

The complaint

Mr and Mrs R complain that National Westminster Bank Plc:

- Gave them poor mortgage advice.
- Hasn't provided phone call recordings they've asked for.

What happened

Mr and Mrs R have a mortgage with NatWest. In December 2021, they wanted to port – or transfer – the mortgage to a new property and take out additional borrowing. NatWest agreed to port the existing mortgage and new borrowing on a fixed rate of 1.73% until 28 February 2027. Unfortunately, Mr and Mrs R's purchase fell through.

In April 2022, Mr and Mrs R said that NatWest told them they could buy a property worth up to £800,000 as long as they had a deposit of 25%. They said NatWest told them the existing application could be amended and it would honour the 1.73% rate as long as the mortgage completed by 16 July 2022. Mr and Mrs R said that based on that information they had an offer accepted for a property that cost £765,000.

In May 2022, Mr and Mrs R said that NatWest told them that they needed to increase their deposit to around 27%, but the mortgage offer was secure. They said they obtained a gift from Mrs R's parents to make up the additional amount.

In June 2022, Mr and Mrs R said that NatWest told them they'd need to increase their deposit to over 31%. Mr and Mrs R were unable to proceed on that basis.

Mr and Mrs R complain that NatWest:

- Gave them incorrect and misleading information about the terms on which it was prepared to lend.
- Led them to believe the mortgage offer was guaranteed and secure. NatWest went back on that and took action to make sure it did not have to honour the original interest rate.
- Had not recorded and preserved phone calls where the mortgage application was discussed.
- Had withheld information when they made a data subject access request (DSAR).

Mr and Mrs R want NatWest to:

- Agree a mortgage with a 25% deposit and a five year fixed rate of 1.73%.
- Compensate them for the impact on their physical and mental health – and the damage to Mr R's reputation at work due to the amount of time he's had to spend dealing with this matter.

- Compensate them for the increase in house prices and any additional fees and charges.

I issued a provisional decision, Subject to any further submissions, I said that NatWest's offer of £1,727.42 was fair. My provisional findings, which form part of this decision, were:

Phone calls

The rules that apply to mortgage advice are called the Mortgages and Home Finance: Conduct of Business sourcebook (MCOB). They set out the requirement for firms giving mortgage advice and in lending. The relevant part for advice is MCOB 4.7A. I must take the rules, amongst other things, into account when deciding what I consider is fair and reasonable in the individual circumstances of this complaint.

There is a requirement for a firm giving mortgage advice to make and retain a record of a customer's needs and circumstances and why the firm has concluded its advice is suitable. There is no specific requirement under the rules to record phone calls where advice is given. I'd note that there is such a requirement in other parts of the rules – so it is not a case where there is an implied requirement to record calls – MCOB sets out when there is such a requirement. So I don't consider there has been any breach of MCOB by NatWest in not keeping recordings of the phone calls.

NatWest's explanation of whether it has a policy to record calls is not particularly clear or straightforward. It told us that there isn't a specific policy – but all "mortgage appointments" should be recorded. It said there was training given to advisers during Covid that recommended mortgage advisers should log into a system that records any outbound phone calls – and that they should make sure "where possible" that all customer interactions are made by outbound calls using the recording system.

But NatWest said, if the advisers were logged in to the system, they could not receive inbound phone calls. So in practice it meant that advisers logged out and did not always remember to log back in for outbound calls. That seems like poorly implemented guidance to its staff. And in my experience, it would be best practice for any such calls to be recorded. So I agree with Mr and Mrs R that NatWest has not treated them fairly or reasonably by not recording the phone call. I consider if it had acted with due care and in line with its own guidance, then it ought to have recorded and kept a recording of the phone calls it had with Mr and Mrs R.

In saying that, NatWest is a regulated financial business. It would be a serious step for it not to give us any relevant call recordings that it had. Bearing in mind the focus of this complaint and the evidence I have, I consider it less likely that the call recordings exist. In such circumstances, where evidence is incomplete, then I must reach a conclusion about what happened on the balance of probabilities – so what is most likely to have happened based on the evidence that is available to me.

I know Mr and Mrs R think there is a conspiracy by NatWest to conceal evidence or hinder our investigation. But I consider it is more likely that there was a lack of a clear or robust policy regarding recording phone calls – and that employees did not follow the guidance that was in place.

It is not for me to refer individual matters to the FCA. We do have an obligation to pass information to the FCA in certain circumstances – but that will usually be for wider issues that come up in a group of complaints.

If Mr and Mrs R consider that NatWest has not fully complied with a DSAR then the Information Commissioner's Office is best placed to deal with that. Although I can't see that NatWest is withholding anything from them.

Mortgage advice

I accept that Mr and Mrs R have brought their complaint in good faith and that NatWest's handling of this matter has caused a lot of unnecessary confusion. But I am going to explain why, even if I were to accept everything they've said about what happened, that would not change the outcome in this case.

It is not in dispute that NatWest did not always give Mr and Mrs R clear, fair and not misleading information about the process for applying for a mortgage or the terms on which it was prepared to lend to them. It seems more likely than not that it led Mr and Mrs R to believe that it would be much more straightforward than it actually was to switch the existing offer to a new property and that it did not make sufficiently clear what further checks would be needed.

If NatWest told Mr and Mrs R that it would honour the 1.73% offer no matter what, that was incorrect. In my experience, it would be unusual for a member of staff at a lender to make such an unqualified statement – and I note that no mortgage offer was ever issued for the increased amounts. But even if they did say that – or even did not explain things as clearly as they should have – it does not mean that NatWest should be required to honour the 1.73% rate or provide a mortgage with a 75% loan-to-value.

Good industry practice and the relevant rules would always have required NatWest to carry out affordability checks before agreeing any new borrowing. It ought to have set out that the success of any application was always going to depend on it assessing the application and considering affordability – and that it could not give a definitive figure about how much could be borrowed until a full application had been made and considered and a mortgage offer issued.

I don't consider it would be fair for me to say that NatWest should waive its usual affordability requirements or that it should honour indefinitely an interest rate it offered someone. It would be unreasonable for a mortgage lender to give an irrevocable guarantee to lend without carrying out an up-to-date affordability assessment.

I consider the correct position was that NatWest was prepared to honour the 1.73% interest rate, providing the revised mortgage application was affordable for Mr and Mrs R, it did not exceed the maximum loan to value for the product of 75% and met any other of its usual requirements. It would not be fair or reasonable for me to say that a lender should proceed with a mortgage where it has reasonably decided that it is not affordable.

I would add that it appears there was an error by NatWest in May 2022 in telling Mr and Mrs R that they only needed an additional deposit of around £15,000. It appears that NatWest had the same information about their income at that point as it did in June 2022. So it gave Mr and Mrs R a further misleading indication about how much they could borrow from on or around 10 May 2022. I have taken that into account. Although Mr and Mrs R must have known at this point that the earlier information was incorrect and that their application was subject to new affordability checks.

There is no evidence that NatWest fabricated the affordability issues so it did not have to honour the 1.73% rate.

The question for me is, if NatWest had explained the position clearly and correctly, would it have made any difference to the position Mr and Mrs R found themselves in? I'm not persuaded that it would have. Mr and Mrs R had their hearts set on moving house. I can see that Mr and Mrs R had already arranged to view a property before they spoke to NatWest on 29 April 2022. NatWest could not give a guarantee it would lend Mr and Mrs R a certain amount until it had carried out its full underwriting – and it appears that it was not in a position to give a revised indication of how much it could lend until around 10 May 2022, when it received up to date income and expenditure information from Mr and Mrs R.

So even if NatWest had given a much clearer explanation of the process involved in April 2022 and that lending was not guaranteed until a mortgage offer was issued, Mr and Mrs R may have continued with the same sale and purchase to largely the same extent they did – albeit they would have known by mid-May that NatWest would not lend them as much as they needed to proceed.

Even if NatWest had told Mr and Mrs R at the outset that the amount they could borrow less than their expectations, that left them three options, bearing in mind they did not want to incur an early repayment charge on their existing borrowing 1) negotiate a lower price on the property they wanted to buy 2)) stay as they were or 3) attempt to buy a cheaper house.

We know that Mr and Mrs R could not negotiate on the price of the property they were buying. The evidence we have shows that they weren't able to do that. And there was no financial loss if they stayed as they were.

If Mr and Mrs R attempted to buy a cheaper house, they would still have needed to complete their sale and purchase by 16 July 2022 to obtain the 1.73% interest rate. I consider it would be difficult for me to conclude that it is more likely than not that Mr and Mrs R could have done that. There are lots of things that might have prevented that happening in time.

Mr and Mrs R would have needed to find a suitable property (for both them and NatWest) within their price constraints, make a suitable offer, go through the conveyancing and application process and complete both the sale and purchase within around two to three months – and for there to be no other issues elsewhere in the chain. There are too many uncertainties and variables for me to reasonably find that Mr and Mrs R would have completed any such notional sale and purchase in time – and I do not see how any such financial loss could reasonably be quantified.

Further, I'm not aware that Mr and Mrs R have taken any steps to move home. I can see why they didn't do so – they'd clearly found the process they went through very difficult and stressful. And then what they could afford was affected by increases in interest rates and house prices. So I see the practical difficulties they would have experienced. But it also makes it more difficult for me to find that they could have found a cheaper, suitable property had they been given the correct information.

It follows, that NatWest is not responsible for any increase in interest rates or house prices. Mr and Mrs R might have found themselves exposed to those increases in any event. I don't consider it would be fair for me to say that NatWest should compensate them for any increase in interest rates or house prices. Mr and Mrs R have not actually incurred any loss as things stand – and it would be difficult for me to fairly conclude that NatWest was responsible for any increase in house prices and interest rates at some unknown point in the future were Mr and Mrs R to move home.

NatWest said that it was prepared to honour the 1.73% rate until 16 July 2022. I can't see any reason why that should be extended. And, bearing in mind NatWest's duty to consider affordability, I could not fairly or reasonably say that it should guarantee that Mr and Mrs R

should borrow 75% loan-to-value on any new borrowing. The amount they can borrow would always be subject to an affordability assessment based on their circumstances at the time. NatWest has offered to pay the fees Mr and Mrs R incurred because of the aborted sale and purchase totalling £727.42. I consider this offer is fair. I can't see we have any evidence of any additional fees that Mr and Mrs R actually paid.

Mr and Mrs R have said that this matter has negatively impacted their home life, general wellbeing and health. I accept that the lack of clear, fair and not misleading information has contributed to that. But Mr and Mrs R were in the process of buying and selling a house. That was already a stressful process. I accept that NatWest's acts and omissions added significantly to that.

NatWest caused Mr and Mrs R a great deal of distress, inconvenience and suffering over around three months with ongoing effects – and I was particularly sorry to hear about the impact on Mr R's health. Our guidance says that we would make awards of between £750 and £1,500 where the impact of a business's mistake has caused substantial distress, upset and worry. There may have been serious disruption to daily life over a sustained period, with the impact felt over many months, sometimes over a year.

In all the circumstances, I consider that NatWest's offer of £1,000 is fair and reasonable for any distress, inconvenience, pain and suffering they've experienced – and that includes any additional worry caused because not all of the phone calls they had with NatWest were recorded. Looking at how we award compensation, this is still a substantial award.

NatWest accepted my provisional decision. Mr and Mrs R did not. They made a number of points, including:

- They believed several emails had not been provided to me and there were gaps in my provisional decision because of that.
- We should provide a document register as required under the Civil Procedure Rules.
- In the absence of all the relevant phone calls, it was false to say that I have considered all of the available evidence.
- I should take into account other parts of MCOB.
- They'd requested an illustration from NatWest by email on several occasions to confirm the mortgage offer made verbally. NatWest failed to provide any response and was unable to provide proof of the work carried out by its mortgage advisers. MCOB says all interactions should be documented and retained for a year. We have evidence showing the absence of an illustration.
- All of the mortgage appointments were to be recorded – and that included pre-arranged calls.
- NatWest's data subject access team said that all calls relating to the sale of a regulated product should be retained for six years and that it was carrying out a review to determine the reason for that. We should comment on the review.
- Multiple emails show that NatWest told them to call at set times as opposed to outbound calls from NatWest being made at set times. There is evidence that NatWest sought to circumvent that policy and bypass call recording requirements. That is reflected in the engagements that led to the collapse of their sale and purchase. We have evidence to

support that.

- An acknowledgment that a regulated business has failed to follow its policy is a very serious matter – as it staff not knowing regulations. We should escalate this to the FCA.
- If NatWest had accepted that its mortgage advisers failed to comply with its policies on data retention then it has acknowledged that there is a wider systemic issue that would have impacted thousands of consumers.
- During multiple phone calls, affordability checks were carried out by NatWest. It was following those checks that it was determined that they'd need an additional £15,000 to increase their deposit. That was after NatWest confirmed it could lend 4.5 times their salaries. It was on condition of the increased gifted deposit that the mortgage offer would be finalised.
- On 27 May 2022, they confirmed that the additional £15,000 deposit was available – so the amount they were borrowing matched the “industry standard” of 4.5 times their combined annual earnings – that is what NatWest offered at that time. So the deposit meant they met affordability requirements. So the actions taken by NatWest after that were unreasonable.
- Their payslips show that they were borrowing 4.5 times their combined income – and NatWest had three months bank statements.
- NatWest claimed to have run an affordability check on 7 June 2022. Had the bank provided evidence of that as it does not show on their credit files.
- In late May and early June 2022 the evidence shows NatWest had agreed to lend them 4.5 times their combined income at a fixed rate of 1.73% over five years. The lending criteria outlined on 10 May 2022 by NatWest was met by them when they increased their deposit by £15,000.
- In my provisional decision I had failed to acknowledge the additional gift of £15,000 in May 2022 as requested by NatWest and that met the affordability requirement. There was no need to negotiate a lower price.
- Mr R sent NatWest an email of 13 May 2022 asking about the early repayment charge – but it failed to respond.
- After emailing NatWest on 27 May 2022 to explain they had the gifted deposit and that they were ready to complete their sale and purchase, they attempted to contact NatWest a number of times to finalise the mortgage. NatWest failed to respond at all before they received several short phone calls from it on 7 June 2022. This was when it reneged on its earlier mortgage offer.
- They have provided emails which show that they were unable to sell their home between January and June and September and October 2023. They attempted to sell through two different estate agents. They were advised that they would have to accept a reduced price to achieve a sale. It is that fluctuation that led to them seeking compensation for a financial loss of £80,000.
- Had NatWest finalised the offer they would have been protected from increased mortgage interest rates, the rise in prices of the properties they were looking to buy and the decrease in value of their own property.

- We have evidence to show that they passed an affordability assessment pending the additional gifted deposit. They met all the criteria to lend at 4.5 times income. And NatWest continued to offer comparable mortgages to would be customers.

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.

Evidence

We are an informal alternative to the courts. The Civil Procedure Rules do not apply to us. There is no requirement for us to provide a document register. Everything Mr and Mrs R have provided has been added to our file – including a significant amount of duplicated information.

Ultimately, it is for me to decide if I have sufficient evidence to determine a complaint. I am satisfied that I do. I note that just because I have not referred to a specific piece of evidence does not mean that I have not taken into account. And while Mr and Mrs R might not agree with how I have interpreted the evidence or the weight I have put on it, it does not follow that I have not taken it into account.

Phone calls

There is nothing I can usefully add to what I said in my provisional decision. Again, just because I have not mentioned a specific rule, does not mean I have not taken it into account.

Mortgage advice

The reason NatWest did not provide an illustration is because things had not reached a stage where a formal application was made.

There is a great deal of confusion here. That is not Mr and Mrs R's fault – it is as a result of failures by NatWest in communicating things properly. But the fact is that Mr and Mrs R's application was at an early stage. There had been no formal application and, importantly, no binding mortgage offer for the new property or the amount Mr and Mrs R needed to borrow. So while I agree that NatWest did not treat Mr and Mrs R fairly there was no obligation for it to offer the mortgage that was being discussed – things were at an early stage. Overall, I don't see how I could require NatWest to provide Mr and Mrs R with the mortgage that was being discussed.

I'm afraid Mr and Mrs R are wrong that the only affordability requirement was that the loan was 4.5 times their combined income. MCOB 11 sets out the requirements for mortgage lenders in assessing affordability. While they can impose a limit expressed as a multiple of a customer's income, it also needs to demonstrate that the loan is affordable having taken account of their income and expenditure – and there are detailed requirements about how it should do that.

It was fair and reasonable – and in line with regulatory requirements – for NatWest to assess affordability before deciding whether to give Mr and Mrs R a mortgage. That is the reason why NatWest was not prepared to lend Mr and Mrs R as much as they wanted or even proceed to a full application. I'd note that while Mr and Mrs R were potentially using

NatWest's "amend and reapply" process, that would still involve a full application to be considered.

NatWest, like many lenders will carry out preliminary affordability checks before moving on to a full application or providing advice. The preliminary check would not usually involve a credit check. That is what NatWest was doing with Mr and Mrs R between April and June 2022. The affordability requirements can change over time – and looking at things again the change in the amount NatWest was prepared to lend between 10 May and 7 June 2022 might have been due to a change in NatWest's affordability criteria, rather than an error by NatWest in overstating how much Mr and Mrs R could borrow in May. I don't consider that changes the outcome here.

When NatWest reviewed the proposed application, it decided that the amount it could lend Mr and Mrs R was lower than it initially indicated. That was a legitimate decision for it to make. Even if NatWest had considered a full application, we do not know if it would have been successful. For example, there might have been issues with the valuation of the property or when further underwriting checks were carried out. And even if the application had been approved, we do not know that Mr and Mrs R's sale and purchase would have completed. I understand they had not exchanged contracts on either the sale or purchase. So I am unable to say whether Mr and Mrs R would have completed their sale and purchase if a full application had been considered.

I agree that NatWest did not communicate well and overstated the likelihood that Mr and Mrs R's application would be successful and how much they could borrow. But even if I accepted everything that Mr and Mrs R have said, I don't see how I could reasonably require NatWest to lend them the amount they wanted or compensate them in the way they want. They never had a formal mortgage offer for the property they wanted to buy for the amount they needed.

I haven't seen any evidence that if NatWest had explained things in a much more balanced and clear way at the outset, that Mr and Mrs R could have done anything differently. They would not have been able to proceed with their intended sale and purchase.

I think NatWest's offer to settle the complaint is fair – for the same reasons set out in my provisional decision. That includes for any service issues that Mr and Mrs R have highlighted. And I haven't been given any evidence that Mr and Mrs R paid more than £727.42. So I see no reason to increase the amount NatWest should pay Mr and Mrs R.

I know Mr and Mrs R will be very disappointed with my decision. But I can't see how I could fairly and reasonably require NatWest to do anything more.

My final decision

My final decision is that National Westminster Bank Plc has made an offer to settle this complaint which I consider is fair in all the circumstances.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R and Mrs R to accept or reject my decision before 22 May 2024.

Ken Rose
Ombudsman