

The complaint

Mr and Mrs H's complaint is about a joint buy-to-let mortgage they applied for with National Westminster Bank Plc (NatWest). While they consider that approval of the mortgage was done in a timely manner, they think it took 'an inordinate amount of time' to finish the process and for them to receive the funds. This caused them to have to delay the purchase of a third rental property with an associated loss of rent. It has also meant they will not benefit in full from the interest rate product attached to the mortgage for as long as they should have and they've said the events caused them a lot of stress.

What happened

Mr and Mrs H applied to re-mortgage a rental property with NatWest on 4 March 2022.

NatWest has confirmed the application was assessed and accepted on 29 March 2022 and an offer was issued. However, on 4 April 2022 Mr and Mrs H's mortgage broker contacted NatWest to ask that the interest rate product be changed. NatWest agreed and an offer was sent to them and the solicitors NatWest had appointed to deal with the mortgage on its behalf. The second mortgage offer was dated 6 April 2022.

While the application was not accepted until 29 March 2022, NatWest has informed us that the solicitors sent Mr and Mrs H a welcome pack on 15 March 2022. The pack included documents, such as those needed to allow NatWest to apply a charge to the property title, that Mr and Mrs H needed to complete. Mr and Mrs H have said they did not receive this documentation.

NatWest has said that on 14 April 2022 the solicitors sent a text message to Mr H's mobile telephone number to chase the return of the documentation that they had been sent. Mr and Mrs H emailed the solicitors on 8 May 2022 to say that they had received a text message, but had not received anything else from the solicitors, and so couldn't return whatever had been referred to.

Two days later the solicitors responded and provided a copy of the welcome pack by email. Mr and Mrs H did so on 13 May 2022. The re-mortgage proceeded and completed on 23 May 2022.

Following a second re-mortgage in Mrs H's sole name completing, Mr and Mrs H purchased the third rental property. They complained to NatWest about the delays and the financial consequences of those delays.

NatWest responded to the complaint in a letter of 20 February 2023. It said that it had appointed the solicitors to assess the parts of the application it was not expert in. As it had appointed a third party, NatWest said it would not be fair for it to be held responsible for the solicitors' actions. It went on to confirm that it was not in question that the solicitors had caused delays in the mortgage process. However, NatWest confirmed that it believed it had not caused any delays and so rejected the complaint.

Mr and Mrs H were not satisfied with the response they received and asked us to consider the complaint.

One of our Investigators did so, but he didn't recommend it be upheld. He was not satisfied that the things the solicitors did, which NatWest could be held responsible for, had caused the delays Mr and Mrs H had complained about. He was not persuaded NatWest was responsible for any losses they had suffered.

Mr and Mrs H didn't accept the Investigator's conclusions. They highlighted that the offer provided by NatWest had confirmed 'The conveyancer will be acting only for us in connection with the mortgage.' They also confirmed that the welcome pack the solicitor said it had sent to their address hadn't been received. The Investigator responded to their comments, but they remained unhappy and asked that the complaint be referred to an Ombudsman.

I issued a provisional decision on 6 March 2024 in which I set out my conclusions and reasons for reaching them. Below is an excerpt.

'NatWest in its final response to Mr and Mrs H said that it would not be fair for it to be held responsible for any problems the solicitors caused. That is not the case. Where a lender delegates parts of an activity to a third party, it remains liable for ensuring that overall activity is completed in an appropriate manner. As such, if the solicitor a lender appoints does not do the job correctly, makes errors or causes delays, the lender is responsible for those omissions and any direct consequences of them. I will be reviewing the complaint on this basis.'

It is normal for a lender to appoint a solicitor to complete the legal works linked to the activity of lending. In relation to a typical re-mortgage all of the activities completed by the solicitor are for the lender's benefit and it is responsible. The first of the activities undertaken would be for the solicitor to provide the borrower with a copy of the mortgage offer and associated documentation they needed to be given or needed to complete. Mr and Mrs H have said they weren't sent this documentation until after they contacted the solicitors in May 2022.

In this case, the timeline that has been presented is somewhat unusual. NatWest has said it didn't assess the mortgage application and decide to lend until toward the end of March 2022. However, it has also put forward that the solicitors sent Mr and Mrs H the welcome pack two weeks earlier. This seems highly unlikely, as a welcome pack would not be sent to an applicant before the mortgage had been agreed. As such, it would seem that Mr and Mrs H are correct that they were not sent the documentation required for the mortgage to move forward until it was emailed to them on 10 May 2022. So the solicitors, acting on behalf of NatWest, delayed the mortgage process between 29 March and 10 May 2022 – five weeks. Had it not been for this delay, it is reasonable to say the mortgage would have completed on 11 April 2022.

The mortgage took 13 days to complete from that point, which seems a reasonable period in the circumstances. As such, it does not appear there were any further delays caused by NatWest once its solicitors provided Mr and Mrs H with the necessary documentation.

Mr and Mrs H have said they have suffered a financial loss in two respects. These being that they will benefit from the interest rate product for less time than they should have, and that the purchase of their new property was delayed and so they have lost out on rent.

In relation to the first issue, the mortgage offer issued on 4 April 2022 details that they would benefit from the interest rate product until 30 April 2027. While I understand what Mr and Mrs H are saying, whether they will suffer a financial loss from this delay can't be

established. I say this as the delay will mean that the mortgage will end five weeks after it would have but for the delays and it is the interest rate they will pay in that last month that would determine whether a loss is suffered. Given how remote that loss is because the term ends in 2038 – and that the interest rate at that time can't be known or anticipated - I don't consider I can make an award for that hypothetical loss.

However, Mr and Mrs H borrowed the money to put toward the purchase of another rental property, along with funds from another re-mortgage. I accept the delay in completion of this mortgage would have delayed that purchase. That in turn would have delayed when Mr and Mrs H began to receive an income from the new property.

Putting things right

If Mr and Mrs H provide evidence of the first rental agreement with their tenants on the new purchase, NatWest would reasonably be liable for five weeks of rent on the property and should pay that sum. I do not propose to add interest to this award for Mr and Mrs H being deprived of this money, as had Mr and Mrs H received this money as rental income, they would have been liable for tax on that sum but will not be on this award.

Mr and Mrs H have also clearly suffered upset and inconvenience in relation to this matter. In light of that, and taking into account the amount of delay caused, I consider NatWest should pay them £250 compensation.'

Mr and Mrs H said that they considered my provisional decision was fair. While they considered the period of delay was much longer than I had concluded, due to the fact the property is used as a holiday rental and would not be occupied 100% of the time, they were happy to accept five weeks of rental as a balanced, simple approach.

NatWest didn't comment on my conclusions, but it did provide some documentation from the solicitors. The earliest of this being evidence of the text message sent to Mr H on 14 April 2022.

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.

NatWest has provided documentation from the solicitors. This starts at the point it sent a reminder to Mr and Mrs H to return documentation that NatWest initially said had been sent on 15 March, but it was referenced as having been sent on 22 March 2022 in the copy text messages. Both of these dates were before NatWest decided to accept the application and so it remains unlikely that the welcome pack would have been sent on either of those dates. In light of this I remain satisfied there was a delay in those documents being sent, and that NatWest remains responsible for that delay.

Mr and Mrs H have said they consider the delay is longer than I have determined it to be, but as they don't have 100% occupancy in the property, they are willing to accept five weeks of full occupancy to settle the complaint.

It is correct that the re-mortgage completed on this property before Mr and Mrs H's purchase could also complete. However, NatWest was not responsible for that delay and cannot be held responsible for any consequences of it. I remain satisfied NatWest was only responsible for a delay of five weeks and so that is the period the redress should be paid for. As for Mr and Mrs H's comments about how they rent the property out and the fact that it is not occupied 100% of the time; that will be taken into account when the redress is calculated.

Putting things right

If Mr and Mrs H provide evidence of the first rental agreement with their tenants on the new purchase, NatWest would reasonably be liable for five weeks of rental income on the property, based on actual figures, and should pay that sum. I do not propose to add interest to this award for Mr and Mrs H being deprived of this money, as had Mr and Mrs H received this money as rental income, they would have been liable for tax on that sum but will not be on this award.

Mr and Mrs H have also clearly suffered upset and inconvenience in relation to this matter. In light of that, and taking into account the amount of delay caused, I consider NatWest should pay them £250 compensation.

My final decision

My final decision is that I uphold this complaint. In full and final settlement of this complaint, I order National Westminster Bank Plc to settle the complaint as detailed above in 'putting things right'.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs H to accept or reject my decision before 18 April 2024.

Derry Baxter

Ombudsman