

The complaint

Mr H complains that when he asked National Westminster Bank Plc if he could have additional lending on his mortgage, it indicated he could. Mr H said he relied on this in a court hearing, but then NatWest turned him down.

What happened

Mr H told us he was going through a divorce, and as part of this, he had hoped to buy his former partner out of the property in which he was living. Mr H spoke to NatWest about the additional borrowing he would need to do that, and he said it indicated this would be possible. Although there were issues on his credit record, Mr H had understood NatWest was going to make an exception for him.

Mr H told us he relied on this reassurance in court, and said he could buy his former partner out of the property. But then NatWest said it wouldn't lend to him after all. So he then had to go back to court to correct this, and set up a different arrangement.

Mr H also said because NatWest wouldn't make an exception, he and his family faced losing their home. Mr H has told us he has a mental health illness, and all of this made things much worse for him.

Mr H wanted NatWest to put in place the exceptions it had told him he could have, and allow him to have the extra borrowing he wanted, so he could keep the house.

NatWest said it didn't have a recording of the call its representative had with Mr H, where the mortgage was discussed. It upheld his complaint, on the basis that it was not clearly explained to him that even if an exemption was done with the underwriters, there was no guarantee that the additional borrowing request would be accepted. NatWest paid Mr H £75 in compensation because of this.

Our investigator thought NatWest should pay Mr H some more compensation, because he felt NatWest had accepted the situation with further borrowing wasn't correctly explained to Mr H. But our investigator said that a mortgage company is only bound to actually lend money once it's made an offer. And Mr H was at a stage before this. So our investigator didn't think NatWest had to lend to Mr H. He did think it should pay £150 to make up for the wrong advice it had given, and for not managing Mr H's expectations appropriately.

NatWest agreed with this, but Mr H didn't. He said £150 compensation was an insult after everything he had been through. He said he now faced losing his home because NatWest wouldn't lend to him.

Our investigator said that if Mr H didn't meet NatWest's lending criteria, then he didn't think we should make NatWest lend him the extra money he wanted. But we could take into account the impact of the wrong information Mr H had been given, indicating that his application was likely to be successful.

Mr H sent us the bank's complaint response letter, and pointed to where he said NatWest

told him if there were any problems, it would sort those out. Mr H said he knew there was no formal offer, but he said he did ask if the lending would go through and if he could rely on that in the negotiations with his ex-partner. He said he'd relied on what NatWest said, which meant that he'd unintentionally lied in court, and this caused severe mental health issues.

Mr H wanted his case to be considered by an ombudsman, so it was passed to me for a final decision. I then reached my first provisional decision on this case.

My first provisional decision

I issued a provisional decision on this complaint and explained why I only proposed to uphold it in part. This is what I said then:

Mr H has stressed just how important it was to him to be able to get the extra borrowing being discussed in this case. He told us he needed that, to buy out his ex-partner, so that he and his family could continue living in their home. He said NatWest's decision might mean they lose that home. So I do understand what this means to Mr H. But I'm sorry to have to tell him that, like our investigator, I don't think it's appropriate here for us to tell NatWest to lend him the money he wants. NatWest took a decision based on its own lending criteria not to offer Mr H the further borrowing he wanted. And I don't think that this decision was unfair or unreasonable.

But Mr H said that he'd also lost out, because NatWest's representative had told him he could count on getting this lending, any problems could be smoothed over. Mr H said he'd checked whether he could rely on this in court, and NatWest had said yes. Mr H said he incurred very considerable additional solicitors' costs, when he found out that NatWest wouldn't lend after all, and he had to undo what he'd previously said in court.

NatWest didn't say the same. It said that Mr H had already been to court and had agreed with his ex-partner that he would buy her out of their former home, before his appointment with its representative.

So I asked Mr H if our service could contact his solicitor, to see if she could confirm what he said about additional costs he'd incurred due to NatWest's mistake. Mr H has given our service his solicitor's contact details, and we've asked her to comment on how much extra this cost Mr H. However, we've had no reply.

Our service does have a responsibility to be fair to both sides in a complaint and, as part of that, I can't delay a resolution indefinitely. As we've still had no reply within the clearly set and extended deadline, I do now think I need to provide a resolution to this complaint. And without confirmation of what Mr H has told us, or any details of the additional costs he said he faced, I don't think our service can fairly and reasonably ask NatWest to contribute to his legal costs.

I do still need to take account of the impact this issue had on Mr H personally. Mr H has set that out in detail for us, but I need to bear in mind here that, as I've decided NatWest's decision not to lend to Mr H wasn't unfair or unreasonable, I can't hold it responsible for the impact that decision had on Mr H. I have to separate that out from the impact of the poor advice NatWest initially accepted it gave to Mr H.

I also need to bear in mind, however, that NatWest was aware both of Mr H's illness, and of the extremely difficult circumstances he found himself in. So it was particularly important for NatWest to be both sensitive and clear in its dealings with Mr H. Although I note NatWest now says what's in its letter doesn't reflect the recollections of the person who spoke to Mr H about his mortgage application, I do think it's likely that NatWest is at

least partly responsible for the confusion which has arisen here.

Our investigator suggested NatWest should pay £150. And I think he had understood NatWest hadn't paid any compensation for this complaint. But it looks from the letter NatWest sent to Mr H on 7 December 2021, as if it has paid Mr H £75 for this complaint already.

Considering all the points I've set out above, I think NatWest should pay a total of £250 for this complaint. But I'll allow it to count towards that any money it has already paid. So if NatWest has already paid Mr H £75, it will need to pay a further £175 now.

I invited the parties to make any final points, if they wanted, before issuing my final decision. Both sides replied. NatWest replied to say it had nothing to add to my provisional decision. Mr H replied to say he reluctantly accepted the offer. But Mr H's solicitors replied, to say that they had sent our service some information on the costs that Mr H had incurred.

I then reached my second provisional decision on this case.

My provisional decision

I issued a second provisional decision on this complaint and explained why I had changed my mind. This is what I said then:

I know that both of the parties had effectively accepted my provisional decision. But it was clear that Mr H was very unhappy about this. And evidence had been submitted to our service on his behalf, which I unfortunately hadn't been able to review, when I issued my first provisional decision. I have already written to Mr H's solicitors to say I'm sorry that something went wrong, so this information wasn't considered by me when I issued the above decision.

I didn't think it would be appropriate to finalise a decision in this case without considering that further information. So I have now done so. And in the light of this further evidence now available to me, I no longer think this complaint should be upheld in the same way. As this is a different conclusion, I'll explain how I've reached that view, and give both sides a chance to respond before I finalise my view.

The information sent by Mr H's solicitors covers a very wide time period, and appears to be based on the understanding that NatWest would be responsible for fees incurred once the funding Mr H was hoping for, didn't come through as expected. But I explained to Mr H's solicitors that the mistake I'd understood NatWest made, was in telling Mr H that it would be able to lend him enough money to buy out his ex-partner. This was the information Mr H said he then shared with the court, in the short time before it was corrected. The mistake wasn't NatWest's decision not to lend to him after all.

Mr H said the mistake was made on 12 July, when his mortgage application was submitted. And it was corrected on 14 July, when his application was refused. But Mr H said that he attended a court hearing (remotely) on the day between, and relied on what NatWest had said at this hearing, making a commitment to buy out his ex-partner.

I've listened carefully to a call Mr H had with our service on 4 April 2022, when he referred to details of the conversation he had with the mortgage advisor, and in particular discussion around his previous defaults, and the need for an exception. I can see that Mr H's mortgage appointment appears to have been booked on 6 July, and the mortgage application appointment was then held on 12 July.

Given the information Mr H recalled from this meeting, about the defaults on his file and the need for an exception if his application was going to be successful, I think it is likely that this conversation happened as part of the application itself. And Mr H confirmed that this happened on 12 July.

Mr H told us he received reassurances that this lending would be offered, because an exception could be made. He set out the reassurances he was given, and he told us that as part of this conversation, he asked the advisor “*are you sure about that, because I’ve got court tomorrow*”. And he said it was because of the resulting confirmation from NatWest, that he relied on what had been said, at a hearing the next day.

Mr H referred to a court hearing on a Friday. But 12 July 2021 was a Monday, and 14 July was a Wednesday.

Mr H’s solicitor has sent us very detailed bills of the advice provided to Mr H. This shows a considerable amount of work in preparation for a hearing in early July, which did fall on a Friday. But this hearing was on Friday 9 July 2021. So it would not seem likely that Mr H could have relied on NatWest’s advice on 9 July, because it doesn’t seem likely that it had been given then.

Having considered this very carefully, I am sorry to have to tell Mr H that I no longer think that this complaint should be upheld, and NatWest should pay him the same amount in compensation.

I note that although NatWest initially upheld this complaint, when it then wrote to our service about this, it said the letter it had sent to Mr H wasn’t an accurate reflection of how the mortgage advisor Mr H spoke to remembered things. And, in the light of the detail provided by Mr H’s solicitor’s invoices, I now don’t think that events are most likely to have unfolded in the way Mr H has described.

I think there may have been some confusion about the events that took place and the advice that was given. I do still think NatWest should pay the amount of £150 in total (including the £75 it had already paid) which it agreed to pay in response to our investigator’s conclusion that it hadn’t managed Mr H’s expectations appropriately. But in the light of the additional evidence I’ve now considered, I can no longer support Mr H’s contention that a clear undertaking was given by NatWest, that he would get this lending, the day before he attended a court hearing, where he relied on that advice.

I do think it’s unfortunate that NatWest’s final response letter of 7 December 2021 didn’t reflect its own internal evidence, but I think the total payment of £150 that it has already agreed to make, provides fair and reasonable compensation for that issue.

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.

NatWest said it agreed with my decision, and had nothing to add.

Mr H said he didn’t agree, and I hadn’t taken into consideration the mental effects things have on people. Mr H said he’d expected us to just look after the bank, and that was what he felt we’d done. Mr H said that we’d told him NatWest had no record of calls, but then in the next sentence we’d told him we have a recording. Mr H said we didn’t care about lies and

additional costs he had incurred. Mr H said he would be taking this up elsewhere, because he felt that we had sided with the bank and not done the right thing for him and his family.

I know our service told Mr H that NatWest didn't have a record of its call with him. That hasn't changed, and I haven't been able to listen to that call. What I did listen to, was a call that Mr H had with our service, where he set out when he spoke to NatWest. And it was in comparing the information from that call, as well as the dates NatWest held as records of its discussions with him, to the dates on the invoices provided by Mr H's legal team, that I then concluded that it didn't seem most likely that events had unfolded in the way Mr H described.

I appreciate that the background to this case has involved an extremely difficult time in Mr H's life, and I'm sorry if he feels I haven't taken that into account. I have sought to do so, but what I haven't been able to do here, is to decide that something went wrong which was NatWest's fault. And without that, I can't ask NatWest to pay to put things right.

So I'm sorry to have to tell Mr H that 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 H £75 now, in addition to the £75 it has already paid to Mr H for this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 13 February 2023.

Esther Absalom-Gough

Ombudsman