

## The complaint

Mr and Mrs R have complained about an application they made for a lifetime mortgage with Nationwide Building Society. They've said that Nationwide encouraged them to clear a support for mortgage interest ("SMI") charge on their property, and then declined the application.

## What happened

Mr and Mrs R had an existing mortgage with Nationwide and they enquired about taking out a new lifetime mortgage to repay that.

The first conversations took place in 2020, and Nationwide couldn't proceed at that time due to the fact the existing mortgage was in arrears. Mr and Mrs R cleared the mortgage arrears and went back to Nationwide but until July 2021 an application still couldn't be taken forward as the arrears had been so recently cleared.

In July 2021 it was still showing as a decline on the credit score, but an appointment was booked with Mr and Mrs R so the options could be discussed on the basis Nationwide could then, if there was a suitable option for Mr and Mrs R, consider whether an exception to the credit score could be made due to Mr and Mrs R's personal circumstances. However, at that time Nationwide still couldn't assist unless that exception was agreed.

An adviser spoke to Mr and Mrs R on 15 September to go through the potential options with them, and in that call Mr and Mrs R said the only charge registered against the title of their property was the Nationwide mortgage.

On 20 September it was noted that the Department for Work and Pensions ("DWP") had a charge on the property in respect of the SMI payments. It was explained to Mr and Mrs R that whilst the charge remained Nationwide would be unable to grant the lifetime mortgage.

Nothing further happened until April 2022 when Mr and Mrs R got in touch with Nationwide again. That led to an email from the adviser that said:

*"Thank you for your message, I do understand your situation. I'm sorry to tell you nothing has changed with our lending policy or our decision from the end of last year.*

*We are not able to help with a Lifetime mortgage while the 2<sup>nd</sup> charge is registered on your property. Your application is subject to assessment, legal and property checks, therefore I'm, unable to guarantee your application will be accepted until these checks and assessments have been completed.*

*I know this is not what you want to hear, if you wish I can log this as a complaint for you, however I do not anticipate it will change our lending policy or decision. I'm sorry there is nothing else I can offer other than checking with other providers to see if they are able to help you."*

Mr and Mrs R replied to say that they'd rather use Nationwide, so would be back in contact

once they were able to meet Nationwide's criteria.

Nationwide then spoke to Mr and Mrs R at the end of November and they said they were looking to clear the DWP charge.

Mr and Mrs R came back to Nationwide in January 2023 and said they had cleared the DWP charge. The application was submitted on 20 January 2023.

On 25 January Nationwide, upon carrying out a check on the property's title, said that not only did the DWP charge still show, there were also other charges showing due to charging orders that had been obtained for what had previously been unsecured debts. It said all the charges needed to be repaid if the lending was to proceed. Those three charges dated back to 2009, 2010 and 2011 and related to Nationwide accounts with the outstanding debts standing at around £22,000.

Mr R responded to say that the DWP charge had been repaid, as had one with a third-party company, and should be showing as removed. He said the other charges were held by different parts of Nationwide and they'd been told by the Nationwide adviser that the other Nationwide charges wouldn't be a problem.

Nationwide explained that the other charges related to three previously unsecured debts, each of which had an outstanding balance, and those had to be paid before the charges could be removed, and until the charges were removed then the lifetime mortgage application couldn't be progressed.

Unhappy with what had happened, and that they'd cleared the DWP charge but still didn't get the lifetime mortgage, Mr and Mrs R raised a complaint with Nationwide. They said that they told the Nationwide adviser about the unsatisfied loans in the first appointment, and that she made enquiries and then contacted them to say it wasn't a problem as the loans were with Nationwide.

Nationwide responded to the complaint on 3 April 2023. It said the adviser wouldn't have been able to confirm with any certainty whether or not the charges would need to be cleared, and that Mr and Mrs R had been told that there was no guarantee their application would be successful even if the DWP charge was removed.

Unhappy with Nationwide's response, Mr and Mrs R referred the complaint to our service where it was looked at by one of our Investigators. Our Investigator didn't uphold the complaint. She said Nationwide had been clear that there was no guarantee the application would be successful even if the DWP charge was cleared, and upon full assessment it wasn't willing to proceed with the application.

Mr and Mrs R didn't agree and so the case has been passed to me to decide.

## 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.

Mr and Mrs R have set out their account in considerable detail. I trust they won't take it as a discourtesy that I've condensed their complaint in the way that I have. I don't doubt that this is very important to Mr and Mrs R but although I've read and considered the whole file I'll keep my comments to what I think is relevant. If I don't comment on any specific point it's not because I've not considered it but because I don't think I need to comment on it in order to reach the right outcome.

Nationwide has said this application couldn't proceed if there were any charges secured against the property, other than the existing mortgage with Nationwide. Mr and Mrs R have said they discussed the other Nationwide charges with Nationwide advisers and were told they wouldn't be a problem. They say, had they been told all the charges would need to be cleared, they wouldn't have cleared the DWP charge. In relation to that they've said:

*"...Nationwide insisted that we had to pay the outstanding balance of £5477.21 before the application could proceed. At this time we did protest and stated that we had to borrow these funds and if the application was unsuccessful we would be left with a debt that we would not be able to repay."*

Mr and Mrs R say they sent an email to the Nationwide adviser about the other Nationwide charges, with the text of that saying:

*"There is an agreement with the Nationwide in regard to an outstanding loan the balance of which will be paid back when the property is sold"*

But when Mr R sent us a copy of that email it was showing as being sent by Mr R to himself (not to the Nationwide adviser) and the date was in June 2023 (in the evening of the day our Investigator's assessment had been sent to him and Mrs R).

He said as well as that email, the matter was discussed in a video call with the adviser in September 2021. He said Nationwide was definitely aware as it was discussed at every level; they named three different advisers and said those conversations took place in September 2021, December 2022 and January 2023

Mr R then sent a screenshot of a further email he said he'd sent to the Nationwide adviser, the unfinished text of that saying:

*"There is an unsatisfied loan still active that we have with the Nationwide, we have not made any payments for over 10 years. This all came about whe"*

Whilst that email was noted as being due to be sent to the Nationwide adviser on 16 September 2021, it was showing as still in draft form; that is, it hadn't been sent.

Having considered everything, I'm satisfied there's no evidence been provided by either side that Mr and Mrs R put anything in writing to Nationwide about these other charges. That leaves me to consider the fact Mr and Mrs R say this was discussed in various calls, and that Nationwide had said it wouldn't be a problem.

Unfortunately not all the calls are available, but I've listened to all those we've been able to obtain. Those include the ones in September 2021 and November 2022 (not December 2022) that Mr and Mrs R have referenced.

In the September 2021 call Mr and Mrs R didn't mention the charges registered against the property. Instead, when asked, Mr R said there were no charges other than the Nationwide mortgage:

**Adviser:** *"Are there any restrictions or charges registered against the title of your property other than the Nationwide mortgage?"*

**Mr R:** *"No"*

In the November 2022 call the adviser, right at the start, said that the maximum amount Mr and Mrs R were able to borrow (if they were eligible for the lifetime mortgage) was less than the outstanding mortgage and so that wasn't an option. During the call Mr and Mrs R said they had the funds to repay the SMI charge and they'd looked into doing that, and then later on the adviser said:

*"So, there's a couple of things you can have a look at. As you've mentioned you potentially have the funds to clear that SMI charge. So that is an option that might make you a bit more eligible. There is a risk with making that decision that I'd just like to highlight for you, so if you choose to fork out your savings to clear this charge it is still a risk that you might not be eligible on some other basis further down the line."*

Mr and Mrs R asked at what stage they'd need to clear the SMI charge so they didn't clear the charge and then be turned down:

*"We've paid [...] the £5,000 off or whatever it is and then for whatever reason we can't get the mortgage. OK, it won't make any difference to our day-to-day living but that would be a good chunk of our savings gone when we don't really need to do it."*

The adviser explained that when he keyed the application a check would be undertaken with the Land Registry and it would flag up there was a charge on the property and decline the application, so it would have to be done before any application was submitted.

Mr and Mrs R said they were in a position to make the payment that day, but they were aware the Land Registry may take some time to remove the charge from the property's title.

Mr and Mrs R then went on to discuss the other Nationwide charges with the adviser. They said due to some difficulties in the run up to Mr R's ill-health diagnosis in 2010 some unsecured debts they had with Nationwide had been secured by charging orders over their property. He said when they'd enquired before the adviser didn't think it would be a problem.

The adviser said:

*"With these products they must be the only charge on the property, so that would need to be cleared as well."*

Mr R said that they'd been told, about 18 months before, that it wouldn't be a problem, at which point Mrs R interjected and said they'd been discussing a full remortgage at that point, with Mr R and Mrs R then agreeing that they were previously talking about taking out a mortgage to repay all the debts owed to Nationwide.

The adviser checked the notes of the previous discussions and said he could only find a record of the DWP charge being discussed. He said theoretically Nationwide charges could be fine as there would be a Nationwide charge on the property anyway for the mortgage, he said as far as he could see from the notes from the previous conversation it was just the DWP charge that was causing an issue.

He said it may be worth checking with the Land Registry what is registered, and Mr R said:

*“So what you’re saying is that when [the previous adviser] said it would be OK, the chances are [...] there’s probably only one Nationwide charge rolled into the mortgage.”*

The adviser again warned Mr and Mrs R that there was no guarantees any lending would be successful, and Mr and Mrs R said:

*“If we get to the stage where we pay it off [...] it’s not going to be detrimental, it’s about £5,000 which we’ve got. Fortunately we’ve got choices.”*

The adviser then detailed what would happen if the DWP charge was cleared. He said there would be an eligibility and affordability check as two of the products Nationwide offered required monthly payments. And the other product was the lifetime mortgage that had been discussed at the start. The adviser said Nationwide checks the eligibility and affordability against all three products in one go, rather than one at a time. In respect of the lifetime mortgage without monthly payments he said:

*“When it comes to the lifetime mortgage, that is the one that doesn’t have an affordability check. However, I have already looked at your maximum borrowing on that and with your ages at the minute you wouldn’t be able to borrow enough on that particular type of mortgage to cover your existing mortgage.”*

Mr R checked that if they wanted to do it now they couldn’t borrow enough to pay off their existing mortgage, and the adviser confirmed that only 25% of the property value was available on that product, which based on a value of £150,000 would be £37,500. Mr R asked if they could go ahead if they paid the difference, and the adviser said that if Mr and Mrs R reduced their mortgage enough then an application could be considered.

It is clear there was some confusion in this call, with the other Nationwide charges being mentioned but then from the further conversation it seems the adviser believed they had been incorporated into the main mortgage charge. However the adviser was very clear that there was no guarantee the lending would be agreed, and had warned Mr and Mrs R that based on the estimated value of their property Nationwide wouldn’t be able to lend enough to repay the existing mortgage. He was also clear that he didn’t know about the Nationwide charges and that *“With these products they must be the only charge on the property, so that would need to be cleared as well”*

I can see this was a protracted process, but I’m satisfied that wasn’t the fault of Nationwide. Mr and Mrs R weren’t eligible initially due to being in arrears on their existing mortgage, and then they didn’t pass the credit score. Even when Nationwide agreed to look at it in September 2021 that was on the basis that Mr and Mrs R still weren’t passing the credit score, but that Nationwide would consider looking at the case manually to see if it could help. It was at that point that a second charge first came to light. It is unfortunate that none of the emails or calls around that time show the Nationwide charges were mentioned so we don’t know what was discussed about that. However an email that the adviser sent to Mr and Mrs R in April 2022 says:

*“Thank you for your message, I do understand your situation. I’m sorry to tell you nothing has changed with our lending policy or our decision from the end of last year.*

***We are not able to help with a Lifetime mortgage while the 2<sup>nd</sup> charge is registered on your property. Your application is subject to assessment, legal and property checks, therefore***

*I'm, unable to guarantee your application will be accepted until these checks and assessments have been completed.*

*I know this is not what you want to hear, if you wish I can log this as a complaint for you, however I do not anticipate it will change our lending policy or decision. I'm sorry there is nothing else I can offer other than checking with other providers to see if they are able to help you."*

And, as I've said, that was then reiterated in the November 2022 call with the adviser clearly stating that all the charges must be cleared.

This hasn't been an easy case to decide and I can hear there was some confusion in the November 2022 call about the other Nationwide charges. But I must keep in mind that Nationwide was clear throughout that the clearing of the DWP charge wouldn't guarantee a successful application as there were still other criteria that needed to be met. I must also keep in mind that in none of the calls or emails I've been able to review were Mr and Mrs R explicitly told that the other Nationwide charges didn't need to be cleared, and whilst something may have been said in the other calls that aren't available, it is also possible that this was a matter of confusion or misunderstanding. Without being able to hear the calls I simply can't say it is more likely than not – which is the test I must use – that Nationwide expressly told Mr and Mrs R that the other Nationwide charges didn't need to be repaid and cleared from the Land Registry.

Having considered everything very carefully, I can't find that Nationwide misled Mr and Mrs R into thinking they were eligible for the lifetime mortgage, and therefore I can't find Nationwide responsible for Mr and Mrs R's decision to clear the DWP charge. It follows that I simply can't uphold Mr and Mrs R's complaint, however much they may want me to.

### **My final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs R to accept or reject my decision before 8 April 2024.

Julia Meadows  
**Ombudsman**