

The complaint

Mr and Mrs F complain that when they wanted to change the title to their property, Nationwide Building Society insisted they use a solicitor.

What happened

Mr and Mrs F have a mortgage with Nationwide. In 2023, they arranged to buy a parking space and have that added to the title deeds of their home. It required granting right of access to one of their neighbours. Mr and Mrs F wanted to make the changes directly with the Land Registry – but it told them that they should ask Nationwide to consent to the changes. But when they told Nationwide, it said they must use solicitors or conveyancers (I'll just refer to solicitors) to amend the title deed.

Nationwide said it required solicitors to make sure that any changes complied with its requirements, that the security remained suitable and covered by its charge, and that any changes were completed and registered correctly.

Mr and Mrs F consider that Nationwide isn't treating them fairly. They complain:

- There is no possibility the value of the security will be affected by the changes they are making.
- Nationwide would not agree to use its own legal team. The reason it gave was that it would be a conflict of interest – but it isn't because they would be acting in the interests of Nationwide.
- The mortgage terms and conditions do not say that a solicitor must be used for any changes to the title deeds. So it is unreasonable to insist they use solicitors and incur those costs,
- A solicitor is not necessary as they have completed the necessary paperwork with the Land Registry themselves.
- Nationwide has said that it needs to make sure that the UK Finance Mortgage Lenders handbook is being complied with. But it has not said what aspect they are concerned about.
- They are left in a position where they will have to pay legal fees or being sued for not completing the purchase. They can't afford to pay for the purchase and the legal fees.

The investigator did not consider the complaint should be upheld.

Mr and Mrs F did not accept what the investigator said. They made a number of points, including:

- Other lenders do specifically cover this issue in their terms and conditions and suggest they would consider it in-house. It can't be fair if Nationwide's terms and conditions do

not cover this point. If it is industry standard that legal advice is required, then that should be in the terms and conditions of all lenders.

- The end result would be the same for Nationwide as it is already – so it could have considered the issue itself like other lenders do.
- The need for an independent solicitor would only arise if Nationwide felt the changes would affect its security. It could consider the request itself – and it would have been straightforward for it to do so without the need for the expense of solicitors.

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.

When Nationwide agreed to give Mr and Mrs F a mortgage, it was on the basis that their home – and the title – offered suitable security for the amount it was lending. So when Mr and Mrs F changed the title of the property, it was reasonable for Nationwide to take steps to make sure that the property still was suitable security for it and that the charge it held was sufficient.

Usually a solicitor would act for both Nationwide and Mr and Mrs F in a purchase or remortgage. The solicitor would refer to the UK Finance Mortgage Lenders Handbook (the handbook). The handbook provides comprehensive instructions for solicitors and licensed conveyancers on behalf of lenders. Some requirements apply to all lenders – and some requirements apply only to individual lenders. The handbook applies to purchases, remortgages, removing charges and changes over the life of the mortgage. Therefore it was reasonable for Nationwide to make sure that the requirements of the handbook were met when Mr and Mrs F altered the title to their property.

Nationwide has also given other good reasons why it needed a solicitor to look at things – to make sure that the title was changed correctly and the charge was registered properly. Overall, I consider it was fair and reasonable for Nationwide to require a solicitor to oversee the change. It had valid reasons for doing that to protect its position. While Mr and Mrs F might have been able to complete the Land Registry documents, they couldn't, for example, check that the changes complied with the handbook – and it was reasonable for Nationwide to require whoever did check to be acting on its behalf.

Nationwide has not told us that the terms and conditions of the mortgage cover this scenario. And I can't see that it is covered. The terms and conditions aren't exhaustive – and what Mr and Mrs F were proposing was relatively unusual in my experience. So I don't consider it was unfair or unreasonable for the terms and conditions to not cover this point – and they met the requirement that applied at the time the mortgage was taken to pay due regard to the information needs of its clients and to communicate information in a way that was clear, fair and not misleading.

Ultimately, Nationwide holds a charge over the property. For the reasons I have given, I consider it is reasonable for Nationwide to check that after any changes the property still offers suitable security and that its charge is properly registered. I know that Mr and Mrs F consider that the changes don't really make any difference to the security. But it is reasonable for Nationwide to check.

While Nationwide does have its own legal team, I can't see that there is any requirement for it to act for Mr and Mrs F in dealing with the change in title. And it is its decision whether to act for itself. In my experience it would be very unusual for a lender to appoint its in-house

solicitors to act for itself a purchase or remortgage – even if the borrowers had appointed their own solicitors. I can't see any reason why it would be required to do so – or that it was unfair for it not to do so – in the circumstances here.

I understand why Mr and Mrs F aren't happy they've been left to pay unexpected legal fees. But I'm required to decide what in my opinion is fair and reasonable in the circumstances of this complaint. Mr and Mrs F want to make changes to the title deeds of their property. While they might consider the changes don't really make any difference, it is reasonable for Nationwide to check that its position is protected – and I think it would be difficult for me to conclude that the steps it required Mr and Mrs F to take or that its reasons for that were unfair or unreasonable in the circumstances.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F and Mrs F to accept or reject my decision before 28 February 2024.

Ken Rose
Ombudsman