DRN-4034165

## The complaint

Mr and Mrs H complain that National Westminster Bank Plc advised them not to take out a new interest rate on their mortgage to avoid paying an early repayment charge (ERC). By the time they did take a new rate, interest rates had increased and they complain that they've lost out overall by being on a higher rate than they could have been.

## What happened

Mr and Mrs H have a mortgage with NatWest. They were on a fixed interest rate which ran until November 2022.

In January 2022 they contacted NatWest because they were concerned about the prospect of interest rates increasing. Mrs H had a discussion with a NatWest staff member about what rates were available and the ERC they would be liable to pay if they took a rate at that point rather than waiting until the end of their existing rate. At that time, NatWest had a rate of 1.59% available, but to secure that rate they'd have to pay an ERC of £1,273.99. To avoid the ERC, Mr and Mrs H would have to wait until August 2022 to apply for a new rate.

Following that discussion, Mr and Mrs H didn't go ahead with a new rate application. In July 2022 they got back in touch with NatWest to start an application, but by this time the best available interest rate was 3.61% rather than 1.59%. They say this means they'll pay an extra £8,760 over the five years of the interest rate.

Mr and Mrs H complained. They said that NatWest advised them not to take out a new rate in January 2022 because the ERC would outweigh any savings. They relied on this advice, but it turned out not to be correct. They want NatWest to honour the 1.59% rate they could have taken.

NatWest said it hadn't given Mr and Mrs H advice in January. It had explained the factual position – what rates were available, and the cost of the ERC should Mr and Mrs H decide to go ahead – but ultimately it was for Mr and Mrs H to decide what to do. However, it agreed that the adviser Mr and Mrs H had spoken to had expressed her opinion about how much interest rates might rise between January and August, which she should not have done. It also recognised that Mr and Mrs H had experienced delays in being able to make an appointment to apply for a new rate in July and August. It offered £150 compensation, and said it would allow Mr and Mrs H to choose from the rates it had available on 29 July 2022 when they first asked for an appointment.

Our investigator recommended upholding the complaint. NatWest didn't agree, and asked for an ombudsman to make a final decision.

## My provisional decision

I agreed with our investigator that the complaint should be upheld, but I took a different view about the appropriate redress. So I issued a provisional decision to allow the parties to comment on my thinking. I said:

I’ve listened to the recording of the call Mrs H had with NatWest on 27 January 2022. This case turns on what she was told in that call. For that reason, and because there’s been some dispute about the importance of individual passages of the call and whether they were placed in their appropriate context, I’ve set out extracts from the call at length below – as I think it’s important to consider not just individual sections and their context, but the overall conversation in the round.

The call had been arranged because Mr and Mrs H were considering borrowing a further £15,000 for home improvements. It began with NatWest confirming Mr and Mrs H’s existing mortgage, including that there was a fixed rate in place until 30 November 2022. NatWest said it assumed that would stay in place. Mrs H said she wanted to pay to come out of the existing rate, and just have one mortgage.

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| NatWest | You do realise you’re going to pay a penalty for that? |
| Mrs H | £1,000 and something wasn’t it. Also we’re concerned about interest rates going up and we just thought we’d rather pay that amount to get out, fix now, where I think the interest rate they told me was slightly lower than what we’re currently paying, 1.8 something |
| NatWest | So you want it all on the lower rate, what you’re planning? |
| Mrs H | Yes please. And I know we’re going to pay to come out of it but my concern is that if we move on to the end of the year and it goes up to like 6% or something… |
| NatWest | So, were you aware - I don’t think it will go up to 6%, but I take your point, yes |
| Mrs H | Rates could go up, yes |
| NatWest | Were you aware that there was, at the moment you are ten months away from that. You don’t have to wait, if you did want to do this without a penalty you would not have to wait until November, you could do it sooner than that. Let me just work out when the date would be you could do it, that might change your mind, I don’t know. If it doesn’t that’s fine but let me just tell you when it is.<br><br>It would be the 14th August. There’s a magic number, the number is 110 days… sorry 12th August. So if you were to wait until 12 August to do this application you could achieve exactly what you want to achieve without paying a penalty |
| Mrs H | OK. I think… |
| NatWest | The only reason I’m saying that, is because it’s not that long. Up to you |
| Mrs H | I do get that, but I’m not too fussed but I know what he’s like, he’s going to be very worried about these interest rates going up so I think he’ll probably rather just pay the money, get out of it and start…. |
| NatWest | I’ll just document I’ve made you aware of it. At the end of the day it’s your decision, you can of course do what you want to do, but it’s a lot of money for a very short space of time. If it was years off I would understand but you are going to end up paying for the sake of what, we’re nearly February so March April May June July, five months. It’s up to you |

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| Mrs H | I guess you guys have no information on interest rates and stuff, you just have whatever's out there and I guess you can't put a price on that anyway can you |
| NatWest | No I'm afraid not. I mean, you either leave it as it is and just take the extra £15,000 on what we call the stand-alone borrowing rates which are slightly higher than your residential rates, OK, but not massively |
| Mrs H | I don't really want to do that separately. And we're not in a rush for that money either, we do need to do it [the home improvements] but it's not like we need to do it right now |
| NatWest | The only advantage of doing it together, so if your mortgage was going to mature, to come up for renewal in the next three months, what would happen is we would be doing additional borrowing and what we call a rate switch, meaning the whole lot would go on one rate. You'd still have two parts to your mortgage, you're always going to have two parts to your mortgage, even if you do this now and pay a penalty you're still going to have two parts to your mortgage, they'll still be on the same rate. But if your main aim is to put it all together as one you're not going to achieve that. It will always have sub-account one and sub-account two. The advantage, what you're telling me, is you and your husband want to put it all on the same rate, which I understand. If you wanted to do that, if you waited until August, you could do that without paying a penalty |
| Mrs H | How much is the penalty, sorry? |
| | It would be 1% of the outstanding balance, so, we don't calculate them, we don't have access to them, but it would be 1% |
| *Discussion about how interest is calculated* | |
| NatWest | So the interest rate is fixed at 1.92%. So you've got two options, you've got three options.<br><br>Option number one, is do what you suggested so you're going to pay a penalty of 1% which is approximately £1,200 to do it now, meaning that you are going to pay the penalty, go forward, put your main mortgage on a new interest rate and the extra 15 on a new interest rate, on the same rate. But you will still have a part one and a part two, but one payment leaves your account, you have one direct debit, so you don't really know you have two parts to your mortgage unless you look at it in front of you and then you'll see there is, there's no difference<br><br>Option two, is wait until August and do what you're doing now and not pay the penalty, but the risk is that rates might be slightly higher<br><br>Number three, is keep your main mortgage as it is now which is at 1.92%, still with changing the new rate on that come November, and just take your £15,000 on what we call a stand-alone additional borrowing rate now. They are slightly higher, they're not 5 or 6%, they're nowhere near that kind of rate, but they are slightly higher. But you're only going to put £15,000, you're not having your whole mortgage on that higher rate, you're only going to put £15,000 on that higher rate.<br><br>So those are your three options. It's entirely up to you, but I just need to make |

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| | you aware, because it's only five months |
| NatWest | It's not long |
| Mrs H | No it's not long, and I wouldn't be doing my job properly and they would pull me up and say why have you not had a conversation with your customers and say "look, if you wait five months, you won't pay a penalty". But it's entirely up to you, entirely up to you.<br><br>So, what do you think? |
| NatWest | I think that makes perfect sense, but in my head I think the conversation I'm going to have with my husband is he's going to want to do it anyway. But he might prove me wrong. So can we go ahead with the fact that we want to do this, and then if we don't I can let you know and we can discuss the other options. |
| Mrs H | You can, you can |
| NatWest | Shall I see if I can get hold of him now real quick? |
| Mrs H | You'll talk to him this evening, won't you? |
| NatWest | Yes |
| Mrs H | OK. So we can go ahead with paying the penalty now, as you originally thought, for now |
| NatWest | Shall I just try and call him really quick, is that OK? |
| Mrs H | Yes of course it is, yes |
| NatWest | He might not answer [pause] No, he's not at his desk |
| Mrs H | Let's just do this affordability, because either way we've got to get affordability done, the only way this is going to be redundant is if you decide to wait until August because we'll have to do it again in August. But that doesn't matter<br><br>It's at the second meeting that you discuss interest rates. So you can make your final decision on what you want to do and which way you want to go, as long as you do it before that second meeting you'll be OK. And the second meeting won't be before next week. All right?<br><br>So you want a deal break, it's called a deal break, in other words break the current deal. I understand why, it's because there's a lot of talk of rates going up, isn't there, at the moment |
| NatWest | We're very careful with our money and we really [inaudible] |
| Mrs H | No I understand that, and it's a good thing that is. |
| NatWest | I get it probably doesn't make much sense, saying we're going to pay £1,200… |

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| Mrs H | What you're going to save, on that interest rate, is not going to be worth £1,200 |
| NatWest | OK |
| Mrs H | That's my concern. But it's your decision. For the sake of five months, that's the difference. If you had another five years to go on it and you were going to pay to come out, then it would be worth the money. But you've got five months. That saving won't pay you back what you're paying in that time period, do you see what I mean |
| NatWest | Yes, that makes sense |
| Mrs H | OK. Anyway, let's just what we need to do you can decide. So we've documented that, potentially a deal break, but we've not 100% decided yet.<br><br>OK. But we're happy with the 20 years and six months term, we don't want to change that, and we're happy it's on a capital repayment basis |
| NatWest | Oh no, what were we going to do with that? We were going down to 15 years |
| Mrs H | 15 years for the £15,000, or 15 years for the main mortgage? |
| NatWest | 15 years for everything |
| Mrs H | So you want to change the term as well. Right. That's definite, you want to change the term, yes? |
| NatWest | Yes, we've just been paying ridiculous nursery fees for the last five years and in a few months time… |
| *Discussion about term extension – including whether to extend and options to make overpayments instead. Mrs H says there are more options they hadn't considered* | |
| NatWest | I need to know now, whether you want to change the term of your main mortgage or not because it's going to affect how I do this application so I need to know that now |
| Mrs H | I'm happy to stick with the plan I discussed with [Mr H] or I don't know if you want me to go away, talk to him, decide what we actually want, and then book another appointment? |
| NatWest | Whatever you want, I can do that happily for you |
| Mrs H | Because we're not in a rush. Otherwise it might be wasting your time |
| NatWest | And it might be wasting yours |
| Mrs H | If we were going to be doing the £15,000 over a shorter term, I could … if we could do that now, and in August re-mortgage the rest of it on a 20 year term |
| NatWest | Yes, absolutely, you could just address the £15,000 now, over a 20, over a 15 year term, 10 year term, whatever you decide. And when you talk to the next adviser, part of their conversation with you is around the term. They will always ask, what's your budget, how much do you want to spend, how much realistically can you spend, and then they'll always try and make that over the |

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| | shortest term you can afford. They'll always try and reduce the term because it's cheaper. If you can pay it off over 10 years instead of 20 you'll pay less, as you know. Which is what you're trying to do anyway. So they'll always try and do that for you automatically. |
| Mrs H | So with £15,000, can you give me an idea of how much that portion on its own would be over say a 5 year, 10 year term, separately? |
| NatWest | I don't know if I can [interruption]<br><br>When you booked this in, they should have told you how much it would cost |
| Mrs H | Not the £15,000 separately, just adding it to the £129,000 we've got left |
| NatWest | …<br><br>Right, let's see. If you just do the £15,000 now and don't change the term on your main mortgage and don't change the interest rate and don't pay the penalty, your main mortgage payments won't change they'll stay the same. So then the £15,000 will be a completely standalone thing.<br><br>I don't have access to the interest rates, that's what it's done in two parts. It's the next adviser that would usually go through this with you and give you the breakdown and can answer all those detailed questions. But I do appreciate you need to understand which way you want to go first before you can get to that stage. So it's a little bit difficult. This is just an indication |
| Mrs H | Yes I know you're not bound to it or anything, it's just an idea |
| NatWest | This is going to be based on a standalone interest rate, I can't tell you what it's going to be if you tie it in with the main mortgage interest rate |
| Mrs H | So is the interest rate a bit higher, much higher? |
| NatWest | It's only a little bit higher, it's not massively higher but it is a little bit higher.<br><br>If you're not desperate to do the work, it would make sense to wait until August because you're not paying the penalty. And then you're going to get your lower rate and not pay the penalty. But if you can't wait until August because you need to do it sooner, again I completely understand. It's a judgement call really, but it seems a big penalty to pay for the sake of five months. |
| Mrs H | Yes |
| NatWest | Right, just putting the information in, I think what it's going to be better to do is, rebook you back, you have a conversation with your husband, decide one way or another what you want to do, and then we'll get you rebooked. It's not a problem, I can get you booked in soon |
| Mrs H | I do think it's worth, when there are so many options, and I really didn't realise, five months isn't a long time for £1,200, is it? |
| NatWest | Not really no |

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| Mrs H | I guess, it's like a lottery isn't it, you've just got to hope interest rates don't shoot up in the next five months |
| NatWest | Yeah. And there is a lot of talk of them going up, and they are going up, but they're not going up by whole percents at a time, they're not jumping up that much, and I don't think you'll be up at 5 or 6% by August, I really don't |
| Mrs H | OK |
| NatWest | But, I think there'll be a lot of people in a lot of trouble if that happens, to be honest with you, but you never know. So there is, there are two sides of the coin. You've got to weigh up the risk of that, versus do I want to pay £1,200 for the sake of five months |
| Mrs H | Yes |
| NatWest | So. £15,000, I'm doing an indication here for you, over 15 years |
| Mrs H | Could you do it over 5 and 10 years? |
| NatWest | So, over 15 years, the £15,000 on its own, based on the situation where you're leaving your main mortgage as it is, you're not going to come out early and pay the penalty and you're leaving the term at 20 years and 6 months, if you just did the 15 now over 15 years, you would be paying between £96 and £100 per month.<br><br>The reason it's between £96 and £100 is I can't give you an exact interest rate, it depends whether you went for a two year fixed or a five year fixed, whether you paid a fee, whether you didn't pay a fee, all of those things change the rate<br><br>If you did the same thing over 10 years, it would be between £137 and £141 per month. Over 5 years, it would be between £262 and £266 a month. The interest rate stays the same whether you go for 15 10 or 5 years, it's the term that changes the amount you pay. The shorter the term the less interest you pay overall because you're paying it back quicker as you know already<br><br>Obviously this is based on interest rates as they are now. If you waited until August you could do this but this could be different. It might not be any higher, it might be lower, it might be higher, don't know. I know the consensus is it's probably going to be higher, but we don't know. But if you waited until August, you could still not pay a penalty, get the advantage of getting the residential rates on the extra £15, and still do that one over a shorter term. |
| Mrs H | Oh OK. So if I did them both at the same time but I said I wanted to keep my main one at 20 and I'll do this one at 10, I would still have the same interest rate for both? Right, perfect |
| NatWest | Yes. Whenever you do it, you can have different terms on both because they are always going to be two separate elements, we're never going to put them together and marry them together in one lump. That's why you can different terms on them |
| Mrs H | I think for me it makes sense to do them together, whether we do that now or we do that in August, it doesn't seem to make much sense to split it ouy |

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| NatWest | I agree with you, but it's entirely up to you |
| Mrs H | Yes of course. Thank you so much, this has been really helpful |
| NatWest | Good. Talk to [Mr H} about it, decide what you want to do. Do you want me to get you rebooked in now, or do you want to speak to him and email me and then we'll get you booked? |
| Mrs H | If I speak to him and email you and I can let you know whether I want to get rebooked in or whether we'll wait until August |

NatWest says that Mrs H was not being given advice during this call. I'm not persuaded of that, at least in the broader sense of the word. At no point on the call that I've listened to did NatWest make clear that it was merely providing information, not advice.

In strict regulatory terms it might not have been providing advice – in the sense of making a specific recommendation about a particular mortgage that it considered most suitable for their needs and circumstances. But in more general terms, NatWest did give Mrs H advice about which of the options open to them might be best. And it also expressed opinions about the likely movement of interest rates, including making predictions about the level they might or might not be at by August 2022. I don't think this was appropriate.

I also think that when explaining the options to Mrs H, NatWest presented her with a misleading basis for assessing what was the right thing to do. It said that Mr and Mrs H should judge the decision on whether to pay the ERC based on the savings over the five month period until August 2022 – that the appropriate comparison was whether Mr and Mrs H would save by reducing their interest rate from the 1.92% they were on to the approximately 1.6% available at that time. This represented a saving of around 0.3% per month, to be judged against the £1,200 cost of paying the ERC to access that saving.

In its response to Mr and Mrs H's complaint, NatWest accepted that wasn't appropriate, because they would actually be saving for more than five months, since their existing rate ran to November 2022.

But I think the issue with what was said here goes further than that. NatWest used the wrong comparator altogether. Mr and Mrs H's reasons for considering ending their existing rate and incurring the ERC were not to access a slightly lower rate for the remainder of the existing product term. It was because they were concerned about rising interest rates – and that the rates available to them in November 2022 (not realising they could book a rate in August) might be much higher than what was then available in January. So it would be worth paying an ERC to secure a lower rate now rather than wait and end up on a higher rate in November.

The cost-benefit calculation that Mr and Mrs H ought to have considered was not whether the saving between February and August (or even November) outweighed the ERC, it was whether the difference between the rate they could secure in January for the next two or five years was sufficiently lower than the rate they might secure in November (or August) to offset the cost of the ERC.

But in the call NatWest did not understand that. It presented the choice as being between the ERC and the saving until August, not the saving after August. This gave Mrs H a false picture of the nature of what she and Mr H would need to consider. NatWest also made predictions about the future movements of interest rates, both about the extent interest rates would rise, and that the remortgage rates in August would be lower than the standalone further borrowing rates in January. Those were predictions it shouldn't have made, and which turned out to underestimate what actually happened – to mortgage rates even more than to the Bank of England base rate.

I think the combination of these two factors – presenting an incorrect basis for assessing the costs and benefits of paying the ERC, and making inaccurate predictions about likely interest rates – gave Mrs H a misleading impression of how to make the decision that she and Mr H were considering. While NatWest also repeatedly said it was Mr and Mrs H's decision to make, the adviser also made clear she didn't think it was a good idea and discouraged them from doing so. I think it was reasonable to expect them to rely on the basis for making that decision NatWest had outlined, and reasonable to rely on the steer NatWest gave Mrs H.

Mr and Mrs H weren't in a position to go ahead with their application on that day in any case. That's because they also needed to decide what to do about the mortgage term, and whether to reduce it as part of their application. I think this part of the call correctly set out the options available to them, and Mrs H needed to discuss them with Mr H before going ahead.

So regardless of what had happened during the discussion about interest rates, Mr and Mrs H wouldn't have progressed their mortgage application on that day.

In fact, they didn't do so until August. I've listened to the August call, and at the outset of that call Mrs H said she'd been advised not to pay the ERC in January because they wouldn't recoup the money. So that was clearly the understanding she'd been left with after the January call – and, as I've set out above, it's understandable why she took that conclusion from the call. But the saving between February and August wasn't the appropriate comparator to have used.

On balance, I'm persuaded that Mrs H was reassured by the content of the call in January that interest rates wouldn't rise by as much as they in fact did, and that in any case there was no benefit in paying the ERC because the saving in interest between then and August 2022 wouldn't outweigh the costs. This led she and Mr H to decide not to progress their application until they could do so without paying an ERC – by which time they were left paying considerably more than they would have done had they re-mortgaged sooner. I think it's likely that had Mrs H been given more accurate information they would have gone ahead in January or February.

I don't think this is a hindsight conclusion. It's now known – but couldn't have been known for sure in January 2022 – that Mr and Mrs H would definitely have been better off paying the ERC. But the question isn't whether Mr and Mrs H could have known that in January 2022; it's whether NatWest misled them by giving them a false basis on which to assess the risk of that happening. I think it did. And even if that didn't, in strict regulatory terms, amount to "advice", it was at the very least a failure to communicate in a way that's clear, fair and not misleading. NatWest did make clear that ultimately it was for Mr and Mrs H to decide how to proceed, but that doesn't change the fact that it gave them a misleading impression of how to make that decision for themselves, and gave them a steer on what that decision should be.

To put things right, I agree with our investigator that NatWest should rework Mr and Mrs H's mortgage so that it is as if they had taken a new interest rate at the time of the January 2022 call, rather than in August 2022. They couldn't go ahead on that date because they also needed to decide what to do about the term. But they could have gone ahead within a few days and for the sake of convenience I will assume an application could have been made on 1 February.

NatWest should put Mr and Mrs H back in the position they would have been had they made the changes to their main mortgage they actually made in August, but in February instead – taking effect from 1 March. NatWest hasn't provided me with the details of what Mr and Mrs H did in August, so in response to this provisional decision it should confirm the changes that actually implemented at that point – including the details of any further borrowing.

Our investigator didn't include the ERC in assessing the redress, but I think this should be factored in as Mr and Mrs H would have had to pay the ERC to access a new rate at this time. NatWest has also offered £150 compensation and I think that's fair.

**The responses to my provisional decision**

NatWest confirmed that Mr and Mrs H re-mortgaged in September 2022, taking an additional £20,000 borrowing, with an interest rate of 3.61% on both the main mortgage and the additional borrowing. The interest rate they selected was over a five year term and with no product fee. It accepted my provisional decision.

Mr and Mrs H said they wanted to know what the backdated interest rate would be before accepting my decision. And they said they didn't think £150 compensation was enough to reflect the stress or inconvenience caused, or the amount of time they've spent dealing with the complaint.

**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.

Having done so, I see no reason to change my mind. Both parties agreed with the overall conclusion I reached and I'm satisfied it's a fair way to resolve this complaint – I'll say more about the detail of the redress below.

**Putting things right**

To put things right, NatWest should re-work Mr and Mrs H's mortgage as if they had taken the equivalent five year fee-free rate that was available on 1 February 2022. It should apply that rate to the whole mortgage. That includes the £20,000 additional borrowing – though it should only take effect on that part of the mortgage from when the additional borrowing was drawn down in September. I think that's fair because I'm satisfied Mr and Mrs H would have paid the ERC and applied for the additional borrowing, securing the lower rate for their entire mortgage, in February had things gone right – but it wouldn't be fair as part of the redress to charge them interest on the extra borrowing before they actually ended up taking it. NatWest should also account for the ERC in the redress.

I've also thought about the fair amount of compensation in this case, and I've noted what Mr and Mrs H have said about the impact on them. And I appreciate that this was a stressful and upsetting experience. But I haven't seen any evidence paying the extra interest rate caused them particular financial hardship, and on balance I'm satisfied £150 is fair in all the circumstances..

**My final decision**

For the reasons I've given, my final decision is that I uphold this complaint and direct National Westminster Bank Plc to:

- Re-work Mr and Mrs H's mortgage as if they had taken a new rate with effect from 1 March 2022. It should use the five year fee free rate it had available on 1 February 2022 – applying that to all parts of their mortgage, but in the case of the additional £20,000 borrowing only from the date Mr and Mrs H completed on the further borrowing in September 2022.

- In taking account of the ERC Mr and Mrs H would have paid to access the new rate, give them the option of:

    - Paying it now by having it deducted from the redress; or

    - Adding it to the mortgage balance as at 1 March 2022, with interest that would have been charged since then included in the re-worked mortgage balance.

- In respect of overpayments made since 1 March 2022 because of the higher interest rates Mr and Mrs H have paid, give them the option of:

    - Having the overpayments refunded to them, adding simple annual interest of 8%* running from the date of each payment to date of refund; or

    - Having the overpayments credited to their mortgage balance each month, reducing the balance and interest charged in subsequent months.

- Write to Mr and Mrs H confirming the interest rate applicable to their mortgage including the revised end date of their fixed rate, their revised balance and revised monthly payments.

- Pay Mr and Mrs H £150, if it hasn't already done so.

** If Mr and Mrs H select this option, NatWest should deduct income tax from the 8% interest element of my award as required by HMRC. But it should tell them what it has deducted so they can reclaim the tax if they are entitled to do so.*

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H and Mrs H to accept or reject my decision before 4 December 2023.

Simon Pugh
**Ombudsman**