainder of Mrs H's mortgage term. And during the current fixed rate period, this will remain on the 1.04% interest rate. This is dependent on Mrs H being able to demonstrate she has a repayment strategy for her mortgage which allows for this increased cost.

As a starting point to correct the error, I think this is a fair offer. And although Mrs H hasn't been clear on this point, I think she accepts this as a way forward with the loan and its repayments now.

As I've said, normally additional borrowing applications are made based on the rates available at the time and would not simply increase the borrowing on a previous rate. Nationwide is not able to assess what would have happened or been offered had it correctly understood Mrs H's request when it was made and because of this, it's offered to convert the borrowing to interest only as it is. So although there has clearly been distress and inconvenience added which I will address in turn, the cost of the borrowing is likely cheaper than it would have been had the correct application been made previously.

The compensation for the error and the impact of this is something that Mrs H feels is far

greater than what our investigator recommended. The assessment of this complaint was based on what happened up until the point of the final response issued by Nationwide and this was sent on 17 March 2023.

Mrs H has highlighted some information which is new and would not have been considered by our investigator when thinking about the impact and I thank her for sharing this. She has also demonstrated that she raised further complaints to Nationwide about its contact with her on the outstanding payments. Nationwide responded on this point to say this will be considered under our complaint so it didn't provide a response on this. So while this is a new point in addition to what was provided at the start, I think it fair to deal with this in this complaint.

Mrs H has also provided information to show that she was unable to be added to mortgages in her husband's buy-to-let portfolio and this has impacted their ability to carry out their future plans attempted in March 2023. This is a new complaint point that has not been considered by Nationwide and it will need to be raised with it in the first instance before we can consider it. But I have thought about whether it would be fair to expect Nationwide to now amend Mrs H's credit file.

When Mrs H was first notified of her monthly mortgage payment increasing, it would have been distressing with the amount increasing by as much as it did. There had been no forewarning of this and for the shock and distress of this, our investigator previously felt £200 was fair as a recommendation. I agree that this is a fair amount for the shock experienced in realising this payment had increased and is inline with what I'd expect to see for an error of this nature.

When Nationwide operated the account as a capital and interest repayment one, arrears built. As a lender it has a responsibility to provide notice of any arrears and look to seek payment to bring the account back on track. But I appreciate this will have felt like continued harassment to Mrs H when she had raised a complaint about the issue and the repayment amount was what was in dispute. I think it is right that the overall award is increased to reflect this additional distress, and as I say, I think it is fair this is dealt with under this complaint.

Mrs H also feels that further compensation should be provided because of Nationwide's failure to engage with her and her MP constructively about the matter causing further distress and delay. Although I've considered the overall impact on Mrs H and the distress caused, I can only think about the loss she suffered and not that of any third party. So while I note her MP may have been frustrated by the lack of engagement, it is not something I will be asking Nationwide to compensate Mrs H for.

Overall, taking account of the additional points made by Mrs H and what was considered previously, I think the award for distress and inconvenience should be increased. I think an overall award of £600 is fair and reasonable and recognises the immediate shock as well as the ongoing distress experienced when Mrs H was needing to deal with chasers for payment for an amount that had increased well beyond what she expected.

I also think it is fair that Nationwide amends Mrs H's credit file to remove any negative information relating to arrears, if based on those accrued as a result of the increased payment.

I appreciate this is somewhat short of what Mrs H is hoping for. But, as I've said I think some of what she has now highlighted needs to be considered by Nationwide as a new complaint and any award this Service makes will be in line with our approach. The references and awards Mrs H has made to case law are not representative of our awards but she is able to

pursue this route if she chooses to do so.

Nationwide responded to say it accepted the recommendations made and the provisional decision.

Mrs H responded to say she disagreed. She provided a number of points in relation to the proposed remedy. The main focus of this has been the level of compensation I've said I think it is fair for Nationwide to pay for the overall distress and inconvenience of the matter.

Mrs H has also said that she feels it is unfair that Nationwide have asked for confirmation that there is a repayment strategy in place for the additional borrowing. Mrs H believes Nationwide has created this through its negligent actions and it is fair that they accept the risk created.

Mrs H has questioned why our awards are different in amount to the awards made by the courts and whether they are unfair in awarding more. She has explained she does not feel £600 provides fair compensation for mis-selling, defamation, and false accounting and this should be increased.

The reference to her MP involvement did not highlight the lengths she needed to go through to acquire this involvement with great time and effort spent in gathering and sending evidence to her MP and time spent seeing them to discuss the matter. As such the request for compensation was wholly for her effort, stress, time, and expense.

Mrs H also highlighted the ongoing nature of the contact she is receiving from Nationwide in relation to the mortgage balance and arrears. She said on 26 March after receiving the provisional decision, she received a further letter from Nationwide in relation to the account and the outstanding balance. And it is not fair to say it is able to report these arrears if the reporting is incorrect.

Overall, Mrs H explained she was unhappy with the proposed outcome due to the level of the award and that the failings of Nationwide were not being correctly recognised through 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.

Having done so and taking account of the information provided by Mrs H, my decision broadly follows that of my provisional decision. Although for reasons I'll go on to explain, I have made a slight amendment to what I think Nationwide need to do to put things right.

It is not disputed that Nationwide has made an error when it did what it did with the additional borrowing application and how this was treated. I appreciate Mrs H's still feels it has acted in breach of the mortgage contract when doing this, but I don't agree it was a breach of the contract or that it is unfair that it has the ability to make changes like this if needed.

As our investigator explained and I highlighted in the provisional decision, Nationwide like many mortgage providers, has within the terms and conditions of the mortgage, the ability to protect its security through adding costs to the mortgage if it feels this is appropriate. In this instance it didn't do this correctly as there was no risk of the freeholder acting in a way which might risk the security. And Nationwide shouldn't have simply added the invoice amount to Mrs H's mortgage balance as it did. This is accepted by Nationwide with it offering to take steps to put this right.

As I set out in my provisional decision, I think the actions of Nationwide and its failure to make it clear what it was doing with the additional borrowing and how this was being treated meant Mrs H lost the opportunity to explore other options. And while there was no direct promise made on how the invoice amount was being applied to her mortgage and on what basis with the repayments, it was not explained this would not be on an interest only basis.

Mrs H has concerns about Nationwide asking for evidence to confirm there is a repayment strategy in place for the additional borrowing. But I don't think it is unfair of Nationwide to ask for confirmation of a repayment strategy now to ensure it is able to provide additional support if this is needed. However, I don't think it would be fair for Nationwide to do anything differently with the additional borrowing if this cannot be demonstrated. This additional borrowing represents less than 15% of the total mortgage balance. And as Mrs H highlights, the funds have already been provided.

When the additional borrowing was provided without clarity on this being on a repayment basis, Mrs H was stopped from being able to look at other options, relying on the expectation of this being interest only. There is no option to rewind this when looking to put Mrs H back in the position she would have been had the error not happened. And I think it is fair the borrowing is converted to interest only now because of this. But it is important that Nationwide is aware of the future plans for the borrowing with the overall term of the mortgage now being relatively short so if needed, additional support can be provided on the term end options and discussions on this can be started.

The reporting of Nationwide with the arrears notices and chasers for payments has clearly caused distress to Mrs H and I am sorry to read this continues when Nationwide has recognised the mortgage is not set up as it should be. When Nationwide provided the additional borrowing on a repayment basis and monthly payments were not met in line with this, it was recording how the account has been managed. It is because this was not explained and Mrs H was not given the option to avoid this happening, that it is correct that Nationwide now amends Mrs H's credit file.

An award for distress and inconvenience is not intended to compensate for all the additional time spent in dealing with an issue or complaint. Nor can it compensate for the impact a complaint has had on an individual. And when something goes wrong, there will always be a certain level of distress and inconvenienced caused when needing to take steps to put this right.

When deciding an award for distress and inconvenience I consider the impact of the business's actions on the consumer and the awards we've made in other similar cases. We are not the courts and whether they choose to award a higher amount or not is not something that has a bearing on the approach of this Service.

Mrs H has set out in detail the time she has spend dealing with this complaint, both with Nationwide directly and the time she has spent providing information to her MP to seek their assistance with the matter. She has also explained the impact of the communication she's received and continued to receive from Nationwide about the mortgage balance and what it believes to be arrears because of how the mortgage is currently operating.

I appreciate the strength of feeling Mrs H has about the impact of Nationwide's error. And this is likely compounded by it continuing to send letters about the mortgage and report on this until it converts the additional borrowing to interest only in line with the rest of the mortgage.

I think it is right to recognise the ongoing nature of the chasers Mrs H is receiving, even after she may have believed this situation to be ending. So I've considered this when thinking about the award for distress and inconvenience, increasing this from my provisional award to allow for this. Overall, I feel an award of £750 is fair for this complaint.

This recognises that Mrs H has been impacted by the mistake of Nationwide resulting in distress, inconvenience and disruption which has needed a lot of extra effort to sort out. I accept that Mrs H feels this award should be considerably higher and it is her choice whether to accept this decision. But I am satisfied this is an award in line with this Services approach.

Putting things right

To put things right, Nationwide should do the following:

1. Convert Mrs H's additional borrowing of £19,124.40 to an interest only loan with the capital to be repaid at the end of the mortgage term.
2. Mrs H should confirm with Nationwide that she has a repayment strategy for the additional borrowing of £19,124.40 so it can be assured it is acting in her best interest when converting the loan from capital repayment. If not in place, Nationwide should work with Mrs H to provide support with her future options at the term end.
3. Nationwide should rework the account as if this has been in place since the borrowing was applied to the mortgage and clear any arrears that have been accrued as a result of the payment being set as capital repayment.
4. If step 3 above shows there has been overpayments made to the mortgage, Nationwide should give Mrs H the option to either: Have this applied as a capital repayment to the mortgage balance, or have the overpayment refunded with 8% simple interest applied to the refund amount.
5. Nationwide should amend Mrs H's credit file to ensure there is no negative information reported relating to the arrears which have been incurred as a result of the above.
6. And in recognition of the distress and inconvenience experienced when Mrs H first became aware her mortgage had not been set up as she believed, and to account for

the impact of ongoing distress as Nationwide has continued to look for payment at the higher amount, Nationwide should pay Mrs H £750.

My final decision

For the reasons I've set out above, I uphold Mrs H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 6 June 2024.

Thomas Brissenden
Ombudsman