

The complaint

Mr and Mrs K complain that National Westminster Bank Plc would not allow them to extend the term of their residential mortgage. They say they've been discriminated against because of their age.

What happened

Mr and Mrs K took out a flexible Offset mortgage with NatWest in 2012. They had a borrowing facility in place for around £600,000, repayable on an interest only basis, over a term of 10 years. In September 2022 the mortgage term came to an end.

In 2021 Mr and Mrs K asked NatWest to extend the term of the mortgage for five years. Around this time Mr and Mrs K only had around £869 outstanding on their mortgage. They wanted the Offset facility extended so they had the option of drawing down further funds in the future if they chose to, to buy another property.

NatWest declined their request. It explained its policy was to lend only up to age 70. Mr and Mrs K would both be 70 when the mortgage term ended.

Mr and Mrs K complained. They were unhappy that NatWest declined their request to extend the term of the mortgage on the grounds of age. They say that in the absence of any evidence to support the reason the policy applies, this is a form of age discrimination.

NatWest responded to the complaint. The complaint wasn't upheld, but NatWest did accept that Mr and Mrs K weren't given a proper explanation as to why the age limit policy applies. NatWest said that in line with its end of term policy it could agree to extend the term until the age of 80 on capital and interest repayment terms to allow more time for the repayment of the mortgage. But the ability to borrow money would be removed. So, NatWest did not agree to extend Mr and Mrs K's mortgage on the terms they required.

Unhappy with NatWest's response Mr and Mrs K brought their complaint to our service. An investigator looked into things and didn't uphold the complaint. She thought NatWest had acted reasonably. Mr and Mrs K disagreed. This matter was then passed to me for a decision. I issued a provisional decision and an extract of my provisional findings is below.

"...I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

As our investigator explained, it's not our role to say whether a business has acted unlawfully or not – that is a matter for the Courts. Our role is to decide what's fair and reasonable in all the circumstances of a case. In order to decide that, we need to take a number of things into account, including the relevant laws and what we consider to be good industry practice at the time. So, although it would be for the Courts to say whether or not NatWest breached the Equality Act 2010, I'm required to take the Equality Act 2010 into account, if it's relevant, amongst other things when deciding what's fair and reasonable in the circumstances of the complaint.

I understand why, in these circumstances, Mr and Mrs K feel they've been discriminated against due to their age. They've been told on several occasions that their mortgage term could not be extended beyond 70 due to bank policy. They don't feel NatWest has taken their individual circumstances into account, including the fact that they say they have sufficient income and assets to repay the mortgage at the end of the required extended term.

Mr and Mrs K quite rightly point out that in line with the Equality Act 2010, any risk assessment involving age must be based on relevant information from a source it's reasonable to rely on. Mr and Mrs K say they've asked NatWest for this evidence, but it's not been provided. I can clarify that such data is likely to be made up of commercially sensitive information that would not usually be shared directly with the public.

If I thought necessary, this is something I would expect NatWest to provide as part of the complaint and something I'd usually consider, if I felt it was relevant when considering the facts of the case. In Mr and Mrs K's case I'm not persuaded it is, for reasons I'll explain. And had NatWest handled things better from the outset, this would have likely been made clear sooner.

Based on what I've seen, I don't think NatWest has acted unfairly when declining the term extension. I'll explain why.

The starting point here is that when Mr and Mrs K took their mortgage out, they agreed to repay the outstanding capital at the end of the term in 2022. Those terms were made clear in their mortgage offer. So, it's not unreasonable for NatWest to expect the loan to be repaid as agreed.

NatWest is under no obligation to automatically agree a term extension in any circumstances, regardless of the customer's age. That said, it must give fair and reasonable consideration to a request to extend the term.

When a borrower is unable to repay their interest only mortgage at the end of the term, the lender is expected to treat the customer fairly and give fair and reasonable consideration for any requests made by the borrower to help them. Some possible options include term extensions, converting to a repayment mortgage or allowing overpayments. When an arrangement is agreed, the customer would typically not be allowed to borrow further funds. Any arrangement would purely be agreed, to allow more time to repay the capital outstanding.

But in Mr and Mrs K's case they had no issue repaying their remaining capital balance of around £800. So, the usual considerations NatWest would normally be expected to consider for customers experiencing financial difficulty, do not apply here.

What Mr and Mrs K want is essentially a new contract with a new borrowing facility. In these circumstances it's reasonable for NatWest to require Mr and Mrs K to submit a new mortgage application which would be considered in line with its usual lending criteria.

If Mr and Mrs K choose to apply for a new mortgage with NatWest, I'd expect it to give that application fair consideration. And if the reason for declining that application were to be because of Mr and Mrs K's age, it's at that point that I'd expect NatWest to be able to demonstrate that it based any risk assessment on relevant information from a source on which it's reasonable to rely on. And even if NatWest didn't carry out a proper risk assessment, it may still be able to justify its actions by showing that it's a proportionate means of achieving a legitimate aim.

I understand Mr and Mrs K feel that these are relevant considerations now. But for reasons I've explained, had age not been a factor here, NatWest's decision not to extend the term in the circumstances would likely be the same, on the basis that the current mortgage could be repaid within the intended term. So, I don't find that there has been any detriment in the decision outcome.

Whilst that might be the case, I do find that NatWest hasn't entirely handled the situation properly and it led Mr and Mrs K to believe the sole reason for declined term extension request was due to age. NatWest has accepted that it could have given Mr and Mrs K a better explanation from the outset. As a result of this not happening NatWest has left Mr and Mrs K feeling that they've been discriminated against, which understandably has caused them a degree of distress. I can also see they've been inconvenienced by having to make several attempts to seek justification from NatWest. In these circumstances I think it's fair and reasonable that NatWest pay Mr and Mrs K compensation to acknowledge the impact its action has had.

I think it's reasonable that NatWest pay Mr and Mrs K £300 by way of an apology to acknowledge the levels of frustration and annoyance caused by not providing a proper explanation to them. I don't see it necessary to increase the compensation award above this amount, as Mr and Mrs K weren't relying on any further borrowing imminently, so NatWest's actions hasn't caused any lasting detriment in terms of delaying access to funds that Mr and Mrs K were presently relying on.

My provisional decision

My provisional decision is that I intend to uphold this complaint and direct National Westminster Bank Plc to pay Mr and Mrs K £300 compensation for the reasons I've set out above. National Westminster Bank Plc should also allow Mr and Mrs K to apply for a new mortgage if they choose to do so, giving fair consideration to the application and provide adequate justification for the lending decision reached."

Mr and Mrs K responded to my provision decision. In addition to providing some general information about their circumstances, they raised points that warranted further consideration. As summarised as below:

- Mr and Mrs K said they did ask NatWest for a new mortgage as an alternative to an extension of the existing mortgage, but they were told they could not be considered for a new mortgage due to their age;
- They were relying on additional funds imminently. Around Mid-2022 they tried to draw down £600,000 on their existing mortgage, but were told by NatWest that it would not allow further borrowing in the final year of the mortgage; and
- NatWest does offer domestic mortgages to applicants up to the age of 75 if applied for through a broker, which is unfair and makes the decision not to lend to them even more discriminatory.

Through further communication with the parties, in response to the points raised by Mr and Mrs K, I explained the following:

- *"There are still some uncertainties about how the conversation about a new mortgage application went. In the interest of bringing this complaint to a resolution soon, I won't be asking NatWest to provide copies of recordings for the calls Mr K has referred to. Instead, I take Mr K's word and will consider all possible scenarios –*

that being whether Mr and Mrs K were fairly declined both a term extension of their existing mortgage and a new mortgage as an alternative...

In deciding whether they were treated fairly, I need to take into account what the law says about this.

The relevant section of the Equality Act 2010, as far as age discrimination is concerned, came into force in 2012. Before that, discrimination on grounds of age was not unlawful. Once the Act came into force, age discrimination was made unlawful. This means that service providers can't refuse to provide a service, provide it on different terms, or treat customers differently because of age.

However, there's an exception for providers of financial services. In some circumstances financial services providers are allowed to make decisions based on age.

As part of the relevant decision making, if the financial services provider has relied on a risk assessment as part of the process, it can only rely on the exemption if it can show that it was carried out using relevant information from reliable sources. In other words, the assessment must be done robustly. If it wasn't, the business can't rely on the exemption. But even if doesn't, or can't, rely on the exemption, a business will only be discriminating if its actions weren't a proportionate means of achieving a legitimate aim.

If there's no risk assessment, a business can rely on the exemption and make decisions based on age.

With that in mind, I asked NatWest to explain to me how its age policy for residential mortgage lending came to be set. It has provided evidence that shows that the relevant policy was set in 1996. The policy has recently been reviewed in late 2022.

As the relevant policy was set before the Equality Act came into force, the specific requirements for carrying out risk assessments didn't apply. And NatWest has said that it has no evidence that the policy has been reviewed until 2022 – after the lending decision complained of. So, taking into account the law, I don't think NatWest's maximum age policy is unfair.

Nor do I think the application of the policy to Mr and Mrs K was unfair. Mr and Mrs K have said that upon enquiry, they were told almost immediately that they weren't eligible for a new mortgage because their age exceeded the policy limit. Because the decision appears to have been made simply because of the policy - this isn't inherently unfair. There is no evidence to suggest Mr and Mrs K submitted a full mortgage application and as such, I don't think that NatWest carried out a risk assessment when responding to their enquiry. So, it can rely on the exemption in the Equality Act, and use age as a factor in its decision making – the decision being to apply the policy to Mr and Mrs K. And so, I don't think that applying the policy to Mr and Mrs K was unfair either.

Whilst I don't find that Mr and Mrs K's enquiry for a new mortgage in 2021 was unfairly declined on the grounds of age, I do think they should have been given better information when enquiring about a term extension. I have explained my findings in full in relation to this in my provisional decision and why I intend to award £300 compensation to Mr and Mrs K.

- *It's not uncommon practice or unreasonable for a lender to refuse further borrowing the circumstances. Mr and Mrs K's Offset mortgage terms and conditions state the following:*

"If your Offset Flexible Mortgage is partial capital repayment or interest only, you will pay to us the amount necessary to reduce all borrowing on your account with interest and charges to zero on or before the end of the term"

As Mr and Mrs K's interest only mortgage term was ending in September 2022, I don't think it was unreasonable for NatWest to decline lending in excess of £600,000 to be repaid in three months.

- *NatWest responded to my direction that it should fairly consider an application for a new mortgage, should Mr and Mrs K choose to submit one. It says it would consider a direct mortgage application from Mr and Mrs K on capital and interest repayment terms to the age of 75. And it was willing to arrange for a mortgage advisor to contact them regarding this. As such I don't find that NatWest is treating them differently to introduced customers or acting in a discriminatory way."*

Both parties responded. NatWest accepted my provisional findings to date. Mr and Mrs K didn't. They felt my rationale was contradictory and they asked for a clear explanation

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've also given careful consideration to all of the submissions made before arriving at my decision, including those in response to the provisional decision.

Having done so, I've reached the same conclusions as set out in my provisional findings to date and for the same reasons. For clarity I can assure Mr and Mrs K that I've carefully considered the provisions of the Equality Act 2010 when considering the circumstances of this case.

I'm satisfied I've given a clear explanation of how the law applies, and why in the circumstances of this case, NatWest can rely on the exemption for providers of financial services - as set out in the act.

In some (but not all) circumstances financial services providers are allowed to make decisions based on age. For reasons I've explained, I don't find that Mr and Mrs K's enquiry for a new mortgage in 2021 was unfairly declined on the grounds of age.

Putting things right

National Westminster Bank Plc ought to pay Mr and Mrs K £300 compensation for the reasons I've set out above. National Westminster Bank Plc should also allow Mr and Mrs K to apply for a new mortgage if they choose to do so, giving fair consideration to the application and provide adequate justification for the lending decision reached.

My final decision

My final decision is that I uphold this complaint and direct National Westminster Bank Plc to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K and Mrs K to accept or reject my decision before 15 February 2023.

Arazu Eid
Ombudsman