

The complaint

Mr and Mrs W complain that National Westminster Bank Plc instructed a basic valuation report instead of the Homebuyer report they'd requested. As a result, a number of defects with the property weren't identified before Mr and Mrs W bought their home.

What happened

In 2016, Mr and Mrs W bought their home with a mortgage from NatWest. They paid for a level 2 Homebuyer report. But NatWest incorrectly instructed a less detailed, level 1 valuation report. The valuation report did not identify any significant defects. It said the property had three bedrooms and two living rooms. It highlighted that the property had been extended and altered in the past and said that Mr and Mrs W should check that the alterations were approved by the local authority. The report also said the garage roof might contain asbestos.

In 2022, NatWest told Mr and Mrs W that the wrong type of valuation report had been carried out in 2016. It agreed to pay Mr and Mrs W for remedial work they'd already carried out on their home. It also arranged for a Homebuyer report and other professional reports to be carried out, which identified a number of defects that required work to put right. NatWest offered to pay for the cost of the repairs and £6,000 for the distress and inconvenience this matter has caused to Mr and Mrs W.

I issued a provisional decision inviting both sides to make any further submissions if they wished. I found that NatWest's offer of £108,163.20 to meet the cost of any repairs and a further £6,000 for any distress and inconvenience Mr and Mrs W suffered was fair and reasonable.

NatWest said it had nothing further to add. Mr and Mrs W did not accept what I said. They made a number of points, including:

- I was wrong to assume they would have bought the house. If they'd received the correct Homebuyer report they would not have bought this house.
- They had any issues identified in the 2016 valuation repaired.
- They are the victims of NatWest's error. I should reconsider on the basis that a) they would not have bought the house b) they have been in the hands of us and NatWest since this happened. All they want now is all the repairs in the survey – but what they actually wanted is for NatWest to meet the cost of them moving out and fix all of the issues.
- If they had negotiated a discount, they would have a smaller mortgage and would have saved money in interest.
- This was the biggest purchase they'll ever make. They are not risk takers and paid for the Homebuyer report to avoid any risk. NatWest is a large company that has a track record of taking risks and then avoiding paying for its errors. It systemically tries to avoid taking responsibility for its errors. It is unfair that it gets to decide what the compensation should be.
- The surveys were carried out in 2020. The defects are still there. When they sell the property they will be left to pay for the errors. That is not fair as NatWest created these

errors.

- The main fact they wish to contest is the issue with the damp proof course and flooring in the extension. This is a major issue and NatWest has consistently ignored it. It is a structural problem, not a cosmetic one. Part of the quote involves new flooring, but the repairs are unable to be carried out without this. They would accept a further £15,000 to put this right.

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.

First of all, I'm sorry if Mr and Mrs W felt that I was criticising them in anyway or saying it was their fault any of this happened. That is not the case at all. I accept that NatWest has not treated them fairly. NatWest made a very serious mistake that has had a huge impact on them.

Mr and Mrs W asked NatWest if it was prepared to pay a further £15,000 to them to settle the complaint. I put that to NatWest, but it is not prepared to agree to that.

Once I issue my final decision, that is the end of the matter as far as we are concerned. NatWest may have previously offered to reconsider any future increases in costs. But as Mr and Mrs W have pointed out, that is a far from satisfactory solution for them – especially when NatWest can't commit to any firm timescales for any reconsideration of costs.

It is also unclear what if any recourse would be available to Mr and Mrs W if they are unhappy with any revised offer from NatWest after a decision from us. We may not be able to consider those matters at all. Even if we could, it is likely that because of the rules that are in place, we might not be able to address all of the relevant issues.

I am also conscious that this matter has already been going on for over a year and that this is a case where time is of the essence. There is an inevitable lag between any assessment of costs, getting everything in place to carry out the necessary work and the work actually being carried out and the payments being made. And that is against a background where inflation has likely caused the relevant costs to increase – and they may increase further.

Ultimately, there is no "right" answer to this. NatWest's position is that it wants to make sure that Mr and Mrs W are not out of pocket but also that the offer does not unjustly compensate them. Mr and Mrs W's position is that NatWest is being difficult, not acting in good faith and is unfairly trying to minimise the amount it pays to put things right.

Looking at things impartially and bearing in mind the need to bring some finality to things, I consider what I am proposing is a fair resolution considering our statutory role to resolve disputes "quickly and with the minimum formality". If Mr and Mrs W reject my decision then they can take legal action if they wish – although I can understand that could be a daunting thing for them to do bearing in mind the imbalance in resources between them and NatWest.

I consider that a lump sum payment in full and final settlement of this complaint is likely to be the only way to reach a fair and reasonable outcome in the individual circumstances of this complaint. Making lump sum awards to settle claims like this is not unusual and is an established and fair approach to settling insurance claims. And in view of the limitations here and the need for closure, I think it is the right thing to do in the circumstances of this case.

I am independent and impartial. I don't represent Mr and Mrs W or NatWest. It is for me to decide what I consider to be fair and reasonable in the individual circumstances of the complaint. I am sorry that Mr and Mrs W felt that NatWest gets to decide what compensation is paid. That is not the case. If I considered more compensation was required then I would tell NatWest to pay it. But after looking at everything again, I'm afraid I'm going to disappoint Mr and Mrs W.

Response to provisional decision

I'll address the points that Mr and Mrs W have made in response to my provisional decision.

Mr and Mrs W said that I had made the assumption that they would still have bought their home if they'd received the correct report. In my provisional decision I said, *"It is possible Mr and Mrs W would not have gone ahead with the purchase. But they've been living in their home for around seven years now and have carried out a lot of work on the property. Unwinding the purchase and working out the financial loss they have suffered would be difficult."*

I acknowledged that Mr and Mrs W might not have bought the property if they'd received the correct report. Because they've been living in the property and carried out a lot of work, working out the financial loss on that basis would be difficult. And in the circumstances, I don't consider it is a fair way to resolve this complaint.

I accept that if Mr and Mrs W had negotiated a reduction in the price of the property, then they would have had a smaller mortgage. It wouldn't necessarily reduce the loan-to-value. And there would have been the costs of putting everything right. It is difficult to say how that would have been funded.

In any case, Mr and Mrs W have said they don't want to resolve the case on that basis. They want NatWest to meet the cost of all the repairs identified by the surveys. NatWest's position is that it will meet the costs of any defects identified in the survey. Where the parties differ is whether NatWest should meet the cost of all repairs identified in the report rather than just items where there is a defect.

I said in my provisional decision that NatWest's position was a broadly fair and reasonable way of looking at things – and I think that is correct. I understand that Mr and Mrs W are very upset at the position they are in. But I can't see any basis on which I could fairly tell NatWest to pay for everything that the reports identified *might* be a problem, but where the evidence does not suggest there is a defect. For the outstanding matters, I will explain what I consider to be fair and reasonable in the circumstances.

Outstanding matters

In my provisional decision I set out what I considered to be the matters that remained in dispute. They were:

- Stairs/hallway
- Chimney/fireplace
- The extension

Neither Mr and Mrs W nor NatWest have told me that there are any other outstanding issues.

Stairs/hallway

Mr and Mrs W want NatWest to meet the cost of:

"The balustrade to the stair and landing which would not comply with regulations as the horizontal planks could easily be climbed by children. This should be replaced with vertical spindles Lift landing carpet and fix loose floorboards."

I can't see that the Homebuyer report identified any defects with the stairs or floorboards – but the structural engineer said:

"Other non-structural issues included the balustrade to the stair and landing which would not comply with regulations as the horizontal planks could easily be climbed by children. This should be replaced with vertical spindles or over-boarded."

...

There is a loose floorboard on the Landing that does not feel as if its end is fully supported."

I agree with NatWest on this point. Just because a feature of a property does not comply with current building regulations does not mean that it is a "defect" or that there is any urgent need to put it right. I can't see any basis on which I could ask NatWest to pay for the cost of replacing the balustrade.

The floorboard is a minor issue. It's not clear if it was an issue in 2016. I can't reasonably find that NatWest should meet the cost of repairing it.

Chimney/fireplace

The Homebuyer report gave the chimney breasts, fireplaces and flues a condition rating of three. The report said, *"Albeit there is no evidence of structural defect the absence of the rear chimney breast is a matter of possible concern and should be investigated by a Structural Engineer, probably necessitating removal of floorboards in the rear bedroom and removal of the plasterboard casing to the bulkhead in the Lounge."*

The structural engineer commented on that point, *"Concern had been raised over the configuration of the chimney breasts, with the suggestion that one had been removed. This actually not the case, and the single fireplace in the front room with the brickwork bridging over the alcove between this and the kitchen wall is an original feature and not uncommon in council-built housing of this era."*

The chimney rising astride the spine wall in the corners of the front and rear bedrooms is supported on this arrangement, which will most likely have a cast in-situ concrete slab at its base. There were no signs of structural weakness or movement to give cause for concern with this feature."

Mr and Mrs W want NatWest to meet the cost of:

- Repointing the chimney brickwork
- Renewing the mortar flaunching
- Fitting vent to fireplaces
- Fitting ventilated cowls to the pots

I can't see that the Homebuyer report identified any of those things as a concern. The condition rating was in relation to the potential absence of adequate support if a chimney breast had been removed. But the structural engineer said that no chimney breast had been removed.

Nevertheless, the aim here is to try and put Mr and Mrs W in the position they would have been in had the correct Homebuyer report been instructed. It seems to be accepted that they would then have instructed a structural engineer's report based on the issues identified in the Homebuyer report. But the engineer's report did not just look at the concerns raised in the Homebuyer report in regard to the chimney, it also said:

"The chimney breasts against the party wall appeared to be intact and stable. The stack was weathered but in fair condition. The next time work is carried out at roof level, the brickwork should be re-pointed and the mortar flaunching holding the pots in place renewed. Some of the fireplaces had been blocked in and should be fitted with vents. Unused chimneys are liable to dampness problems due to the accumulation of moisture within the flues and so the pots should be fitted with ventilated cowls to prevent the ingress of rainwater and pests."

I consider it likely that these issues would have come to light but for NatWest's error. But the majority of the issues identified by the surveyor are not urgent – he says the stack is in fair condition and that repairs can be carried out next time there is work at roof level. And venting the unused fireplaces and fitting cowls to the chimney pots are relatively minor

issues. On that basis, I don't consider that NatWest should reasonably be required to meet those costs.

The extension

Mr and Mrs W want NatWest to meet the cost of remedial works to the damp proof course in the extension and to provide adequate underfloor ventilation. NatWest had previously agreed to keep that under review and meet the costs of repair if there was an issue in future. But as I've explained above, I don't consider it is right for me to make a final decision on that basis.

NatWest said:

"...as evidenced by the survey and specialist reports, there is no evidence of a problem with the flooring and no certainty that there will be any defect to put right. As the customers have not incurred a financial loss and there is no evidence to show that any loss will occur beyond that of natural wear and tear that would occur in any property, I do not consider it reasonable to cover costs relating to the flooring.

The building survey states that there are airbricks to the front and flank walls. None of the reports we have seen make any reference to there being any concerns or requirement to replace or add any airbricks. As there is no defect to put right and no financial loss to Mr and Mrs W, I do not consider it appropriate to make an offer for this element."

The Homebuyer report is silent on those issues. But the structural engineer's report said:

"The damp-proof course was protruding and unevenly-laid – this is probably just a sign of poor workmanship and need not signify a lack of structural integrity; however it is important that the DPC is linked to the damp-proof membrane beneath the floor and this cannot easily be checked (but would be another of the statutory Building Control checkpoints).

...

There may be future problems as yet undiagnosed with regard to damp-proofing the walls and floors in the extension, but there is no reliable non-destructive means of testing whether the DPC and DPM have been properly installed.

One should allow a provisional budget of £10,000 to £15,000 against the need to make remedial repairs to the floor of the house or extension, which would include installing under-floor ventilation to the main house to reduce the risk of timber decay in the floor."

Mr and Mrs W said this was a major issue that has consistently been ignored by NatWest. The issue is structural not cosmetic and they would need to replace the flooring if the repairs were carried out. If they were aware of this issue, they would have been able to negotiate a discount of £15,000.

I appreciate why Mr and Mrs W are worried about the damp proof course. But my interpretation of the report is:

- The damp proof membrane/course has been poorly installed.
- Its effectiveness should have been checked as part of building control when the extension was built. What I take from that is that if it was not effective then it would not have passed building control. So if it did pass building control – and no one has told me that it didn't – then the damp proof course would have worked effectively at that time.
- There is no evidence that it is not doing what it is supposed to do *"this is probably just a sign of poor workmanship and need not signify a lack of structural integrity."* The structural engineer thought it was probable that it was just poor workmanship.
- The only way to find out definitively would be to take up the floor.
- If issues were found, then the whole floor would need to be replaced and as part of that

under floor ventilation should be installed – all though I can't see that the lack of such ventilation was identified as a defect in any of the reports.

- The repairs would cost between £10,000 and £15,000.

I've thought very carefully about this point. It is potentially a significant issue – but equally there might not be any issue at all. The report merely said that the damp proof course has been poorly installed, but that would not necessarily mean it is not working. The only way to find out definitively would be to take up the floor – and that would be costly, considering there might not be a problem.

In my provisional decision I said that *"I have not seen any evidence that part of the property has experienced damp, despite Mr and Mrs W living in the property for around seven years, and that any potential issues with the damp proof membrane/course are the cause of that."*

Mr and Mrs W have not disputed that or provided any evidence to show that the property has suffered damp as a result of this issue. It follows that it is unlikely there is a defect that NatWest should pay to put right.

I don't consider the evidence we have is enough for me to say, on balance, that it is a serious defect that required immediate attention. Indeed there might not be any defect at all apart from poor workmanship that does not affect the proper operation of the damp proof course. Overall, I don't consider it would be fair or reasonable for me to require NatWest to meet the costs of this work based on the evidence available to me.

The report also said:

"The airbricks at the front were in fair condition but the vents at the rear had been blocked by the extension instead of being ducted to the exterior beneath the floor."

I can't see that this was a significant issue where Mr and Mrs W could successfully have negotiated on price.

NatWest has offered to pay £100 for filling a gap between the extension and the house. It should honour that offer.

Conclusion

I consider the total offer of £108,163.20 (£104,566.64 of which has been paid) is a fair offer for the financial loss Mr and Mrs W have suffered. Whichever way I look at it, I can't see that I have reason to tell NatWest to pay them any more than that.

The total offer includes around £13,000 for Mr and Mrs W to employ a project manager, which Mr and Mrs W did not go ahead with. I understand their reasons for that, but they've still had the benefit of that money. I think it is fair amount to cover any incidental costs and contingencies that may arise.

It is clear that Mr and Mrs W have been caused an severe amount of distress, inconvenience and suffering as a result of NatWest's error. The upset and stress of finding out what had happened – along with the ongoing stress, inconvenience and upheaval of arranging quotes and building work and then having that work done with disruption to their home and family – over a period of around two years warrants a large amount of compensation.

NatWest has offered £6,000 for the distress, inconvenience and suffering this matter has caused to them. As I said in my provisional decision – we don't often make awards at this level and usually only where a complainant has suffered pain and suffering. Looking at the circumstances, I don't consider I could reasonably recommend a higher award here. In all the circumstances, I consider £6,000 is fair and reasonable.

My final decision

My final decision is that National Westminster Bank Plc's offer of £108,163.20 (£104,566.64 of which has been paid and a further £3,596.56) is a fair and reasonable way to settle this

complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W and Mrs W to accept or reject my decision before 21 December 2023.

Ken Rose
Ombudsman