

The complaint

Ms A has complained that she's been unable to get a new preferential interest rate product on her mortgage that she holds with National Westminster Bank Plc.

Ms A holds this mortgage jointly with her estranged husband (who I'll refer to as Mr A). Mr A told NatWest that he doesn't agree to this mortgage being put on a new interest rate product.

What happened

Ms A and Mr A took out this mortgage in 2018 on a fixed interest rate of 1.89% until 31 July 2023, after which it would revert to the standard variable rate (which at the time of the mortgage offer was 3.99%).

Ms A and Mr A separated last year, with Ms A remaining in the property with her children.

On 11 July 2023 a NatWest mortgage adviser emailed Ms A about her request for a new interest rate. He said:

"I have looked through the information and would need to get an exception raised to proceed without the consent of the second party but I could do that between now and our appointment. To make you aware we wouldn't have to contact him but if he did contact us for what ever reason and object to the change we would have to reverse it."

The adviser raised a request with the exceptions team the same day, saying that Ms A was making the payments and if the mortgage went onto the standard variable rate it would be unaffordable for her. The exceptions team responded to ask the mortgage adviser to try to speak to Mr A as they were concerned that he would challenge it at a later date.

The mortgage adviser contacted Ms A two days later, on 13 July, to let her know that he would need to try to contact Mr A and said he would try him the following day.

Mr A wasn't willing to agree to a new preferential interest rate and so NatWest said it couldn't proceed. Unhappy with that Ms A raised a complaint.

NatWest didn't uphold the complaint. It said that from a legal perspective it needed all parties to agree to any change to a mortgage, but once Ms A had a finalised divorce financial settlement then it could consider matters again, depending on what the settlement said.

The complaint was referred to the Financial Ombudsman Service and one of our Investigators looked at it. He said that NatWest hadn't done anything wrong in not allowing the mortgage to move to a new preferential rate as the divorce financial settlement hadn't yet been finalised and so there was a risk the house would have to be sold.

Ms A didn't agree and asked for an ombudsman's 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 purposely haven't mentioned Ms A's specific personal circumstances in this decision to protect her privacy, but I can confirm that I have read and taken into account everything that has been said and provided about that. I would like to thank Ms A for how open she has been with us and NatWest. It is clear things haven't been easy for her, and I hope she will accept my best wishes.

This mortgage remains in joint names, and although only Ms A is party to this complaint, Mr A is still jointly liable for the mortgage.

As the mortgage is on the standard variable rate, it means she must pay more each month than if a preferential interest rate was available. I understand Ms A has said she can't afford the full payment on the standard variable rate.

However, I must also bear in mind that Mr A is still party to the mortgage – and therefore still liable for the monthly payments, as well as the overall outstanding debt.

If a new interest rate product was arranged on the mortgage, that would reduce the monthly payments for Ms A. However, it would also tie both of them into the mortgage for the length of the rate when Mr A has been clear that isn't his wish. If the mortgage came to an end during that period, there would be an early repayment charge. This would increase the debt that Mr A is liable for – and also reduce his share of the equity in the property. Given their relationship has broken down but their finances have not yet been fully separated (due to this mortgage still remaining jointly held), that wouldn't be in either of their best interests. And the same would be true were a product fee to be added to the loan. Put together, that means any change to the interest rate product could be detrimental to Mr A.

In all the circumstances, I don't think NatWest has done anything wrong. It was caught in the middle of a dispute in wishes between Ms A and Mr A. As a joint party to the mortgage, Mr A has the same rights as Ms A in relation to the contractual terms and they can't be varied in a way that could be detrimental without his consent. Without that consent it wasn't possible to change the mortgage product.

Ms A has said that NatWest told her it wouldn't need to contact Mr A and then went back on that. She said NatWest had ignored her wants and wishes and upheld Mr A's, which is discrimination, and had NatWest just made the change without asking Mr A then there was a chance he wouldn't have questioned it.

I'm sorry to disappoint Ms A, but it isn't a case of upholding one party's wants and wishes over the other. Instead, as an agreement couldn't be reached between Ms A and Mr A, then the contract just continues to run as it currently is without change. Unfortunately for Ms A that ties in with what Mr A wants, but that doesn't mean NatWest has favoured him, instead it is that all it has done is made no change at all to the mortgage contract.

I agree with Ms A that the email from the mortgage adviser wasn't as clear as it could have been about the risk Mr A would still need to be contacted, but that doesn't mean NatWest was wrong to say that attempt of contact needed to be made. It is possible Mr A may have not questioned it if NatWest had just made the change but, bearing in mind everything Ms A has said to us and NatWest about their relationship breakdown and why Mr A wasn't involved, I can understand why NatWest wasn't willing to take that risk. NatWest would have needed to write to both parties to confirm the change to the mortgage contract and, taking into account everything Ms A has said, it seems more likely than not that Mr A would have objected after the event so the rate change would have needed to have been unwound anyway.

I know Ms A doesn't want to sell the property but if an agreement can't be reached between Ms A and Mr A as part of their divorce proceedings, then that will be a matter for a court to decide. It might help Ms A to speak to a financial or her legal adviser to find out what her options are in this respect if she hasn't already done so. However, in the absence of any consent from Mr A, contractual changes can't be made to this mortgage at the moment.

I understand Ms A has discussed with NatWest making reduced payments on a forbearance basis. Under that informal arrangement the full contractual monthly payment is still due, but as Ms A can't afford it NatWest accepts a lower amount each month for a period of time. As that isn't a formal change to the mortgage contract (which a new interest rate product would be) NatWest can accept those lower payments without needing Mr A's authority to do so.

I know this isn't the outcome Ms A was hoping for. But after giving the matter careful consideration, I'm unable to find that NatWest has acted unfairly or unreasonably in all the circumstances of this case.

I appreciate Ms A's hopes were raised when she thought a new product could be arranged, and she's said she wants me to review the loss of expectation. I've considered this point very carefully and whilst I can understand how disappointing it must have been for Ms A, I think NatWest's apology was enough as the request to proceed without Mr A being contacted was raised on 11 July and she was told just two days later that Mr A would need to be contacted. It may be there were some earlier conversations, but until all the information had been gathered on 11 July NatWest wasn't in a position to consider the request.

Finally, I understand Ms A has spoken to NatWest about some other options for the mortgage. I can only consider the complaint that was answered in the complaint response letter of 14 August 2023 so I can't comment on those here. If Ms A would like to raise a complaint about any other issues she can contact our Investigator and he can discuss that with her.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms A to accept or reject my decision before 5 December 2023.

Julia Meadows
Ombudsman