

## **The complaint**

Miss C and Mr H have complained that National Westminster Bank Plc (NatWest) has unreasonably decreased the valuation of their property, as a result of the bank saying that more than 20% of the property comprises commercial buildings, which it will not take into consideration.

Miss C and Mr H dispute this, saying that the commercial space is 17% of the property, and that, in any event, NatWest knew these commercial buildings were in existence at the time of the original mortgage, when the bank was happy to lend at a loan-to-value ratio (LTV) of 85%.

To settle the complaint Miss C and Mr H want NatWest to accept the property value to include the outbuildings at 17% of the use, and to adjust the property valuation and LTV to reflect this.

## **What happened**

The mortgaged property is a house occupied by Miss C and Mr H. The previous owners were a Mr and Mrs W.

The documents on file show that in 1996 the local authority granted change of use of dwelling to mixed use as dwelling and boarding kennels for rabbits and guinea pigs, with the proposed garage and 2 sheds being used for that purpose.

In 2010 the local authority granted permission for the erection of a single storey timber building to accommodate a canine hydrotherapy pool, and for the formation of hardstanding for parking and associated landscaping.

I understand that Mr and Mrs W operated a business commensurate with the local authority permissions.

In October 2017 Miss C and Mr H purchased their property with the aid of an 85% LTV mortgage from NatWest. They borrowed £405,995 against a purchase price of £475,000, with the first five years of the mortgage being on a fixed interest rate product.

Miss C and Mr H instructed solicitors – a firm I will refer to as AL – to act for them. NatWest has confirmed that AL was not on its panel and so didn't act for the bank on the mortgage. Indeed, NatWest has said no solicitors acted for the bank on this transaction. (I will refer to this later.)

As part of the mortgage application a valuation was carried out for NatWest by an independent surveyor. The surveyor claimed to have inspected the property. He thought the property was worth £450,000. No mention was made in the valuation report of the small animal boarding kennels, canine hydrotherapy or customer parking at the premises.

The purchase completed in October 2017. Miss C and Mr H have explained that at the time of the purchase Miss C owned a cattery about 100 miles away from the mortgaged property

(and which is where she had previously lived). After the move to the new property, Miss C dealt with all the admin for that business and continued to do so for some time. However, her business relationship with the other partner in the business broke down, and after a court case the cattery closed.

Consequently, because there were already suitable outbuildings at the property and consents in place from the local authority, in June 2018 Miss C and Mr H set up a limited company in order to re-start the small animal boarding business, run by Miss C (Mr H having his own full-time job in an unrelated field). Initially they were only using the hydrotherapy pool for their own dogs, but later started to offer this after customers enquired about it.

In 2022, after the five-year interest rate product expired, Miss C and Mr H applied for a new interest rate product. Miss C and Mr H thought their property would have increased in value to about £662,000, sufficient to allow them to meet the 60% LTV, giving them access to the best interest rates available.

They paid for a valuation of the property. The surveyor thought the property was worth £662,000. However, he told NatWest that he didn't think the property was suitable security, because 20% of the property, including outbuildings, were seen to be used for commercial purposes. NatWest agreed to offer a new interest rate product, but only at a valuation of £530,000.

Miss C and Mr H complained to NatWest. They said that the commercial element of the property was only 17%, not 20% as claimed, as they used one of the outbuildings as their gym. Miss C and Mr H also said that they'd not changed anything at the property, as all the outbuildings were in situ – and were being used for commercial purposes by Mr and Mrs W – at the time of the valuation in 2017.

NatWest didn't uphold the complaint. Miss C and Mr H raised it with our service. An investigator looked at what had happened, but didn't think the complaint should be upheld.

Miss C and Mr H asked for an ombudsman to review the complaint.

### **Provisional decision of 13 July 2023**

I issued a provisional decision in which I reached the following conclusions.

After reading the file, I asked detailed questions of both parties. Miss C and Mr H have provided a comprehensive response to my questions.

I asked NatWest to obtain the 2017 surveyor's comments, given that his valuation report makes no mention of the existence of the commercial outbuildings at the time he inspected the property. I have not had a response to this query.

I asked NatWest to confirm whether AL acted for it on the mortgage or whether the bank instructed its own solicitors. NatWest said it didn't instruct any solicitors on the mortgage.

In a purchase and mortgage, there are two separate pieces of legal work that need to be done.

For the purchasers, their solicitors (in this case, AL) investigate title to the property, carry out local searches, and ensure that there is nothing onerous that is likely to affect the ownership of the property. They make sure their clients have funding in place to purchase the property before committing them to the transaction with an

exchange of contracts, and after completion register their clients as proprietors of the title at the Land Registry.

For the majority of purchases, the buyers need a mortgage. In order to put the mortgage in place, there is separate legal work that needs to be done. This involves receiving the lender's instructions, informing the lender of anything likely to affect its decision to lend, including anything revealed by the local search, arranging for the legal charge to be executed, submitting the Report on Title, arranging for the mortgage funds to be in place in time for completion and registering the legal charge at the Land Registry.

If the solicitors acting for the purchasers are on the mortgage lender's panel, then the lender will generally instruct those solicitors to act for it on the mortgage as well. If the solicitors are not on the lender's panel, the bank will instruct its own solicitors, who will liaise with the buyer's solicitors, to avoid duplication of searches, etc. Usually the buyer's solicitors will provide the bank's solicitors with a copy of the local searches, any lease (if applicable), etc. so the bank's solicitors can satisfy themselves that the lender's position is protected.

But in this case, NatWest has confirmed – and provided evidence – that AL were not acting for the bank. However, NatWest has been unable to confirm which solicitors acted for it; clearly there was legal work carried out for the bank – the mortgage didn't register itself at the Land Registry. But I'm satisfied AL didn't act for the bank, and although NatWest said it didn't instruct any solicitors, it must have done so if AL didn't act for it.

The implications of this are that it was up to NatWest (or whichever solicitors acted for it) to ensure that both the property in its physical state and the property title were suitable for mortgage purposes.

If the surveyor didn't mention the obvious commercial outbuildings on his valuation report, then that is something NatWest will need to raise with him.

Similarly, I'm satisfied that it is likely that whichever solicitors acted for NatWest on the mortgage would have been provided with a copy of the local search, from which they would have noted the planning permissions and change of use referred to above. If these weren't drawn to the bank's attention, that is something NatWest will need to raise with whoever acted for the bank on the mortgage.

Turning now to the mortgage terms and conditions, these say: *"The Property must be used as your only or main home unless we agree otherwise in writing."* Miss C and Mr H were using the property as their only home, and have continued to do so. I'm satisfied, therefore, that they didn't breach this term of the contract.

The terms and conditions also say:

*"3.4 You will obtain our permission in writing before ... changing the use of the Property, altering, demolishing or extending it, or applying for permission to change its use or for structural alterations or additions, including the construction of additional buildings."*

But when they decided to start their business in 2018, Miss C and Mr H weren't changing the use of the property; it was still their only or main home, and the commercial buildings had existed for more than 20 years before they bought the property, with change of use already granted by the local authority.

NatWest said that it wouldn't have lent on this property because of the commercial aspect. But I'm satisfied that NatWest would, or should, already have known in 2017 about both the existence of the commercial buildings and the planning permissions and change of use granted by the local authority. As I said above, if it didn't, it'll need to take this up with its surveyor and solicitors. NatWest can't hold Miss C and Mr H responsible for any failings in this respect.

Given this, I don't think it's fair now, because of potential failings by its surveyor or solicitors in 2017, that the bank should be allowed to pass on the consequences to Miss C and Mr H. By accepting the property as suitable security at an 85% LTV in 2017 – with the commercial buildings and change of use already in existence – I do not think it is fair or reasonable for NatWest to change its position at a later date by down-valuing the property, when it was (or should have been) aware of the commercial use of part of the property in 2017.

In the circumstances, I am intending to uphold this complaint.

To put things right I intend to direct National Westminster Bank Plc to do the following:

- treat the property as if it was valued at £636,000 in 2022;
- review the products that would have been available to Miss C and Mr H on this basis;
- effective from the end of the previous mortgage product which expired in 2022, switch the mortgage onto the best interest rate available at the time that product expired at the lowest LTV for the valuation of £636,000;
- re-work the mortgage to take into account the payments actually made against the payments due on the best available product;
- at the choice of Miss C and Mr H, any overpayments can be applied either to reducing the capital balance of the mortgage (with no early repayment charge applied) or reimbursed to them;
- pay £300 for distress and inconvenience.

### **Responses to the provisional decision**

Miss C and Mr H accepted my provisional decision. Despite being reminded of the date by which a reply was due, NatWest didn't respond.

### **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.

I've reviewed the case again from the outset and revisited my provisional decision. Because no further evidence or arguments have been submitted, I see no reason to depart from the conclusion reached in my provisional decision.

For the same reasons as given in my provisional decision, which are set out above, I uphold this complaint.

### **Putting things right**

I direct National Westminster Bank Plc to do the following:

- treat the property as if it was valued at £636,000 in 2022;
- review the products that would have been available to Miss C and Mr H on this basis;
- effective from the end of the previous mortgage product which expired in 2022, switch the mortgage onto the best interest rate available at the time that product expired at the lowest LTV for the valuation of £636,000;
- re-work the mortgage to take into account the payments actually made against the payments due on the best available product;
- at the choice of Miss C and Mr H, any overpayments can be applied either to reducing the capital balance of the mortgage (with no early repayment charge applied) or reimbursed to them;
- pay £300 for distress and inconvenience.

### **My final decision**

My final decision is that I uphold this complaint. I order National Westminster Bank Plc to settle the complaint as set out above. I make no other order or award.

This final decision concludes the Financial Ombudsman Service's review of this complaint. This means that we are unable to consider the complaint any further, nor enter into any correspondence about the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C and Mr H to accept or reject my decision before 29 August 2023.

Jan O'Leary  
**Ombudsman**