

The complaint

Mr A complains that National Westminster Bank Plc asked him to make unaffordable mortgage payments after it paid ground rent and service charges owed in relation to his leasehold property.

What happened

Mr A took out a mortgage with NatWest in 2017 with a 35-year term. Mr A had financial difficulties during the Covid-19 pandemic. He was unable to pay the ground rent and service charge for the security property (for simplicity, I'm going to refer to this as the "lease debt").

In 2021 the management company instructed solicitors to start action to recover the lease debt of about £7,500.

NatWest paid the lease debt with Mr A's agreement. It wrote to Mr A saying he'd have to repay the lease debt over 12 months. Mr A's monthly mortgage payment increased to about £1,000 which Mr A says isn't affordable. Mr A says after speaking to NatWest in September 2021 he'd expected the repayments to be spread over the remaining term of the mortgage.

I sent a provisional decision to the parties explaining why I intended to uphold the complaint and setting out what I thought NatWest should do to put matters right.

Mr A agreed with almost all of my provisional decision but asked that NatWest compensate him for an administration fee of £175 related to the authority for NatWest to pay the lease debt. He said he hadn't previously provided income and expenditure to NatWest because the only options it offered were unaffordable. He said he was willing to provide this information now, but NatWest hadn't contacted him since my provisional decision. Mr A asked if NatWest could arrange a face-to-face meeting at a branch.

NatWest agreed with my provisional decision and to pay the £175 fee. It said Mr A hadn't provided his income and expenditure information, and he hadn't made any contribution to his mortgage since late 2021. NatWest said it hadn't contacted Mr A recently as we'd asked it not to do so while the complaint was with us, and it didn't know he expected this.

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 A was unable to pay the lease debt – the ground rent and service charge related to his leasehold property. This property was the security property for Mr A's mortgage with NatWest. The management company instructed solicitors to start recovery action. Recovery action could result in forfeiture of the lease and put NatWest's security at risk, although recovery action wasn't at that stage here. The solicitors acting for the management company wrote to NatWest about the lease debt and potential recovery action. The solicitors told Mr A one of his options was to approach NatWest for help.

Mr A spoke to NatWest in early September 2021. Mr A said he wanted to discuss adding the lease debt to the mortgage, but while he accepted he owed money to the management company he disputed the amount. NatWest wrote to Mr A in early September 2021. This letter said that if Mr A didn't resolve the matter with the management company it would make the payment to protect its security. It said it would require this to be repaid over 12 months.

Mr A called NatWest in late September 2021. I've listened to a recording of this call. Mr A said he'd been waiting for a call back from NatWest to explain the process if the lease debt was settled by NatWest. In particular, if the debt had to be repaid over 12 months. He said he needed it to be stretched over a longer period as his income was affected by the Covid-19 pandemic. Mr A was told while in some cases NatWest required repayment within 12 months this wasn't always the case, it depended on personal circumstances.

Mr A told NatWest during this call that he'd returned an acknowledgement to the county court, meaning judgement wouldn't be entered in default and he had an extra 30 days to deal with the lease debt. Mr A told NatWest the amount claimed by the management company wasn't correct. He was concerned about the time, trouble and legal costs involved in disputing this. He said on the basis NatWest would spread the cost over the mortgage term he'd bite the bullet and pay it.

Mr A signed and returned the admission letter relating to the lease debt in early October 2021. NatWest wrote to Mr A saying it would pay the lease debt, and Mr A would have to make repayments over 12 months. Mr A contacted NatWest to say he signed the letter on the basis the repayments would be spread over the remaining mortgage term. He asked for an urgent call back.

NatWest records show it was aware in mid-October 2021 that Mr A might be in financial difficulty. He hadn't been able to maintain ground rent and service charge payments. His account was in two months arrears with a payment due (totalling about £1,100). It noted that Mr A's interest rate product was due to expire at the end of October 2021 and he'd applied for a new rate online. When NatWest spoke to Mr A, he said his income had been affected by the pandemic, but he could now clear the arrears and maintain payments going forward. He said he wanted to protect his credit file. Mr A made a payment of £800 on 1 November 2021 and said he planned to pay the remaining £300 before mid-November 2021. It seems Mr A didn't make this payment, or any payments since then.

NatWest made the payment to the solicitors acting for the management company in late October 2021. It wrote to Mr A confirming this and that he'd have to repay the debt over 12 months. This increased his monthly payments from about £285 to more than £1,000.

Mr A called NatWest again saying this wasn't affordable and he was waiting to hear about his request that repayments were spread over a longer term. He made a complaint. Mr A said NatWest paying the ground rent wasn't his last resort and he had other options – such as to take out a loan or borrow from family.

Initially, NatWest said the lease debt had to be repaid within 12 months. I think this was unfair. NatWest discussed Mr A's income and expenditure with him in January 2022. It established that repayments over 12 months or five years weren't affordable. Payments over the remaining term appeared to be affordable. However, NatWest says Mr A didn't provide all of the requested information so this might not be accurate.

NatWest contacted Mr A again in March 2022 to discuss his options. NatWest told us options included extending the term of Mr A's main mortgage account, as well as spreading repayments for the ground rent over five years. This combination would reduce his monthly payments. It said it would consider capitalising the arrears, although it says based on the

information it had this might not be affordable.

I think that NatWest made errors here.

Mr A expected NatWest to spread repayment of the lease debt over the mortgage term. While NatWest didn't promise this it did say that this was a possibility. This was the basis on which Mr A signed the admissions letter.

Mr A told NatWest before it made the payment that he'd agreed to this on the basis payments would be spread over the remaining term. He told NatWest repaying the debt over 12 months wasn't affordable. Given Mr A was in arrears at that time, NatWest should reasonably have known there was a risk that repaying the lease debt over 12 months (or even five years) would be unaffordable.

I think NatWest should have contacted Mr A again, before making the payment to the solicitor. It should have made it clear that it would require repayments to be made over 12 months or at most five years. It should have discussed with Mr A if this would be affordable and if he still wanted to go ahead or look into other options.

I don't think NatWest would have made the payment to the management company in October 2021 if Mr A hadn't signed the admissions letter. I don't think NatWest's own criteria were at that time met for it to have made the payment under its own policy. And I don't think it would have been fair for it to do so as its security wasn't at serious risk at that time.

Mr A says NatWest gave him legal advice related to the admission letter. During the call in late September 2021 Mr A said he thought the amount being claimed by the management company was too high, but he was in a dilemma whether to dispute the amount. Mr A had to make this decision before sending the admissions letter. NatWest asked if he'd told the solicitor he'd spoken to about having proof he'd made some of the payments being claimed. Mr A said he'd speak to the solicitor acting for the management company again. I don't think NatWest was inappropriate in this aspect of the discussion. I noted in my provisional decision that Mr A could have been referring to a different call, but he didn't respond to say this was the case.

I don't think NatWest initially responded fairly to Mr A's concerns after it had paid the debt. It should at least have considered whether it could spread the payments over five years (in accordance with its policy) and if this was affordable for Mr A. It did agree to consider this in early 2022, and to look into what options might be available.

How did NatWest's error affect Mr A?

From what Mr A has said, if he'd known that NatWest would require repayment over a short term he'd have looked for other options. He'd have looked for a loan or borrowed from family. He might have taken the opportunity to dispute the amount being claimed by the management company. I can't now know if Mr A would have found the funds elsewhere. Or if disputing the lease debt would have resulted in it being reduced. Mr A did have some opportunity to dispute the amount being claimed by the management company before NatWest became involved.

But it seems to me that NatWest paying the lease debt to the management company despite knowing the repayments might be unaffordable and Mr A expressing his concerns about this, put Mr A into a very difficult position. He has unaffordable mortgage payments and arrears recorded on his credit file.

How should NatWest put things right?

It's difficult now to arrange matters to put Mr A into the position he would have been in had NatWest given him correct information in late 2021. He's lost the chance to dispute formally the amount of the lease debt. It's likely to be difficult for him to source other finance to repay the lease debt to NatWest with mortgage arrears recorded on his credit file.

I've thought carefully about how this matter should be sorted out. Mr A says he's happy to pay the debt, provided this is arranged in a way that's affordable. I appreciate that this is outside NatWest's policy. But I think in the particular circumstances here it would be fair and reasonable for NatWest to arrange for repayment of the lease debt to be spread over the mortgage term.

It's possible that the repayments won't be affordable for Mr A even when spread over the mortgage term. The increase in interest rates since late 2021 will have increased the risk of this. And Mr A hasn't made any payments to his mortgage account for 15 months and so his arrears and overall balance has increased. I think before re-working the mortgage account it would be reasonable for NatWest first to assess whether this will be affordable for Mr A. Mr A will need to provide the necessary information and evidence to NatWest for it to do this.

NatWest should offer a meeting with one of its mortgage advisers within 30 days of Mr A accepting my final decision with the aim of assessing affordability, and gathering information to look into Mr A's options and what would be in his best interests. Both parties have said they are willing to do this. While Mr A would prefer NatWest to offer this as a face-to-face meeting at a branch, I don't think it's reasonable to require it to do so. NatWest might want a mortgage adviser from a specialist team or with additional expertise to attend given the circumstances here, or it might not be possible to arrange a meeting at a branch near to Mr A at short notice.

NatWest should take into account what I've said about re-working the mortgage account when assessing affordability. However, NatWest will need to be flexible, and it won't necessarily be fair for it to rigidly apply its usual affordability tests. It will need to consider Mr A's best interests.

If repayments of the lease debt are assessed as affordable when spread over the remaining term, NatWest should re-work the mortgage account as if this had happened on 1 November 2021. It should apply the same product that Mr A took out in his main mortgage account at that time.

Given Mr A hasn't made any payments since late 2021, it's likely that, after re-working the mortgage account, there will be a shortfall. NatWest should give Mr A reasonable opportunity (at least 60 days after notifying him of the amount) to bring the mortgage account up to date.

I think it's fair that NatWest pays compensation for the upset caused by its errors. I think £250 is fair and reasonable in the circumstances. NatWest has agreed to compensate Mr A for the £175 fee he paid related to the authority for NatWest to pay the lease debt.

What if the repayments aren't affordable, even when spread over the remaining term?

It's possible the repayments would remain unaffordable even when spread over the remaining term such that it wouldn't be in Mr A's best interests for the mortgage to continue on that basis. That would present considerable difficulties for both parties in sorting out this matter. I don't think I can set out here what NatWest should do, as what options might be available will depend on a number of factors, including Mr A's financial circumstances.

NatWest should consider what options it could offer to support Mr A, including the

suggestions it's already made about extending the term and/or capitalising arrears. I'd ask NatWest to be flexible and creative when looking into what options it could offer Mr A, given its error has put him in this position.

Mr A might want to seek independent financial advice about his options, which could include a loan to repay the lease debt or re-mortgaging with another lender. If Mr A does choose to re-mortgage with another lender, I think it would be fair for NatWest to waive any early repayment charge that would otherwise apply to the product Mr A took out in late 2021.

What should NatWest do about the adverse data on Mr A's credit file?

Credit files should present an accurate and fair picture of a person's commitments and how they manage their finances. I don't think mortgage arrears on Mr A's credit file give a fair picture. Mr A found himself in this position, with unaffordable mortgage payments, due to NatWest's unfair actions. And having mortgage arrears on his credit file would make it difficult for him to re-mortgage or access finance to repay the lease debt if he decides that's the best option.

I think that NatWest should arrange for the adverse data recorded following the increase in Mr A's monthly payments in late 2021 to be removed from Mr A's credit file. And NatWest should allow a reasonable period of time to sort out this matter as I've directed, during which it shouldn't record further adverse data on Mr A's credit file.

This period will need to allow time for Mr A to meet with NatWest's mortgage adviser and provide the requested income and expenditure information to NatWest. NatWest will need to assess the information and ask for further information if required, and discuss its proposals with Mr A.

If NatWest isn't able to offer a solution to Mr A, or if Mr A decides to apply elsewhere, this period will need to allow time for Mr A's credit file to be cleared of adverse data related to the mortgage before he makes an application, and for the new lender's usual application timeframe. I suggested that five months would be a reasonable period, and asked the parties to comment.

NatWest said three months would be sufficient. I've thought about this, and I'd hope that this matter can be sorted out within three months. Mr A's arrears are increasing, and it's in his interests for this matter is sorted out as soon as possible. But, in fairness, this period needs to allow enough time for Mr A to consider what options (if any) NatWest can offer, and he might then need time to take advice and/or apply elsewhere. And not all applications progress smoothly.

Taking all this into account, I think NatWest shouldn't record adverse data related to the mortgage for five months from the date of this decision. I must be clear that this wouldn't prevent NatWest from recording missed or late payments or arrears which occur after this period expires.

What happens now?

It isn't easy to give a clear direction here about how NatWest should put things right. I've made some proposals which I hope will help the parties move forward.

NatWest is the cause of the problem here, and it should put things right. But any solution needs to be workable and in Mr A's best interest. Mr A will need to engage with NatWest and he will need to provide the information NatWest asks for. It can't make a decision about what is affordable or in Mr A's best interests if Mr A doesn't provide the information it needs to do

this.

I'm hopeful NatWest will offer proposals for a viable plan to help things move on. But if not, it needs to give Mr A reasonable time to look into other options. This could include raising funds (by borrowing from family or taking out a loan) to repay the lease debt, re-mortgaging or even selling the property. Again, I think a reasonable amount of time would be five months from the date of this decision.

If Mr A is unable to do this, NatWest would still have an obligation to treat him fairly if he's in financial difficulty and unable to repay his arrears (and the lease debt if not included in the arrears).

My final decision

My decision is that National Westminster Bank Plc should pay £425 to Mr A, and take the steps set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 14 April 2023.

Ruth Stevenson
Ombudsman