

The complaint

Miss T and Mr W complain that National Westminster Bank Plc didn't act on the comments provided by the surveyor when they purchased their property in 2019. They said that this has made the property unmortgageable and this has trapped them into the property and the mortgage.

What happened

Miss T and Mr W purchased a property on the help to buy (HTB) scheme on 31 August 2019.

The HTB scheme was a government scheme in place to support home ownership. In addition to the usual mortgage from a regular lender, a borrower took a shared equity loan funded by the government to reduce the amount of cash deposit that would be otherwise required.

In 2021, Miss T and Mr W looked at selling the property and they received an offer of £255,000 which was accepted. They said they found the perfect home which was close to Miss T's father which was important to them.

Miss T and Mr W said that their original buyer had two applications declined due to valuation issues with their property. So in order to try and help the situation, Miss T's father said he would purchase the property from them, so he made contact with a broker to enable him to do so. Miss T and Mr W said this application was also declined.

Miss T and Mr W managed to get the previous valuation which was carried out on their property from 2019 which they said had the following comments:

'Additional Matters considered essential for the lending decision.

Are any other matters not already reported which are considered essential to the lending decision? Yes

If yes, please provide details: The property is adjacent to a restaurant and a retail shop. This has been reflected in the valuation. ACM cladding is thought to be present and property cannot therefore be assessed for mortgage lending without further information being provided. Once the following reports have been received in full the property will be assessed , but may still be deemed unsuitable where recommendations are yet to be acted upon and/or where any question of liability remains unclear.

1. *DCLG Screening Test result identifying the type of cladding*

Where ACM cladding is confirmed:

1. *Fire Risk Assessment for the block (post-dating the screening test)*
2. *Local Fire Authority confirmation that recommendations for the interim management of fire safety within the block have been implemented.*
3. *Confirmation from the Freeholder/Management Company of any proposed remedial works, timetable for implementation, estimated costs per flat and who is liable for these costs.*

Miss T and Mr W said that the property has now been sold to another buyer who offered £251,000 meaning they have lost £4,000 from the sale price and the mortgage interest rates have increased since the first offer fell through. They said they could have got a lower interest rate when they first found a buyer for their property. Miss T and Mr W also say that had they known about the potential issues with the property in 2019 – they may not have gone ahead and purchased it.

NatWest acknowledged that they didn't act on the valuation report as they should have done and eventually offered £250 compensation to Miss T and Mr W. But they said that had the reports been carried out, it wouldn't have affected their offer to Miss T and Mr W at the time, or any new applications made on that property by other parties. NatWest also said that they had spoken to Miss T's father about why his application was declined but couldn't go into detail with Miss T as to why that was.

Miss T and Mr W didn't agree with NatWest so they brought the complaint to the Financial Ombudsman Service where it was looked at by one of our investigators. Our investigator didn't think there was enough evidence to say that NatWest's initial error caused a delay in the sale of the property. He said that a surveyor would now request an EWS1 certificate and there is nothing to suggest that this was done until the second buyers' application was made. He didn't agree that Miss T and Mr W were trapped in the mortgage or that the property was unmortgageable as it has since been sold.

But he did think that NatWest ought to have actioned the comments on the initial report and he did think that this situation has caused Miss T and Mr W distress and inconvenience – so he thought that NatWest should pay Miss T and Mr W £600 in recognition of this.

NatWest accepted this but Miss T and Mr W didn't. They said that their initial buyer had their mortgage declined because of the issues with the property and this has been confirmed by their estate agent. They said if NatWest hadn't declined this first buyer, they would have been able to proceed with the first property they were purchasing and would have secured a sale on their property for £255,000 and purchased their new property on a much lower interest rate.

Miss T and Mr W said that NatWest only changed their stance on the property once a complaint was raised which led to the sale of their property going through nearly one year later.

As Miss T and Mr W disagreed with what the investigator said, they asked for the complaint to be reviewed by an ombudsman, so it has been passed to me to decide.

I issued a provisional decision on 16 January 2024. I said:

I've considered the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I have taken a look at the original valuation report from 2019 and it's evident that the surveyor did say that the property may be deemed unsuitable security if recommendations were not acted upon and/or where any question of liability remains unclear.

It's clear for whatever reason that NatWest missed this and proceeded to issue a mortgage offer which enabled Miss T and Mr W to complete on their property. The possible issue with the property didn't therefore come to light until they wanted to sell their property.

NatWest didn't action the comments and they are entitled to rely on the comments by the valuer – but ultimately, they also don't have to. However, they didn't say they chose not to act on the comments but did acknowledge that they missed them. I can see that the valuation that was carried out was for mortgage purposes and NatWest said that a copy may have been sent to Miss T and Mr W at the time, but if it wasn't,

a copy would have been sent to their solicitor to consider action if necessary. So it would be deemed reasonable that the solicitor could have also picked this up.

But the issue that needs to be considered here, is what impact this would have had on Miss T and Mr W down the line.

Miss T and Mr W did find a buyer for their property, and they told us that an offer had been accepted for £255,000 but this fell through, and Miss T and Mr W believe this is because of the issues with the property. This well may be the case but that doesn't mean that without the necessary reports having been carried out – that the property wasn't suitable security.

The thing to bear in mind is properties with potential fire safety issues have progressed considerably over the last few years. Just because NatWest failed to action the comments of the surveyor in 2019 – that doesn't mean that any other new reports or similar information wouldn't be required now. And there is no evidence to suggest that even if these reports had been obtained in 2019 – that Miss T and Mr W wouldn't have been granted the mortgage.

There are a number of reasons why applications are declined, and I appreciate that Miss T's father also applied for a mortgage to purchase the property – and NatWest have explained that they have spoken to him directly regarding the reasons for the decline.

It may well be that Miss T and Mr W's first buyers were declined because of the property, but certain reports are likely to have been needed to ascertain what if any fire concerns the property may have had. Unless these reports are obtained, some lenders will not accept a property as suitable security.

An EWS1 form was introduced in collaboration between government, the mortgage industry and the surveying industry following the Grenfell Tower tragedy. The fire at Grenfell led to concerns across the country about the possibility of combustible cladding and other fire safety issues – including balconies built on top of each other - which might allow a fire to spread more quickly.

The EWS1 process allows a qualified fire safety inspector to assess a buildings external wall system. The building will then be given a rating – showing there are no fire safety risks, that there are issues but the risk is low, or that there are issues which are high enough risk to require remedial work.

The EWS1 process was designed, among other things, to give mortgage lenders enough information to decide whether a building presented a particular fire safety risk. Lenders will only lend where the property which is subject to the mortgage is good security for the loan and if there's a fire safety risk, it might not be good security. That's because of the higher risk of damage to the property, and also a greater likelihood that it won't be able to be sold.

This is relevant because this has been the process for the last few years. Any properties which may have potential fire safety risks would need certain reports – such as those indicated in the 2019 valuation or the EWS1 for example – to give lenders the assurance they need in order to lend money on the property.

Miss T and Mr W did end up being able to sell their property, so I don't agree that it was unmortgageable or unsuitable security. It's likely that their buyer would have obtained the necessary reports that were needed which meant they were able to purchase the property – so again confirms that Miss T and Mr W's property is suitable for mortgage lending. It's also fair to point out that they sold it for slightly more than they purchased the property, so they have gained from having this mortgage.

I cannot see that there has been a consequential loss with respect to NatWest agreeing to the mortgage and while I appreciate that Miss T and Mr W have outlined the costs they think should be reimbursed, I don't agree that they should be. Any costs in relation to purchasing the property would always have been needed to be paid. And I'm not persuaded that their first buyers application would have solely been declined because of the property. And if it was, reports would have been needed to ensure the property was suitable security – which seemed to have happened when they found their second buyer.

I therefore can't come to the conclusion that the fact the comments were not acted on by NatWest caused a chain effect which meant that Miss T and Mr W's first buyer's application was declined.

NatWest did acknowledge they didn't act on the comments but they said it wouldn't have made a difference to them lending to Miss T and Mr W. And while it's possible they should have acted on the comments, I don't agree that these are the reasons that applications by borrowers wishing to purchase Miss T and Mr W's property were declined. So overall, I don't think that NatWest have really done anything wrong.

Our investigator contacted NatWest and since his involvement, NatWest agreed to pay Miss T and Mr W compensation for the fact they didn't act on the comments. NatWest agreed to pay £250 in recognition of this. Our investigator didn't think this was enough as he said it caused Miss T and Mr W a great deal of stress. He thought that NatWest should pay Miss T and Mr W £600 – which NatWest agreed to.

I've thought carefully about this. Other than NatWest not acting on the comments from the 2019 valuation, I can't say they have done anything wrong. I cannot find the link between them not acting on those comments and future applications being declined because as I've said, reports would have been needed before a lender would agree to lend – as we have seen happen. So I'm not persuaded that NatWest should be offering any compensation to Miss T and Mr W.

However, NatWest said they were willing to offer £250 for the fact that they didn't act on the comments initially and I think this is reasonable. I say this because although I don't think it would have made a difference, I do understand that this caused Miss T and Mr W some stress and upset while trying to understand what had or hadn't happened back in 2019. I don't think that NatWest should pay anymore than this for the reasons I've given above.

Developments

NatWest responded to the provisional decision and accepted what I had said.

Miss T and Mr W also responded but didn't agree with the provisional decision. In summary they made the following comments:

- The property they purchased was not considered fit for lending until the outcome of further assessments had been carried out – then the property could be re-evaluated for lending purposes. These assessments were not carried out by NatWest in 2019 and these issues would have been apparent before Miss T and Mr W purchased the property.
- They were notified by their estate agent that their first buyers were turned down by two lenders because of issues with the property – one of those lenders was NatWest. NatWest changed their stance on lending on their property three years later.
- Miss T's father contacted a broker to help him purchase the property from them, and he was declined by several lenders due to the property issues. A senior mortgage adviser got involved and informed Miss T's father that around 200 lenders that the broker does business with will not lend on Miss T and Mr W's property. They said

there was only one lender that could possibly lend on the property. Miss T's father approached this lender and after the survey had been conducted, the mortgage was declined.

- Miss T and Mr W said they understand there can be various reasons why a mortgage may be declined, but the reasons for the declines in buyers trying to buy their property was to do with the property itself.
- NatWest said they wouldn't initially agree to lend on the property due to the issues. It's only because they raised a complaint where they reversed their decision to lend. This made NatWest one of around 205 lenders that would lend on the property.
- NatWest did eventually agree to lend on their property after so many limitations so it took much more time to sell their property than it should have. Property prices increased during this time but their one didn't.
- They disagree that there was nothing wrong with their property when they purchased it and feel that they have provided clear evidence to support 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.

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I have thought about the comments that Miss T and Mr W have made, and I know they feel very strongly about their complaint. But after considering the arguments they have made; my outcome remains the same.

Their main argument is that NatWest should never have lent on their property because the survey from 2019 said it was unsuitable security until further assessments were carried out.

And because they did, Miss T and Mr W have encountered further problems down the line when they wanted to sell their property – because no other lender would lend on it.

I understand fully the point that Miss T and Mr W are making here. The surveyor did say that the property may not be suitable security until the further assessment took place, but the fact is NatWest did end up lending on the property.

It would be very difficult to unwind what has happened and to know for sure what would have happened back in 2019,. It may well be that once the assessments had been carried out that NatWest may have decided not to lend on Miss T and Mr W's property – but it could also be the case that they did. There is no way of knowing. And I can't conclude that just because other lenders declined the mortgages of prospective buyers – that this means NatWest should not have lent on the property in 2019.

Miss T and Mr W have said they were told by their estate agent that their buyers were declined a mortgage because of the issues with the property – that may well be the case. But I am not going to comment on other borrower's mortgage applications because that is not what is being considered here. I have to look at what NatWest did or didn't do and the impact that has had on Miss T and Mr W.

The fact remains that NatWest did lend on the property and this property has now been sold – and it wasn't sold at a loss which is a major factor.

I appreciate that Miss T and Mr W believe that they lost out on their buyer from 2021 because of the issues with the property which meant the offer they have had more recently was for less money – but there are too many other variables that can occur when properties are purchased.

Their prospective buyer could have pulled out and there are several things that could have also impacted the property that Miss T and Mr W wanted to buy at the time. So it's difficult to say that any financial loss is directly linked to the fact that NatWest lent on the property in 2019 because the assessments were not carried out.

I am not disputing that there wasn't an issue with Miss T and Mr W's property as it's clear from the survey in 2019 that there may have been. But issues with properties such as the one that Miss T and Mr W have evolved over the last few years so I still can't say that because NatWest didn't act on the comments of the valuer – that this meant things may have been different.

I understand that Miss T and Mr W will be unhappy with my decision, but I won't be asking NatWest do anything further other than pay the £250 they offered – which I think is fair and reasonable in the circumstances of this complaint.

My final decision

For the reasons given above and in my provisional decision, I uphold this complaint and direct National Westminster Bank Plc to:

- Pay Miss T and Mr W £250 compensation for the distress and inconvenience they have been caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss T and Mr W to accept or reject my decision before 8 March 2024.

Maria Drury
Ombudsman