

The complaint

Mr B's complaint about Nationwide Building Society (NBS) relates to its decision to commence legal action against him when his mortgage account fell into arrears.

What happened

On 5 January 2015 Mr B took out a repayment mortgage with NBS over a 25-year term. In 2018 he began to struggle financially in making his mortgage payments and in January 2020 stopped altogether. This was due to the effects of the pandemic and his unemployment.

Mr B took a three-month mortgage payment holiday between 14 July and 13 October 2020 but didn't make his next payment until January 2021. He then made payments to March 2021 and thereafter they were sporadic. He made no payments between November 2021 and September 2022. This again was caused by his inability to work by virtue of ill health.

NBS wrote to Mr B in January 2023 advising him that he was over 14 months in arrears on his mortgage account. They asked him to contact them within seven days to discuss remedial action, warning that in default they would be considering legal action. Mr B didn't contact NBS until after that seven-day period had expired by which time NBS had commenced the legal process to recover possession of the property.

Mr B feels NBS didn't follow the mortgage pre-action protocol (MPAP) before issuing proceedings, as a result of which he was severely distressed. He asked NBS for an apology, an explanation, and also that they,

1. change his mortgage type to interest only with the first payment starting from 30 June 2023.
2. pay him £600 compensation for the loss of earnings caused by him having to attend a Court hearing.
3. pay him compensation for the pain and suffering NBS they had caused which included not being able to go to a family funeral because he had to attend a homeless interview.
4. contact DWP and complete form UCML12 correctly.
5. provide DWP with his Building Society Roll Number so they could make an SMI payment (Support for Mortgage Interest).
6. remove from his account all associated charges such as court fees, interest, or penalties.
7. repair the damage to his credit file as a result of the breach of protocol and unfair treatment he received.

In their final response NBS said,

1. it couldn't change the mortgage to Interest Only as they longer offered that product.

2. a final demand letter was sent to Mr B in January 2023; the legal process was not commenced until 23 March 2023 and that attempts had been made to contact Mr B by telephone and email prior to the action starting without success.
3. It was sorry he had missed the funeral but questioned why he had not contacted the local authority directly to reschedule the interview.
4. they had returned the UCML12 form to Mr B, duly completed, for him to send on to the DWP because he hadn't given them an address to send it to.
5. they hadn't provided a 'Roll Number' because NBS don't provide them.
6. the fees applied to Mr B's mortgage account were in line with their Terms and Conditions which allowed for any additional costs incurred to be added to the mortgage account.
7. it had provided accurate information to the credit reference agencies (CRAs), as it had simply reported the missed payments which were a true reflection of his account.

NBS later reviewed their final response and as a gesture goodwill, removed the legal costs applied to his account from the first hearing and subsequent adjournment.

Mr B was unhappy with NBS's final response and so approached this service to see if we could assist in resolving the dispute, but our investigator thought that NBS hadn't done anything wrong and had dealt with the complaint fairly. Mr B didn't agree and asked for the complaint to be passed to an Ombudsman for a final decision.

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.

I know the parties provided a lot more detail than my summary, but I shall focus on what I see as the key issues. Our rules allow me to do this, and it reflects the informal nature of our service as an alternative to that of taking action through the Court. If I've not mentioned something then this isn't because I've ignored it, rather it's because I don't need to comment on every individual argument to be able to reach what I think is the right outcome. Naturally, I have considered the views of both Mr B and NBS and all the available evidence

Mr B asked NBS for their help and sent to them form UCML12. He expected they would fill it in and send it off to the DWP who would then make a payment to NBS. But NBS wrote to Mr B on 27 February 2023 returning the form having completed the part they needed to and attaching a letter with more information for Mr B to put into part 7 of the form. NBS signed part 8 of the form and told Mr B he would need to post it to the DWP because he hadn't provided an address to send the form to. They advised Mr B that if the DWP had any questions they should contact them directly, or if he had any questions he should call them or go into a branch for help.

As Mr B didn't respond to that letter and DWP didn't make contact with NBS, I can't therefore say that NBS has acted unreasonably here. NBS provided all the information they had, and whilst no roll number was provided, that was because there wasn't one and Mr B didn't make NBS aware that this was a problem. Mr B could have called NBS to clarify this but he didn't and so I am not persuaded that NBS' action here has delayed DWP's ability to process any claim he made.

On 23 March NBS instructed their solicitors to commence legal proceedings and a hearing was set for 9 May 2023. The Council notified Mr B about this on 18 April 2023.

Mr B has referred to the MPAP and feels NBS did not adhere to this. Para 6.5 of MPAP provides; *'a lender must not consider starting a possession claim for mortgage arrears where the borrower can demonstrate to the lender that the borrower has submitted a claim to the DWP for support for SMI or if appropriate Universal Credit'*. He also feels NBS should have explored the possibility of alternative dispute resolution, in accordance with the protocol.

My first observation here is that NBS did try to avoid commencing litigation. They wrote to Mr B on a number of occasions, and they tried to contact him by email and phone. The arrears on Mr B's mortgage account were considerable when proceedings were commenced and well in excess of three months mortgage payments. I have also noted that NBS had paid the service charges on Mr B's property when they had received demands from Mr B's management company. They had advised Mr B about this but he had been unable to pay the charges. So, as the arrears weren't being addressed and Mr B was falling further into debt, I think it was reasonable for NBS to commence proceedings.

It was on 4 May 2023 that Mr B called NBS to tell them that he had applied SMI. This was the first time NBS was aware that a claim had been made, albeit they didn't have any evidence of it actually being submitted. So, I can't say that NBS has acted in breach of MPAP in commencing proceedings because there was no evidence that an application for SMI had in fact been made at the time proceedings were commenced.

However, NBS didn't tell their solicitors of this and so the first Court hearing on 9 May went ahead but was adjourned to allow the issue of an application for SMI to be looked into. NBS, upon review of the final response letter, agreed, as a gesture of goodwill, that the legal costs that were incurred for this hearing should not be charged to Mr B's account. They did this because they accepted that they could have notified their solicitors and had the case adjourned. I agree, although in saying this I do accept that NBS hadn't actually received actual notification of the SMI claim and so were not at fault in continuing with the proceedings. The amount of costs incurred was well over £2,000 and so in removing these costs I think it is a very fair and reasonable step taken by NBS.

Mr B asked to have his mortgage switched to Interest Only, but NBS doesn't offer this type of mortgage anymore. Even if it did, I don't think this would have been in Mr B's best interests since he had no credible plan for repayment of the capital at the end of the term. So, I don't think that NBS have been unreasonable in declining Mr B's request.

Mr B also asked for his credit file repaired but as I have found that NBS didn't breach MPAP and as a fact his mortgage account was in arrears from January 2020, I think NBS correctly reported the missed payments to the CRAs.

I have also taken into account that Mr B did not enjoy good health and also had caring responsibilities. But having done so I do not consider that they were of such impact upon him that he was unable to deal with NBS and address the mortgage arrears prior to the initiation of proceedings. So, I don't feel that NBS has acted unfairly or unreasonably here and I'm not upholding this complaint.

My final decision

For the reasons set out above I do not uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or

reject my decision before 9 April 2024.

Jonathan Willis
Ombudsman