

The complaint

Mr and Mrs A's complaint is about what happened when they asked to port their later-life mortgage with Nationwide Building Society to a new property. They are unhappy that the mortgage documentation from when they took out their original mortgage didn't tell them about the restrictions in place regarding property type and that they were not given this information when they initially made enquiries about porting in 2023. This meant that they couldn't port their mortgage, their move was delayed with associated stress, and they incurred an early repayment charge. In light of the situation, Mr and Mrs A think Nationwide should have waived the early repayment charge.

What happened

Mr and Mrs A took out a later-life interest-only mortgage with Nationwide in early 2022. Attached to the mortgage was a fixed interest rate product with a term of five years. During that term, an early repayment charge (ERC) was payable if the mortgage was repaid. In relation to porting to another property the offer said:

'You have the right to transfer this product to a new mortgage with Nationwide on another property. However, your application will be subject to the lending criteria at that time.'

In the spring of 2023 Mr and Mrs A decided to move home. They contacted Nationwide to ask questions and later to arrange for a port to happen. Nationwide located several calls about the matter, the first of which was 15 May 2023. Unfortunately, only the first part of the call is available. That part of the call confirmed that Mr and Mrs A were thinking of moving and wanted to know if their mortgage could be ported. Mr A was then transferred to a different department. Mr A has said that he was told in the second part of this call that they could simply keep paying the mortgage.

On 23 May 2023 Mr and Mrs A paid a £5,000 deposit on a leasehold property. The property had a restriction relating to the age of the purchaser.

Three days later Mr A called Nationwide again. He explained that he wanted to make sure they could do what they wanted to – move home and carry on with the mortgage. He made it clear that he didn't want to pay it off, but rather keep the mortgage and continue paying it monthly. Nationwide explained to Mr A that porting a mortgage meant repaying the existing one, applying for a new one and porting the interest rate to the new mortgage. The process to do this was given and it was confirmed that Mr and Mrs A would need to have an appointment with a mortgage adviser.

Mr A was not happy with the concept of having to apply for a new mortgage and asked whether they couldn't just continue paying the existing one. Nationwide didn't answer the question, but instead asked for clarification about the type of mortgage Mr and Mrs A had – whether it was a later-life mortgage. Mr A confirmed that was the case and that he had previously spoken to the senior mortgage team, but the line had been terrible, and he had been told to just keep on paying the mortgage. At this point Mr A was transferred to the team that dealt with later-life mortgages. He was then told that to port the mortgage he had to speak to a specialist mortgage adviser. An appointment was made for the first part of the

advice process. Mr A again said he had spoken to someone the week before and had been told to just keep paying the mortgage.

Mr and Mrs A spoke to Nationwide about a week later and an appointment was made with a mortgage adviser. In that call Mr A again said that they just wanted to continue with the existing mortgage. He also said that if he was not allowed to keep the existing interest rate, he would move to a new lender.

Mr and Mrs A were booked in to speak to a mortgage adviser on 8 June 2023, but this was cancelled due to the adviser being ill. It was rearranged for 15 June 2023. In the conversation with the mortgage adviser Mr and Mrs A confirmed they had sold their property and they gave details of the one they were buying. When Mr and Mrs A confirmed that the property was age restricted, Nationwide told them it didn't fall within their lending criteria and the mortgage could not be ported to it.

Mr and Mrs A complained that they were unable to port the mortgage and had not been made aware of the lending conditions that meant the property they were buying would not be acceptable to Nationwide.

Nationwide emailed its response to Mr and Mrs A on 7 July 2023. It apologised for the time it took for Mr and Mrs A to be able to speak to a mortgage adviser. Nationwide also said that when they had asked if the mortgage was portable, while the answer was correctly given as yes, they should have been reminded of what was contained in the mortgage offer – that porting was subject to lending criteria. Mr and Mrs A were paid £300 for the upset and inconvenience these matters may have caused them. However, Nationwide was satisfied it had made the right decision in relation to their porting request.

Mr and Mrs A were not satisfied with Nationwide's response and referred their complaint to this Service. When they did, they explained that had they been told they could not buy an age restricted property, they would have chosen a different property that didn't have that restriction. Due to Nationwide not giving them this information, they consider the ERC should be waived.

One of our Investigators considered Mr and Mrs A's complaint, but he didn't recommend that it be upheld. He mistakenly believed a call from 26 May 2023 was the missing call from 15 May 2023. As such, he concluded that the telephone call had before they put down the deposit for the new property had made it clear that porting was subject to an assessment of the request. This was also what was documented in the mortgage offer from the previous year. The Investigator was satisfied that Mr and Mrs A had put down the deposit on their new property in the knowledge that porting was not guaranteed. As retirement properties with age restrictions fell outside of Nationwide's criteria, the Investigator was satisfied Nationwide had not done anything wrong in declining the port or applying the ERC when the mortgage was paid off. In relation to the service issues Mr and Mrs A experienced, he was satisfied the £300 Nationwide had already paid was appropriate in the circumstances.

Mr and Mrs A expressed disgust at the Investigator's conclusions. They disagreed about the content of the telephone calls Mr A had with Nationwide and maintained they understood until 9 June 2023 that their mortgage was portable without any conditions needing to be met.

The Investigator responded to the points Mr and Mrs A made, but he didn't change his view of the complaint. He remained satisfied that they were aware before they put down the deposit on their new property that while the mortgage could be ported in principle, Nationwide would want to assess the request before agreeing it. In addition, it was clear that Mr A had been aware during the period they could cancel their purchase and have their deposit refunded that the request to port might not be agreed.

Mr and Mrs A remained dissatisfied with the Investigator's view. They said that they believe there was another call with Nationwide that it 'conveniently' can't find and which would support Mr A's recollection that he was told he would be able to port the mortgage to another property. In addition, they commented that while the terms and conditions do mention that any application would be subject to lending conditions at the time, they consider that is a generality and does not mention that Nationwide doesn't lend on or port to age restricted properties. Mr and Mrs A consider the lack of this specific information meant the conditions are not clear. They summarised that the delay and the lack of clarity from Nationwide meant that they had to arrange another mortgage with a higher interest rate and pay an ERC.

Our Investigator considered what Mr and Mrs A had said, but it didn't change his conclusions. As agreement couldn't be reached, it was decided the complaint should be referred to an Ombudsman for consideration.

I issued a provisional decision on 26 April 2024, in which I set out my conclusions and reasons for reaching them. Below is an excerpt.

'It is unfortunate that the second part of the telephone call from May 2023 is not available. I would explain at this point that if the available evidence is incomplete and/or contradictory (or simply disputed) we reach our findings on what we consider is most likely to have happened, on the balance of probabilities. That's broadly the same test that the courts use in civil cases.

It is for us to assess the reliability of evidence, from both sides, and decide how much weight should be attached to it. When doing that, we don't just consider individual documents in isolation. We consider everything together to form a broader opinion on the whole picture. In reaching my decision, I will have regard for the law and good industry practice where relevant, but my overarching responsibility is to decide what is fair and reasonable in the circumstances.

I would initially comment that porting is always dependent on the property the borrowers want to move to being acceptable to the lender, whether that is porting of a later-life mortgage as a whole, or an interest rate product on a traditional mortgage. Mr and Mrs A's mortgage was portable, but only if the property they wanted to port to was acceptable to Nationwide as security for the amount borrowed.

Mr and Mrs A have complained that Nationwide didn't tell them about restrictions in what type of property it would allow their mortgage to be ported to. A lender will decide what types of property it is willing to provide mortgages for based on its appetite for risk. It is entitled to do so and that is not something this service would normally look to interfere with. It is not unusual for lenders not to accept properties that have restrictions on ownership. This is due to such restrictions potentially making them harder to sell.

In addition, a lender's appetite for risk will change over time based on changes to the financial and property markets. This means that lending criteria will also change over time, so it would not have been possible for Nationwide to tell Mr and Mrs A in advance what types of property it would or would not lend on when they took their mortgage out, in the event they might want to port it at some point in the future. It would be a case of an assessment being made when they asked to port and there was no guarantee the request would be agreed.

I have listened to the recordings of the telephone calls that are available, and in none of those calls was Mr A told he could simply continue to pay the mortgage when he and Mrs A moved home. Admittedly, Nationwide gave him some incorrect information about porting his mortgage due to its staff assuming the mortgage worked in the same way a standard

mortgage did. However, the new property fitting within Nationwide's lending criteria is always a requirement for porting, no matter what type of mortgage it is, and I find it highly unlikely that Mr A would have been told in the missing part of the conversation of 15 May 2023 that there was no assessment involved in the process and they could simply move the mortgage and keep paying it.

Mr A's query when he called three days after he and Mrs A put down the deposit on their new property was to make sure they could do what they wanted to do. This again would not indicate that Mr A had been given a definitive confirmation that the mortgage would be ported to whatever property they selected. Indeed, it indicates that Mr and Mrs A were not entirely sure the mortgage could be ported at all. I also note that Mr A said later that the line was bad on the relevant call indicating difficulty with the clarity of the conversation.

I know this will disappoint Mr and Mrs A, but I can't find that Nationwide should have discussed at an earlier stage the types of property it would not allow the mortgage to be ported to, or that it told them the mortgage could be ported with no assessment being done of the property they were buying. Given Nationwide's lending criteria at the time Mr and Mrs A wanted to port their mortgage, I can also not find that its decision not to allow the port was wrong.

As for the ERC, this would have been documented in the mortgage offer that was sent to Mr and Mrs A before the mortgage was advanced. They accepted that offer and the ERC that was associated with it, even if they thought, at the time, it was unlikely they would have to incur it. As Nationwide didn't act inappropriately when it declined to port the mortgage, it was not unreasonable for it to charge the ERC when Mr and Mrs A repaid the mortgage.

Nationwide paid Mr and Mrs A £300 for service failings in its communications. Having listened to the calls and considered this matter carefully, I would agree that Nationwide's service could have been better. However, I consider the £300 already paid is sufficient compensation in this regard.'

Mr and Mrs A said that I had looked at the complaint with a prejudiced and subjective viewpoint. They asked that I consider why they would have asked Nationwide for the recording for the second part of the 15 May 2023 call if they were not convinced it would prove their point. Mr and Mrs A also indicated that they believe Nationwide had chosen to be unable to find the call recording. Mr A said he remained adamant that Nationwide told him he could just carry on with the mortgage during that call, which is why they paid the deposit on the property they wanted to buy and ultimately ended up with a mortgage at a higher interest rate. They also said that in questioning Mr A's recollections, I was insinuating that he was lying.

Nationwide acknowledged receipt of the provisional decision and confirmed it had nothing further to add.

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.

As for Mr and Mrs A's suspicions regarding the telephone call of 15 May 2023, I can understand, in the circumstances, why they feel this way. However, I have seen no evidence that the call recording does exist, and Nationwide is withholding it. I would also confirm that I in no way meant to imply I was questioning Mr A's integrity. I do not doubt that Mr A has given us his genuine recollections of events. However, people's individual recollections, although given in good faith, can sometimes be inaccurate or contradictory. This would

especially be the case where, as Mr A has said, the telephone line during the conversation in question was bad and understanding was difficult.

While I have considered everything that Mr and Mrs A have said about this matter, I remain of the view that it is highly unlikely that Mr A would have been told they could port their mortgage with no assessment of the new property being made, or in other words, they could simply continue paying if they moved home. It is simply not how porting works on any type of mortgage. Given that Mr A was told a porting application would have to be assessed in the other calls where there was some discussion, I think that on balance, it is unlikely he would have been told otherwise in the missing call recording.

My final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs A to accept or reject my decision before 14 June 2024.

Derry Baxter
Ombudsman