

The complaint

Mr M and Ms W complain about the way in which National Westminster Bank plc dealt with a mortgage application. They're unhappy that the bank:

- insisted they apply by telephone, despite their having told it that Mr M is hearing impaired and would struggle to go through an application on the phone; and
- recorded a marker against Mr M on a fraud prevention database.

What happened

Mr M and Ms W took out a buy-to-let mortgage with NatWest in September 2019. Soon afterwards, in November 2019, they applied to port, or transfer, the mortgage to another property and borrow some additional money.

Mr M has a hearing impairment. He uses hearing aids and lip reads. He says he wanted to make the November 2019 application at a NatWest branch because this would have been easier for him – but NatWest wouldn't let him do so. He had to apply by phone instead, which he found very difficult since he couldn't always understand what the mortgage adviser was saying.

The application was completed, but NatWest declined it and recorded a marker about Mr M with Cifas, a fraud prevention database.

Mr M and Ms W complained. NatWest said it hadn't done anything wrong and it wouldn't remove the Cifas marker, so Mr M and Ms W got in touch with us.

Our investigator thought NatWest had had reasonable concerns about Mr M's and Ms W's application, so she didn't recommend it remove the Cifas marker. She also concluded that NatWest hadn't known about Mr M's disability, and so it hadn't treated him unfairly in its handling of the application.

Mr M and Ms W didn't accept that conclusion. They said NatWest had discriminated against them and treated them unfairly, and it had no reason to record the marker.

My provisional decision

I came to a different conclusion to our investigator, so I issued a provisional decision. I said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. This complaint is twofold, so I'll deal with each issue in turn.

NatWest's handling of the application

Mr M describes himself as hearing impaired. He uses hearing aids and lip reads, which is why he wanted to deal with the bank face-to-face rather than by phone. He says NatWest

refused this request, and this made going through the mortgage application very stressful and unnecessarily difficult.

NatWest says its usual process for this type of application at the time was to complete it over the phone, but it could have arranged a face-to-face appointment at one of its branches had Mr M told it he needed one. It says it didn't know about Mr M's hearing impairment and communication needs at the time of the application, and this wasn't noted on its records until later, in August 2020.

Banks should make reasonable adjustments so that customers with disabilities can use their services. NatWest says it understands this, and that it would have made adjustments for Mr M if it had known he required them.

I've looked carefully at NatWest's records of its contact with Mr M. Those records show that Mr M told it about his disability during the application process. Specifically, a note from 1 November 2019 says: "£185.60 DLA [disability living allowance] is to [Mr M] because he is deaf, this would continue for life".

When this note was made, however, Mr M and Ms W were already going through the application. And it doesn't say anything about Mr M preferring to communicate face-to-face. Unfortunately, there's no recording of the call. NatWest says, and I accept, that this is because calls to and from its branches aren't recorded and the staff member in question was branch-based.

NatWest has been able to provide a recording of a later call Mr M had with its complaints handler, which I've listened to. Mr M didn't mention his hearing impairment during that call, or say that he was having any difficulties with the conversation.

In the circumstances, I don't think I can fairly conclude that Mr M's and Ms W's application was adversely affected because it was made on the phone instead of in person at a branch, or that this led to the application being declined and the Cifas marker being recorded.

Mr M and Ms W say they feel NatWest discriminated against them. In deciding a fair and reasonable outcome to this complaint, I've taken account of the Equality Act 2010, as well as all the circumstances. I think NatWest caused avoidable upset to Mr M and Ms W by repeatedly saying it didn't know about Mr M's disability when in fact it did. It's clear from what Mr M has told us that he has found this distressing.

I understand NatWest does now have the appropriate marker on Mr M's records, so its staff will be aware of his hearing impairment in future.

So, while I'm not satisfied that the outcome of Mr M's and Ms W's application was affected because it was done over the phone, I consider Mr M and Ms W should fairly receive some compensation for the reasons I've set out above. I provisionally assess a fair award at £250.

Cifas marker

First of all, I note Mr M and Ms W have said they were entitled to port their existing NatWest buy-to-let mortgage to another property. That's not the case – this was never guaranteed and would always have been subject to NatWest's lending criteria. This was set out clearly in the terms of the mortgage they took out in September 2019.

But NatWest didn't just turn down Mr M's and Ms W's application; it also recorded a marker about Mr M with Cifas, for application fraud. It had concerns about the application, and in particular about Mr M's income.

Lenders should only record information on fraud prevention databases where they have reasonable grounds to do so. I've looked at how NatWest considered Mr M's and Ms W's mortgage application in order to decide whether it acted fairly here.

In assessing Mr M's situation, NatWest asked why some of Mr M's monthly wages didn't show in his bank account in line with his payslips. Mr M and his employer said Mr M had used his employer's accounts to buy materials, and so some of his salary had been offset against those costs. Mr M has since explained to our investigator that there are no receipts for the purchases because they relate to materials his employer had already bought in bulk. He has also said that it's usual for his employer to pay him at different times each month.

NatWest also asked about Mr M's and Ms W's reasons for selling the property they had bought only a few weeks earlier. It noted that they had had an offer too good to refuse; it also referred back to earlier applications it had had from them shortly after buying properties. Its records satisfy me that it looked at Mr M's and Ms W's particular circumstances and took account of what Mr M and his employer said; it also made independent external enquiries before recording the marker.

Having weighed up all the evidence and arguments here very carefully, I can understand why NatWest had concerns about the information it had been given in connection with the application, and I don't think it acted unfairly in recording the marker it did. So, while I know this isn't the outcome Mr M and Ms W were hoping for, I don't require NatWest to remove the marker.

Mr M has said he has since had an application turned down by another lender. Lenders who use Cifas shouldn't automatically decline applications just because of a marker – that's set out in Cifas's guidance to its members.

My provisional decision

For these reasons, my provisional decision is that National Westminster Bank plc should pay Mr M and Ms W £250 compensation.

I invited Mr M and Ms W and NatWest to let me have any more evidence or arguments they wanted me to consider before making my final decision.

Mr M and Ms W didn't accept my provisional decision. They still felt NatWest had been unprofessional and discriminatory, and they thought £250 was insulting. They said NatWest had lied and withheld evidence, and there should be more call recordings, particularly given that the application call was made while they were at home, not at the branch. They thought the calls were crucial because they led to the Cifas marker being recorded – and to suggest otherwise was discriminatory and insulting. They also said the questions NatWest had asked during this investigation about Mr M's hearing impairment were insensitive and disgusting.

Mr M and Ms W also said that Mr M's receipt of wages at different times and offsetting his wages against building materials shouldn't be an issue and isn't grounds for a Cifas marker.

NatWest didn't say whether or not it accepted my provisional decision, but it had nothing more 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.

Having done so, I've come to the same conclusion I reached in my provisional decision, for the same reasons.

NatWest doesn't record all its phone calls and, as I said in my provisional decision, I have listened to the call it has been able to provide. Mr M and Ms W may well have been at home during the application call, but NatWest has said the staff member they spoke to was at a branch – and not, for example, at a contact centre. That's why there's no recording of the call. It has, however, provided statements from the staff members Mr M and Ms W spoke to during the application, which I've considered alongside Mr M's and Ms W's comments.

I recognise that Mr M and Ms W feel NatWest's behaviour should be investigated further. But there are limits to the powers of the Financial Ombudsman: we don't cross-examine witnesses, for example, or fine or punish financial businesses.

I think Mr M was caused avoidable distress as a result of NatWest's poor treatment of him. I also agree that some of the questions NatWest asked of Mr M during our investigation were insensitive and inappropriate. So I still consider that Mr M and Ms W should fairly receive some compensation – and that £250 is fair and reasonable in all the circumstances, bearing in mind that the awards I make are to recognise the impact of failings and aren't intended to represent a fine or a penalty.

Mr M and Ms W haven't pointed to anything NatWest got wrong in the application – so I still find I can't fairly say their application was adversely affected because the application was done by phone, or that this led to the recording of the Cifas marker. I see no basis on which to change my provisional conclusions about the marker, and I don't require NatWest to remove it.

My final decision

For these reasons – as well as those set out in more detail in my provisional decision – my final decision is that National Westminster Bank plc should pay Mr M and Ms W £250 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and Ms W to accept or reject my decision before 6 April 2022.

Janet Millington
Ombudsman