

The complaint

Miss D and Mr M complain that National Westminster Bank Plc refused their application for further borrowing on their mortgage because Mr M had taken self-employed financial support during the coronavirus pandemic. As a result they moved their mortgage to another lender and incurred an early repayment charge (ERC).

What happened

Miss D and Mr M had a mortgage with NatWest. They decided to move house and applied to NatWest to port their mortgage, borrowing more money to fund the house move.

They were told that because Mr M had taken self-employed income support scheme (SEISS) grants, they were not eligible for further borrowing. As a result, and so they didn't lose out on the property they wanted to buy, they went to another lender which agreed to lend what they wanted. They had to pay an ERC on their existing mortgage with NatWest.

Miss D and Mr M complained. They said that NatWest had a blanket policy of not lending to anyone who'd taken an SEISS grant – this was unfair and discriminatory. They said that while they'd taken the grants, their business had in fact grown during the pandemic and was in an industry that was largely unaffected. They said that had NatWest been willing to consider their application on its own merits, it ought to have seen that they didn't present any risk and could have lent to them. They said it was unfair they'd had to pay an ERC.

NatWest said that at the time it didn't take into account income from the SEISS scheme, or income from a business that had used the scheme, because that was likely to show that the business had been impacted by the covid-19 pandemic and therefore was at higher risk of not being able to support the mortgage in the future. It said it could have looked at Miss D and Mr M's individual circumstances had they appealed a decision, but by then they'd decided to go elsewhere. It didn't agree to refund the ERC. But it offered £300 compensation as a gesture of goodwill for the frustration they'd experienced.

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 understand Miss D and Mr M's frustration in this case. They had an existing mortgage with NatWest. By the time of their application, they say – and I have no reason to doubt – that their business had recovered and indeed was in a stronger position than it was pre-pandemic. The particular sector they are in was less directly impacted than many others. They feel that if NatWest had looked carefully at their individual situation, it would have seen that and would have been willing to lend to them – as indeed their new lender did. And that resulted in them having to pay an ERC.

What I have to decide is whether NatWest acted fairly and reasonably in all the circumstances.

All mortgage lenders are required to act within the regulator's rules – which includes having clear policies on how affordability is to be assessed, so that mortgages are only lent where they are sustainable.

That does not mean that each lender takes the same approach – some are more willing to accept higher risk borrowing than others, or treat the same situation in different ways. Within the broad parameters the regulator has set, different lenders have different business models, and this means that different lenders might legitimately reach different outcomes on the same application. This doesn't mean either lender has done anything wrong, it simply reflects that there's a range of business models and options available within the regulated market.

At this time, in early 2021, NatWest had decided that it wouldn't accept applications that relied on self-employed income from a business that had taken an SEISS grant. That's why it wasn't able to lend to Miss D and Mr M – their business had taken a grant early on in the first lockdown in 2020, and another grant while they were required to self-isolate for a time.

Miss D and Mr M say this isn't fair, because it doesn't reflect the actual position, which was – despite having taken the grants – their business was thriving and largely pandemic-proof.

NatWest's position is that there was still great uncertainty at this time. The UK was in, or just emerging from, a further long and strict lockdown. It couldn't be known how long the pandemic would go on for, or how serious its impact would be on both the wider economy and on individual businesses. The government had put in place a support scheme for the self-employed – the SEISS – and having taken an SEISS grant meant that a business had been impacted in the past, and therefore was at higher risk of being impacted again in the future. This in turn made it more risky to rely on income from this business to support a mortgage, and therefore meant that at this time NatWest wasn't prepared to accept applications from borrowers who'd relied on SEISS grants.

Miss D and Mr M say this is discriminatory. I don't think it is. As a matter of law, self-employment is not a protected characteristic under the Equality Act so there's no direct discrimination. And even if there were indirect discrimination (for example because those with a protected characteristic are more likely to be self-employed – though I've seen no evidence of that), NatWest might still be able to show that its policy is objectively justified. In any case, making findings on the legal question of unlawful discrimination is a matter for the courts.

However, when they say NatWest has discriminated against them, I think Miss D and Mr M mean that they've been treated unfairly because as self-employed customers they've been treated differently to other customers. And whether or not they've been treated unfairly is very much a matter for me.

I've explained NatWest's position above. This resulted in it not being able to take Miss D and Mr M's application forward. And while I know how strongly they feel about it, I don't think this was – in the circumstances at that particular time – unreasonable.

I've explained that, within the parameters of regulation, lenders have a broad discretion on how they lend and their lending policies.

I think it was reasonable for NatWest to decide – in the circumstances as they were in early 2021 – that the pandemic was still a very large factor to take into account in lending decisions. It was reasonable for it to be concerned about increasing lending in a situation where an unprecedented international emergency might impact an applicant's ability to repay their borrowing in ways that couldn't be predicted with any certainty. And it was

reasonable for it to conclude that if Miss D and Mr M had been impacted enough to have to take grants in 2020, they might be impacted again in the future – affecting their ability to repay any increased borrowing.

I don't think the fact that a different lender assessed their application in a different way – and did decide to lend – means that NatWest was wrong. It just means that those two lenders both made reasonable, albeit different, decisions within the broad parameters of responsible lending set by the regulator, reflecting the different risk appetites and commercial priorities of two separate banks.

Ultimately, no lender ever has to accept a lending application. It's up to NatWest to decide whether it wants to lend. In this case, it didn't – and for the reasons I've given, I think this was in the circumstances of early 2021 a reasonable decision for NatWest to make.

It follows from the rejection of their application that if Miss D and Mr M still wanted to buy the new property they'd have to go to a new lender. As they were still in a fixed rate period, that meant paying an ERC.

Given the decision NatWest made was a reasonable one, I don't think fairness required it to waive the ERC. When they took their fixed rate, NatWest made clear an ERC would apply and that while Miss D and Mr M could apply to port and borrow more money, doing so would be subject to NatWest's lending criteria at the time.

When it reasonably decided not to lend more money to Miss D and Mr M, they were allowed to exit their fixed rate so they could still go ahead with their purchase with another lender – in return for paying the ERC. This is how their mortgage was supposed to work, and I don't think it was unfair to charge the ERC in these circumstances.

I note that when the complaint came to us, NatWest made an offer of £300 compensation to resolve it. I think that's fair, and I don't require it to take any further action.

My final decision

For the reasons I've given, my final decision is that National Westminster Bank Plc's offer of £300 is a fair and reasonable settlement of this complaint and I direct it to pay that amount.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D and Mr M to accept or reject my decision before 5 October 2022.

Simon Pugh
Ombudsman