

## **The complaint**

Mr K complains that National Westminster Bank Plc didn't say he must start an application to port his mortgage before selling his mortgaged property, until it was too late for him to do this. He said now he can't get back a large Early Repayment Charge ("ERC") he paid.

## **What happened**

Mr K said he was led to believe he could clear his mortgage, and pay the ERC, but then as long as he got another mortgage with NatWest on a new property and completed within four months of that, the ERC would be refunded. But he said he'd since found that he couldn't get the ERC back, because he didn't start a new mortgage application before paying off his previous one. Mr K said that if he was told this earlier, he would've carried on with the old mortgage as it was, and taken a decision on clearing the mortgage at a later date.

Mr K said he was charged £8,199 for an ERC which he didn't need to pay. He said this affected his ability to purchase a new property and also get a mortgage. He said that money could've helped with the immense rise in cost of living, and eased the stress of affording his next home with increasing property prices as well.

Mr K thought it was the incorrect information NatWest gave him, which led to him taking a chance on clearing the mortgage. So he wanted NatWest to refund the whole of the ERC. NatWest said that Mr K and his former partner took out a mortgage in July 2019 with a five year fixed interest rate. He redeemed the mortgage on 30 September 2021, and NatWest said an ERC was correctly charged then.

But NatWest didn't think Mr K had made his decision to redeem his mortgage on the basis of the advice it gave him. When it spoke to him on 8 June 2021, that was about transferring the existing mortgage into his sole name and borrowing an additional sum. NatWest said there was no mention of porting the mortgage in that call, and no advice was given on the ERC being refundable.

NatWest said it hadn't been able to find any other evidence of Mr K being given wrong advice, until a call of 4 October. It accepted that one of its agents told Mr K then his ERC would be refunded if he completed on a new mortgage within four months of repaying the old one. But importantly, by 4 October Mr K had already redeemed his old mortgage and hadn't yet applied for a new one. So he was already too late to port when he was given this advice.

NatWest also said that on that call, Mr K was then transferred to a mortgage adviser who told him this information was incorrect, he was already too late to reclaim his ERC. So NatWest said it had put the mistake right, straight away.

NatWest told our service it had offered Mr K £150 to make up for the lapse in service on the call he had of 4 October 2021.

Our investigator didn't think this complaint should be upheld. She said she had listened to the call recordings, and the call of 8 June didn't discuss porting, as NatWest had said. Mr K was hoping to buy out his partner at that point, but wasn't able to do so. On the call of 4

October, Mr K was given wrong advice at first, but she thought it was important that this was after Mr K had redeemed his existing mortgage. She couldn't see any evidence that NatWest gave any wrong advice before Mr K redeemed his mortgage. And Mr K had been properly notified that an ERC would be payable when he originally took this mortgage out. Our investigator didn't think NatWest had to pay this ERC back to Mr K.

Mr K said that between 8 June and 4 October, he had one or more calls and web chats, in which it was confirmed that he could get the ERC back. Our investigator asked both Mr K and NatWest if they had evidence of this, but neither side could provide that. Our investigator also asked some further questions of Mr K. He said that he'd sold the property because he and his partner were separating, and the priority was to sell the house. Mr K said he'd found a property by 4 October, but he'd also enquired before about lending to him alone in November 2020 and October 2021. He showed us that he'd put an offer in on a property before his house sold, although that wasn't successful. He said he wanted us to see that he was seriously looking to buy a new home.

Our investigator said that there was still no evidence that Mr K had been misadvised by NatWest before 4 October 2021. And even if his application for new lending and porting his old mortgage had been successful in October 2021, it also wasn't clear that Mr K would have bought a house within 4 months of the sale. She was sorry to hear that Mr K still hadn't been able to find a new property, due to increasing house prices.

Mr K still didn't agree, and he said NatWest had already offered to pay more than we had suggested. He sent us evidence that NatWest had offered to increase its payment to £250. Mr K wanted his complaint to be considered by an ombudsman, so it was passed to me for a final decision.

I then reached my provisional decision on this case.

### **My provisional decision**

I issued a provisional decision on this complaint and explained why I only proposed to ask NatWest to honour its previous offer. This is what I said then:

I understand that Mr K has been deeply disappointed to find that he couldn't port his mortgage, because he hadn't started the application process for a new mortgage before he redeemed the old mortgage. I appreciate he feels strongly that things could've been different now, if he'd been given this advice earlier.

But in the situation that Mr K sadly found himself in, of needing to sell his existing property as part of the end of a relationship with its co-owner, I can understand why he would prioritise selling the house, rather than waiting to tie this in with another purchase. In these circumstances, it's not always clear to the bank what will happen next for each of the parties. And unless NatWest should have been aware that Mr K would wish to port his mortgage – unless Mr K approached it about this before he sold the property that NatWest lent on, and asked about porting – I wouldn't be able to say that NatWest was responsible for Mr K not realising he wouldn't be able to do this later.

Unfortunately, I haven't been able to locate evidence that Mr K did have a conversation about porting with NatWest before he sold, and redeemed the mortgage on his former home.

The call that Mr K had with NatWest on 4 October starts with Mr K setting out that he should be able to port within four months of redeeming his old mortgage, but I haven't been able to see that this was advice Mr K received from NatWest, rather than, for

example, information he obtained from his original mortgage offer – which is explicitly restricted to applications meeting NatWest's lending criteria at the time. And one of those criteria is that Mr K applies for the new mortgage before he redeems the old one.

I know NatWest did then give Mr K some wrong advice on a call dated 4 October, but I understand that this was corrected later on the same call. Because Mr K had already sold his house and redeemed his mortgage by this time, it doesn't look like this made a difference to Mr K's position overall. But I do think NatWest raised Mr K's hopes at this point, only to dash them a few minutes later.

Although I can hear that Mr K was aware of the ERC payable on his mortgage, and he was hoping to avoid paying this, importantly, I haven't been able to see that NatWest had an opportunity to warn Mr K before his home was sold, that he would only be able to obtain a refund of his ERC if he made his new mortgage application before redeeming the old one. And I also haven't been able to see that this is what has prevented Mr K from buying again. So I do think NatWest should offer Mr K some compensation for the wrong advice it gave him. But I don't think it has to refund all of the ERC that Mr K has paid.

I know that this ERC was a large sum, but mortgages are intended to be a long term product, and Mr K unfortunately needed to redeem his in the initial five years, while the rate was still fixed. When lenders offer a fixed interest rate mortgage, it's very common for them to also attach an ERC, which is intended to cover the costs to the bank if the borrower redeems the mortgage in the fixed interest period. This isn't just profit for NatWest.

NatWest said it had offered £150 for this complaint, but Mr K has shown us that NatWest offered to increase this sum to £250. I think that £250 is a more appropriate amount for NatWest to pay for this complaint, and I also think that does provide a fair and reasonable outcome to the issues I've identified here.

I know Mr K will be disappointed, but I don't think that NatWest has to do more than that.

I invited the parties to make any final points, if they wanted, before issuing my final decision. Both sides replied.

### **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.

Mr K said he would like a higher amount of compensation, but he said he had no further evidence to offer in support of that. And NatWest just said it would agree to honour its previous offer.

I have reviewed my decision, but I still think the payment I suggested then is appropriate in this case, for the reasons I set out in my provisional decision. So I haven't changed my mind. I'll now make the decision I originally proposed.

### **My final decision**

My final decision is that National Westminster Bank Plc must pay Mr K £250 in compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or

reject my decision before 21 November 2022.

Esther Absalom-Gough  
**Ombudsman**