

## **The complaint**

Mr Y complains that National Westminster Bank Plc withdrew a mortgage offer it had made to him. He said the amount he wanted to borrow was affordable for him, and as interest rates went up in the meantime, he'd ended up paying much more to get a mortgage elsewhere.

## **What happened**

Mr Y said he obtained a mortgage offer from NatWest in late March 2022, but then it told him the offer had been withdrawn. Mr Y had managed to get a different offer elsewhere, but interest rates had risen sharply since then, and his monthly payments would be much more.

Mr Y said he'd complained to NatWest about this in August 2022, but hadn't received a response to his complaint by November, so he wanted us to look into this for him.

NatWest said that it received some new information after Mr Y's mortgage offer was issued, about the service charge payable on the property Mr Y was buying. Once it reassessed his application, including this new information, it could no longer lend to Mr Y.

Our investigator thought this complaint should be upheld in part. She said the offer NatWest had made hadn't accounted for a service charge being payable on the property Mr Y wanted to buy. So NatWest had to reassess his application later. And when it did so, it would no longer lend to Mr Y. She said the internal "score" that NatWest's process generated wasn't the same as the credit score set by a credit reference agency ("CRA"). She said NatWest has to reassess an offer in circumstances like this. She thought it had acted appropriately.

But our investigator noted that Mr Y didn't get a prompt response to his complaint. She said NatWest accepted it was at fault, but hadn't recognised the detriment caused by this, so she asked it to pay Mr Y £100.

NatWest agreed with our investigator, but Mr Y didn't. He sent further detailed argument, and asked for his complaint to be considered by an ombudsman. So his case was passed to me for a final decision. And I then reached my provisional decision on this case.

## **My provisional decision**

I issued a provisional decision on this complaint and explained why I didn't propose to ask NatWest to do more than our investigator suggested. This is what I said then:

Mr Y has supplied clear and detailed argument in support of his complaint. Although I have summarised this only briefly here, I have considered it carefully.

Our investigator didn't think NatWest's mortgage offer had accounted for any service charge at all – and I can see she said this because that's how NatWest summarised the case for our service on one occasion. But I've looked at the other comments NatWest made, and at its internal notes and the evidence it has provided, and I don't think that's most likely to be what happened. I think it's most likely that NatWest provided its first

offer based on its previous understanding of the service charge which would apply to Mr Y's new property. And it then changed its mind when this amount increased.

I think this, because NatWest showed us an email it received on 10 May 2022 from Mr Y's broker, which says –

*“The service charge has increased from £87.06pm to £125.55pm”*

That suggests to me that Mr Y's broker had previously provided service charge information for his property, and was now revising it. And I note this also fits with what NatWest said to Mr Y in its complaint response letter, where it said it received information about an increase in service charges, and then reassessed Mr Y's application. I can see from NatWest's internal notes, that it went through a revised affordability calculation shortly after Mr Y's broker sent the above email. And it was after this, that NatWest said it was no longer prepared to offer Mr Y the mortgage he wanted.

Mr Y had already received a mortgage offer from NatWest on 31 March 2022. This offer contained conditions, those allow NatWest to withdraw a mortgage offer which would otherwise be binding on it. So what I need to do here, is to check if NatWest acted within those conditions, when it withdrew Mr Y's offer.

The conditions say this –

*This Offer is conditional upon us being satisfied that:*

- *There has been no material change in your circumstances since the date of this Offer, which we were not aware of, which could affect your ability to afford the loan. By this, we mean a change to your circumstances which, had we known about it at the time of making this Offer, might have resulted in us being unable to provide the Offer to you or only being able to provide the Offer to you for a lower amount.*
- *None of the information which you have provided as part of your application for the loan and which we have used to decide whether to provide the Offer to you is untrue, inaccurate or incomplete or that you have not withheld information which we have requested from you as part of your application for the loan which, if we had received this information, might have resulted in us being unable to provide the Offer to you or only being able to provide the Offer to you for a lower amount;*
- *There has been no change to the condition, value or title to the property which would have a material impact on the suitability of the Property as security for the Loan.*

I think that NatWest could reasonably have concluded that the change in the anticipated service charge Mr Y would have to pay each month meant that there had been some (unintentionally) inaccurate information used in its assessment of whether to lend. And that, in turn, means NatWest was able to withdraw the offer it had made.

I understand that Mr Y feels strongly that NatWest couldn't be justified in withdrawing its offer, because he could still afford this lending. And he says he's secured the same lending elsewhere, even though higher interest rates mean he's paying much more each month. But it is, broadly speaking, for each lender to assess the risks in offering a mortgage. I don't think it was unfair or unreasonable for NatWest to reach a different conclusion about whether it would lend to Mr Y, on the basis of this revised information.

I should also note that, even if NatWest hadn't been entitled to withdraw its offer at this stage, I still don't think this complaint could fairly and reasonably have been upheld.

That's because the offer Mr Y did get from NatWest would (if it hadn't been withdrawn) have expired on 30 September 2022.

Mr Y's complaint form was sent to our service on 18 November 2022, and he indicated then that he still hadn't completed his purchase. So Mr Y would not have been able to purchase a property with this mortgage offer in any event. He wasn't ready to complete his purchase by the time the offer expired. And the intervening rise in interest rates means it's very unlikely any offer from NatWest would have been extended for Mr Y.

It appears that Mr Y would always have had to obtain a new mortgage offer, in late 2022. And with the intervening changes in interest rates, it was always likely that this would have meant an increase in monthly payments. So, even if I didn't think NatWest was entitled to withdraw its offer, I would still say I couldn't fairly and reasonably ask NatWest to cover an increase in payments that Mr Y would always have faced.

Our investigator did think NatWest should pay something though. NatWest accepted that it got Mr Y's complaint, and didn't respond to it. So she suggested a payment of £100 to make up for NatWest's oversight.

I think that the withdrawal of his mortgage offer was an extremely stressful event for Mr Y. Although I don't think NatWest did anything wrong when it withdrew the offer, I do think that failing to explain simply and promptly why this had happened is likely to have had a further adverse impact on Mr Y. So I agree with our investigator's suggestion that NatWest should pay £100 in compensation to Mr Y for this. That's how much I would have proposed, if she hadn't already suggested this amount.

I know Mr Y will be disappointed by my intended decision, but I don't currently think NatWest has to do more than this.

I invited the parties to make any final points, if they wanted, before issuing my final decision. Only Mr Y 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.

Mr Y provided a detailed response to my provisional decision, which divides into two main heads – the completion of his purchase, and the meaning of the conditions set out in his mortgage offer.

First, Mr Y challenged my view that it seemed unlikely he could have completed his property purchase before his offer from NatWest expired. Mr Y said he was only unable to complete his property purchase by this date, because the offer was withdrawn. And he could only get a mortgage elsewhere once it became clear NatWest wouldn't change its mind. He said he was confident he would otherwise have been able to complete by the offer's expiry date.

Mr Y became aware of NatWest's decision to withdraw its offer at the start of July 2022. It may have been prudent to obtain a new decision in principle ("DIP") at this stage, but Mr Y first appealed to NatWest to see if it would change its mind. Mr Y then obtained a decision in principle from a different lender in mid-September.

Mr Y hasn't given us any date for the completion of his property purchase. We know that about two months after this DIP was issued, when he brought his complaint to our service, Mr Y's purchase hadn't completed. There's no mortgage showing on the credit report he sent us

for December 2022. And Mr Y referred to this purchase as still being in progress when he wrote to us at the start of March 2023. So there appears to have been a substantial delay.

If Mr Y's purchase would otherwise have been ready to complete by the expiry date of the first offer, on 30 September, then it does seem somewhat surprising that he then appears to have taken quite so long to complete. I cannot rule out that there may be extenuating circumstances which explain this. But I have not asked Mr Y for more information and evidence on this point, as I still think NatWest was entitled to withdraw its offer, for reasons I'll explain below.

Before I turn to the conditions of Mr Y's offer, I note Mr Y has expressed the view that if this ground for dismissing his complaint stands, then it would have undesirable consequences. He said in the scenario where: (a) a lender makes a mortgage offer in March which expires in six months and (b) the lender unlawfully withdraws the offer in May, the consumer must then be able to obtain a new mortgage offer and complete the entire conveyancing process within four months before they are able to bring a complaint against the original lender for the unlawful withdrawal. Mr Y said he didn't believe that would be a correct view, because it would introduce an unreasonable time-bar for eligible complaints.

I think I ought to clarify that whether or not Mr Y's mortgage offer would have expired anyway before his purchase could be completed isn't being used here to dismiss his complaint. So I don't agree that this introduces a time bar.

What I sought to explain in my provisional decision is that things that have happened after the offer was withdrawn, can affect what it's fair to ask NatWest to pay. So, here, Mr Y said he would have to pay much more for his mortgage each month because of what NatWest did. But in my provisional decision I said it seemed likely, on the evidence I'd seen so far, that Mr Y wouldn't have completed this purchase before his offer from NatWest expired. If that were the case, then he would always have had to obtain a new mortgage offer, in late 2022. And this in turn would always have been more expensive, given the change in interest rates. So my point was that if Mr Y was always going to have to pay a higher monthly mortgage charge anyway, regardless of any mistakes made by NatWest, then it wouldn't be fair and reasonable for me to ask NatWest to cover any increase in payments.

Mr Y then moved on to his second point, about the conditions of the offer made to him, and to challenge my conclusion that NatWest was entitled to withdraw its offer. He said I'd identified that what happened here fell under the second limb of the conditions I reproduced above. Mr Y said he agreed with me that what happened didn't fall under limbs one or three, although I would note that I had not reached this conclusion in my provisional decision.

Mr Y said he didn't think that what happened fell under the second limb, briefly, that "*None of the information ... provided as part of your application ... is untrue, inaccurate or incomplete ...*" Mr Y made two points about this. He said I'd misconstrued this condition, and even if I hadn't, he said that I should still not penalise him for any innocent mistake.

Mr Y said I should only think about whether the information provided was accurate at the time the mortgage application was submitted. He said the requirement in the condition wasn't a prospective obligation, so when he put in his application, he didn't need to foresee potential changes to the information he gave. He said any material change to the applicant or their application would be covered by the first limb of the conditions. And he said that I should also infer into this condition a requirement that any mistaken information should have been given in bad faith, if it was to trigger the right to withdraw the offer.

I'm sorry to have to tell Mr Y that I don't agree. I think that the second limb of NatWest's conditions could cover both circumstances in which the applicant has deliberately withheld

information (which I haven't suggested was the case here), and, separately, circumstances where the information has turned out to be untrue, inaccurate or incomplete, without the applicant being to blame for that (which is what I thought had happened here).

I see no basis to imply into this condition, as Mr Y suggests, that NatWest is only entitled to judge whether information was inaccurate or incomplete as at the date of the application, not subsequently. I also don't agree that an innocent mistake cannot possibly trigger this condition, as Mr Y suggests. (The conditions he refers to in MCOBs are not an exhaustive list.) So I still think that NatWest was entitled to rely on this condition to say that information Mr Y had given in good faith had unfortunately turned out to be inaccurate.

Finally, Mr Y also said that I'm obliged to determine his complaint by reference to what is, in my opinion, fair and reasonable in all the circumstances of the case. He wanted me to consider whether the outcome was fair and reasonable for him. He said he was now faced with the absurdity that an increase of approximately £40 of service charge per month means he has to pay approximately £400 extra a month in mortgage payments.

I understand why Mr Y feels this is unfair. He hasn't done anything wrong, what's happened is just unfortunate. And he's told us the withdrawal of his mortgage offer had a significant impact on him. But I'd invite him to consider the reverse scenario. NatWest made its lending decision on one basis. It then found out some of the information it had based this decision on was wrong. And although Mr Y argues that this change couldn't possibly be material, when NatWest ran its assessment of Mr Y's application again, with this change, it decided it couldn't lend him the money he wanted.

I appreciate that Mr Y may consider he's been disadvantaged through no fault of his own, and I'm sorry that has happened, but I don't think it would be fair and reasonable to require NatWest to continue to lend to Mr Y in these circumstances, or to require it to compensate Mr Y because it has refused to do so.

For those reasons, I still don't think it would be fair and reasonable to require NatWest to pay Mr Y the difference between the mortgage payments he was expecting, and the ones he says he's facing now. But I do still think that failing to explain to Mr Y, simply and promptly, why the offer had been withdrawn, is likely to have had a further adverse impact on Mr Y. So I still think that NatWest should pay £100 in compensation to Mr Y for this.

For those reasons, 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 Y £100.

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

Esther Absalom-Gough

**Ombudsman**