

The complaint

Mr and Mrs C have complained that in April 2019 National Westminster Bank Plc (NatWest) unfairly declined their application to move switch their mortgage from an offset product to a core mortgage product.

To settle the complaint Mr and Mrs C would like to be compensated for the additional interest they've paid.

What happened

I will summarise the complaint in less detail than it's been presented. There are several reasons for this. First of all, the history of the matter is set out in detail in correspondence, and in the investigator's letter dated 16 November 2022. All parties have a copy of that letter, so there is no need for me to repeat the details here. I will instead concentrate on giving the reasons for my decision.

In addition, our decisions are published, so it's important I don't include any information that might lead to Mr and Mrs C being identified. So for these reasons, I will keep my summary of what happened quite brief.

Briefly, Mr and Mrs C had a mortgage with NatWest taken out in 2009 which was on an offset basis at a rate of 4.25%. The parties' accounts of what happened are different.

Mr and Mrs C say:

- On 9 April 2019 they asked to transfer the mortgage onto a new product, with no additional borrowing. They were told they didn't meet affordability criteria and so didn't proceed at that time.
- After speaking to an independent mortgage broker, Mr and Mrs C were told that, because they weren't borrowing any more money, an affordability check wouldn't have been necessary.
- In December 2019 NatWest contacted Mr and Mrs C to discuss their mortgage options, at which point a switch to a cheaper product was approved, going ahead in January 2020.

NatWest's position is somewhat contradictory. The bank says:

- It has no record of any application in April 2019.
- The decision not to proceed with the application in April 2019 was Mr and Mrs C's, because they knew they wouldn't meet affordability criteria.

- The mortgage adviser recalled speaking to Mr and Mrs C in April 2019 but the adviser wasn't able to explain why the application didn't proceed.

In January 2020 Mr and Mrs C complained that their request to switch to a new product in April 2019 had been declined. NatWest disputed that an application had ever been made but that the decision not to go ahead was that of Mr and Mrs C, after they'd been told they wouldn't meet affordability criteria.

Mr and Mrs C complained to our service. An investigator looked at what had happened. Having done so, she was persuaded that Mr and Mrs C *had* requested a product switch in April 2019 and that, as they weren't requesting any new borrowing, NatWest should have allowed this to go ahead. NatWest agreed to a product switch in December 2019. However, in January 2020 the bank's notes show the mortgage was redeemed and I am told that Mr and Mrs C took out a new product with NatWest.

The investigator asked NatWest to reimburse the difference in interest Mr and Mrs C had paid between April 2019 and the point where they switched their product.

NatWest wouldn't agree to this, saying that there'd never been an application in April 2019.

The investigator had noted that in January 2020 NatWest said in an email *"Our decision to decline a new application for a core mortgage product based on their current circumstances failed to meet our criteria generated this complaint..."*. When pressed on this, NatWest said that this email related to the application in December 2019, which was still pending at that point.

However, the investigator pointed out that the January 2020 email was referring to a letter sent to Mr and Mrs C arising from a previous complaint about suitability of the mortgage – a letter sent in September 2019 – and so could not have related to the December 2019 application. Nevertheless, despite this discrepancy, NatWest was not prepared to change its stance.

Because the matter is unresolved, it falls to me to issue a 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.

Where the evidence is incomplete or contradictory, as it is here, I must make my decision by considering the evidence that *is* available, and reach my conclusions on what I think is most likely to have happened, based on that evidence.

I've looked at the bank's contact notes, and in particular those from September 2019. These refer to an earlier declined application on the basis of affordability. Furthermore, on 29 August 2019 the mortgage adviser said *"Everything was pretty much agreed that we could help get [Mr and Mrs C] from an offset mortgage to capital repayment, as I found out regardless of whether it was passing affordability, we could do it anyway..."*

I am satisfied that notes from August and September 2019 could not have referred to a later application made in December 2019 – which is what NatWest has asked me to accept. The only logical conclusion is that there had, as argued by Mr and Mrs C, been an earlier application, which I am satisfied was in April 2019.

The mortgage adviser's comments tie in with the bank's obligations under the Mortgages and Home Finance: Conduct of Business Sourcebook (MCOB).

There are regulations in place that have flowed from the FCA's Mortgage Market Review (MMR) which took place after the financial crash in 2008. This has led to a series of major changes, effective since 2014, in the way residential mortgages are regulated. MMR regulations have brought about requirements for stricter lending assessments, aimed at protecting consumers and encouraging mortgage lenders to act more responsibly.

The FCA recognised though that existing borrowers who wanted to make changes to their mortgages might have difficulties with this if they had passed tests under the old rules but wouldn't under the new ones. So, it introduced certain rules to address this. The rules are contained in the Mortgages and Home Finance: Conduct of Business Sourcebook (MCOB).

MCOB says a lender doesn't have to carry out an affordability assessment if a borrower wants to vary or replace an existing mortgage and there is no additional borrowing (other than for product fees) and no change to the terms of the mortgage that is material to affordability.

There are also transitional arrangements which say that a lender need not carry out an affordability assessment if:

- the borrower has an existing mortgage taken out before 26 April 2014, and is applying to vary that mortgage or replace it with a new one;
- the application wouldn't involve any additional borrowing except for essential repairs to the property, or to add product fees to the balance;
- there's been no further borrowing (with some exceptions) since 26 April 2014; and
- the proposed transaction is in the borrower's best interests.

So, under this rule, even where a change material to the affordability of the mortgage takes place, the lender can, *if it chooses*, waive an affordability assessment. If the lender decides to carry out an affordability assessment, it shouldn't use that as a reason to decline an application if allowing the application would otherwise be in the customer's best interests. But the lender can take the assessment into account as part of its consideration of best interests.

In this case, there was no request for an increase in borrowing, but there was a request to move to a lower interest rate. In the circumstances, NatWest should have allowed the switch to a core product without the need for an affordability assessment. So the mortgage adviser was correct in saying that, notwithstanding affordability, this could have been done in April 2019.

In the circumstances, I'm satisfied that Mr and Mrs C were disadvantaged by NatWest's failure properly to apply MMR to their situation when it told them an affordability assessment was required. If the bank had properly applied the rules, the switch would have been allowed in April 2019 without the need to assess affordability.

As a result, from April 2019 to January 2020 (when the product switch took place) Mr and Mrs C paid more interest than they needed to, and that this was due to NatWest unfairly declining their request for a product switch in April 2019.

I am therefore upholding this complaint.

Putting things right

To settle this complaint I direct National Westminster Bank Plc to do the following:

1. calculate the difference in interest paid by Mr and Mrs C from 9 April 2019 to the date of completion of the product switch;
2. either apply that amount to reducing the capital balance of the mortgage (without any ERC, if applicable) – which will result in a reduction in the mortgage balance, resulting in less interest being paid over the remaining mortgage term;
or
3. if Mr and Mrs C prefer, refund the overpayments directly to them, together with interest at 8% per annum simple* – which will leave the mortgage balance higher than it would have been if the product switch had gone ahead in April 2019, resulting in more interest being paid over the remaining mortgage term.

I leave it to Mr and Mrs C to let the bank know which of options 2 or 3 above they prefer.

* If NatWest considers that it is required by HM Revenue & Customs to withhold income tax from any interest, it should tell Mr and Mrs C how much it has taken off. NatWest should also give Mr and Mrs C a tax deduction certificate if requested, so the tax can be reclaimed from HM Revenue & Customs if appropriate.

My final decision

My decision is that I uphold this complaint. I direct National Westminster Bank Plc to settle the complaint as outlined above, subject to Mr and Mrs C confirming which option they prefer for the refund of overpayments.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C and Mrs C to accept or reject my decision before 7 March 2023.

Jan O'Leary
Ombudsman