

## The complaint

This complaint's about an equity release lifetime mortgage Mrs J and Mr J hold with National Westminster Bank Plc (NatWest) There are three broad elements to the complaint; these are, in summary, that NatWest:

- rejected a request from Mr J for a payment holiday or payment deferment;
- won't agree a new fixed interest rate product on the mortgage unless both borrowers agree to it; and
- has recorded information on Mr J's credit file that is detrimental to him.

## What happened

I don't need to set out the full background to the complaint. This is because the history of the matter is set out in the correspondence between the parties and our service, so there is no need for me to repeat the details here. In addition, our decisions are published, so it's important I don't include any information that might lead to Mrs J and Mr J being identified. So for these reasons, I will instead concentrate on giving a brief summary of the complaint, rounding the figures, followed by the reasons for my decision. If I don't mention something, it won't be because I've ignored it; rather, it'll be because I didn't think it was material to the outcome of the complaint.

The joint mortgage with NatWest started in 2014, for £192,000 plus fees, repayable over 25 years, on an initial five-year fixed rate. When that rate expired in late 2019, Mrs J and Mr J agreed a new fixed rate deal dealing running until February 2021. As is customary with such products, an early repayment charge (ERC) would be payable if the mortgage was repaid before the product end date.

By the time the 2019 deal came up for expiry in 2021, Mrs J and Mr J had separated, and Mr J was making the mortgage payments alone. He asked NatWest for a new rate deal, but it said it couldn't provide one without Mrs J's consent, which wasn't forthcoming. The mortgage reverted to NatWest's standard variable rate (SVR) and the monthly payments increased to reflect that. As the general trend in mortgages rates has been upward since then, Mr J has come under increasing financial pressure whilst the details of his and Mrs J's matrimonial settlement were finalised.

In February 2023, Mr J asked NatWest for a payment holiday; it told him it no longer provided these, but that he could apply for a payment deferment, which would be subject to an assessment of his financial situation. Unfortunately this was turned down, prompting Mr J to start the complaint.

As it is about a joint mortgage, we asked Mrs J to join the complaint, and she did. However, when we spoke to her on 27 July 2023, she told our investigator that she was opposed to a new rate being applied to the mortgage as it would come with an ERC, and a court order was in place mandating the sale of the mortgaged property.

Our investigator didn't think NatWest had done anything wrong; Mr J asked for the complaint to be reviewed by an ombudsman.

## What I've decided – and why

I'll start with some general observations. We're not the regulator of financial businesses, and we don't "police" their internal processes or how they operate generally. That's the job of the Financial Conduct Authority (FCA). We deal with individual disputes between businesses and their customers. In doing that, we don't replicate the work of the courts.

We're impartial, and we don't take either side's instructions on how we investigate a complaint. We conduct our investigations and reach our conclusions without interference from anyone else. But in doing so, we have to work within the rules of the ombudsman service, and the remit those rules give us.

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I've set out my conclusions and the reasons for them below.

Unless there are exceptional circumstances that would put one of the parties at risk, it's our normal requirement that all eligible complainants join a complaint. That's to ensure that all of the relevant parties (so, in the case of a joint mortgage, as here, that's both borrowers) that might be affected by the complaint outcome are acting in unison towards a common purpose. The impression I get from reviewing the evidence here is that Mrs J agreed to join the complaint before she was fully aware of what it was. When it was explained to her what the complaint was about, Mrs J apparently opposed it but didn't withdraw from it.

This has put this service in a slightly difficult position; we can't take sides between joint account holders who don't share a common purpose; and indeed, our rules give us the discretion to decline to investigate a complaint in such circumstances. However, we're past that here, because we've already expressed an opinion, albeit an informal one, on the merits of the case.

But it's not just this service that has been put in a difficult position; NatWest has been as well. On both of the main elements of the complaint (the requests for payment deferment and a new interest rate) it was being asked to do something that would impact on both borrowers, but only one of the borrowers wanted it. Just as we can't take sides between joint account holders who don't share a common purpose, NatWest can't either.

Mr J has argued with some force why he doesn't believe Mrs J would be prejudiced by NatWest agreeing to the steps he alone wants it to take, but without wishing to be unkind, that's not his judgement to make. Looking at things dispassionately, it seems to me that both a payment deferment and a new fixed rate have the *potential* to prejudice Mrs J; the former by imposing higher monthly payments later to make up the deferred payments if the mortgaged property isn't sold, and the latter by imposing an ERC if the property is sold.

The potential for detriment is enough here. Mr J might make the argument that he alone has been making the payments since they separated, but all the time the mortgage is a joint contract, NatWest must consider both borrowers equally liable, and equally effected by any steps it takes.

In my view, this is a situation that will, in all likelihood, only be resolved within the matrimonial proceedings between Mrs J and Mr J. Given this, I don't think it's unreasonable for NatWest to treat both borrowers equally and not risk taking action that would benefit one whilst potentially causing detriment to the other.

The leaves the question of credit file reporting. The starting point here is that when lenders record data on borrowers' payment records with credit reference agencies, that data must be factually accurate; it doesn't reflect context or circumstance. It's intended to report *what* happened, not *why* it happened. Provided it is factually accurate, then the only reason for ordering a lender to remove such data is if a material error or omission on the lender's part caused it to be recorded. I've not found any material error on NatWest's part, so there's no basis for me to say it shouldn't continue to report factually accurate data on Mrs J and Mr J's respective credit files.

### **My final decision**

My final decision is that I don't uphold this complaint or make any offer or award against National Westminster Bank Plc.

My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further consideration or discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J and Mr J to accept or reject my decision before 7 February 2024.

Jeff Parrington

**Ombudsman**