

## The complaint

Mr F has complained about a mortgage he held with National Westminster Bank Plc. He's said, in summary:

- NatWest didn't check affordability in 2013 when he took out a new five-year fixed rate.
- It didn't help him in 2016 when he was in financial difficulties and had to sell the property.
- He was charged an early repayment charge (ERC) of over £4,000 when he repaid the mortgage.

## What happened

In 2011 Mr F took out a two-year fixed rate with NatWest following advice given to him by an independent mortgage broker. Then in 2013 he opted to take a new five-year fixed rate on a non-advised basis.

Mr F was struggling to manage all his financial commitments in 2016 so he needed to sell the property. He said he contacted NatWest to ask for help, but none was forthcoming. The property then sold and the mortgage was redeemed, leading to him paying an ERC. He said he would have looked to port the mortgage to a smaller property if NatWest had given him some assistance at the time.

Mr F complained to NatWest in January 2021, and it didn't uphold his complaint. When Mr F brought his complaint to us NatWest didn't consent to us looking at all of it, saying the complaint about the 2013 rate change had been brought too late.

Our investigator agreed the 2013 rate change hadn't been complained about in time, and she didn't think NatWest had done anything wrong in relation to the rest of the complaint. Mr F didn't agree with this so it was passed to me to decide.

Earlier this month I issued a decision explaining that we couldn't consider the first point (about whether the 2013 rate change was affordable) because Mr F hadn't complained about that within the time limits set out in our rules. I said we could consider the other two points and that I'd issue a decision about those shortly. I'm now issuing that 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 trust Mr F won't take it as a discourtesy that I've condensed the complaint in the way that I have. Ours is an informal dispute resolution service. If I don't comment on any specific point it's not because I've not considered it but because I don't think I need to comment on it in order to reach the right outcome.

*Financial difficulties*

Mr F says he phoned NatWest a few times to discuss his options and was only offered the option of porting, whereas NatWest has said it can't trace those calls and its contact notes only show one call on 3 May 2016 which says "*Mr called, advised ERC of £4084.57 and process of porting a mortgage. Mr confirmed property is going up for sale, will call back later for redemption statement.*"

It would be unusual that more than one call handler failed to put any note on Mr F's mortgage account when he phoned to discuss his financial difficulties, and that another call handler that did put a note on (on 3 May) only mentioned the sale and porting and neglected to record a conversation about financial difficulties. That's not to say I disbelieve Mr F, but equally I've no reason to disbelieve NatWest and its call records.

There were no missed payments on the mortgage, or any other issues that could have flagged up to NatWest that Mr F may be struggling. NatWest can only offer assistance if it is aware of a problem, and even if it was aware of a problem that doesn't mean any of the things Mr F says would have helped would have been considered an appropriate thing to do.

Mr F has said either a switch to interest-only or a payment holiday would have given him the breathing space to allow him time to find another property to move to so he could port his mortgage. But it isn't as simple as that. NatWest would have needed full income and expenditure information from Mr F to assess his affordability, and it would also have needed to see something to show Mr F could afford the higher payments once any temporary concession (such as a switch to interest-only or a payment holiday) ended as either way his future payments would have gone up. There would have been no guarantee any sale would go through in any concessionary period, so NatWest would have to carry out those checks. And as Mr F is saying that his existing payments were unaffordable, it is unlikely he'd pass the checks for ensuring the future higher payments (to make up the missed / short payments) would be affordable.

As no formal request for either a payment holiday or a temporary move to interest-only was made we can't know whether those requests would have been granted. We also can't say whether that breathing space would have meant Mr F was able to port his mortgage thus not incurring the ERC. There are simply too many doubts and variables.

When considering any complaint like this, as Mr F is the one bringing the complaint against NatWest, to uphold the complaint Mr F's version needs to be *more likely* than NatWest's version; not *just as likely*. Having considered what both sides have said I don't find Mr F's version to be any more than just as likely. For that reason I can't uphold his complaint that he asked for support for financial difficulties and NatWest didn't help him, and that the help would have meant he would have been able to port his mortgage and therefore not incur the ERC.

### *The ERC*

The ERC wasn't a "penalty" as that has a distinct meaning in law; it's a contractual term that applies where there is a breach of contract. But when Mr F's mortgage was repaid, there was no breach of contract. That's because the contract allowed for the mortgage to be repaid if Mr F paid an ERC.

It's not in dispute that the ERC was set out in the mortgage offer that Mr F accepted when he took out the mortgage product in 2013. For the avoidance of any doubt, I'm satisfied that the ERC was set out clearly and prominently in the mortgage offer. And the ERC was applied in line with the terms that Mr F agreed to. As the mortgage was repaid before 31 December 2018, NatWest was entitled to apply an ERC.

But I need to decide what is fair and reasonable in the individual circumstances of the complaint. The rules we operate under say that in doing that I must take into account, amongst other things, the relevant rules and regulations. In this case that is the Financial Conduct Authority's Mortgages and Home Finance: Conduct of Business sourcebook (MCOB).

MCOB says that lenders can impose an ERC as long as it can be expressed as a cash value and is a *"reasonable pre-estimate of the costs as a result of the customer repaying the amount due under the regulated mortgage contract before the contract has terminated"*. It goes on to explain that lenders don't have to calculate the ERC for every mortgage individually. They can calculate the ERC across a range of mortgages of the same type.

The ERC is expressed as a cash value in the mortgage offer. So I've considered whether the ERC was a reasonable pre-estimate of the cost of the mortgage being repaid early. NatWest has provided evidence to show how it pre-estimated the costs of the mortgage being repaid early. Under our rules I am allowed to accept evidence in confidence if it is appropriate to do so. I am satisfied that the information NatWest has provided is commercially sensitive and I have good reason to accept that in confidence.

The information from NatWest shows that it takes into account a number of factors when estimating the cost of a fixed rate mortgage being repaid. It has provided a breakdown of the figures it used and an explanation for the calculations and estimates it has made. Having considered all that I'm satisfied that it was a reasonable way for it to estimate what its costs might be if the mortgage was repaid early.

Mr F said *"I also question the level of the ERC and it's fairness. I had been a Natwest mortgage customer since 2011, so the size of the fee seems disproportionate to the cost to the business."* But the length of time Mr F had been a customer of NatWest isn't relevant here – nor is the actual cost to NatWest of this individual mortgage being repaid. MCOB only requires NatWest to make a reasonable pre-estimate of the cost to it of the mortgage being repaid early across a range of similar mortgages. I consider that is what NatWest has done. And based on the information presented to me I consider it was reasonable for it to charge the ERC it did.

Overall, I consider it was fair and reasonable for NatWest to apply the ERC in line with the agreement that Mr F entered into.

### **My final decision**

I don't uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 20 October 2021.

Julia Meadows  
**Ombudsman**