

The complaint

Mr O complains that National Westminster Bank Plc took repossession action following the end of the term on his buy to let mortgage, and added legal costs to his mortgage balance.

What happened

Mr O had a buy to let mortgage with NatWest, on interest only terms. His fixed interest rate came to an end in May 2020, at which point the loan reverted to the standard variable rate (SVR). The term of the mortgage ended in June 2020, at which point the whole capital balance of around £120,000 was due for repayment.

Mr O wasn't able to repay at that time. Mr O had asked for further borrowing of £40,000 in March 2020, which NatWest had declined at the time. In June 2020 Mr O asked for a term extension to allow him time to re-mortgage to another lender. He said the property was not tenanted and he had recently begun a loft conversion which he hoped would increase its value. Once that was complete, he would look to re-mortgage. NatWest agreed to allow until December 2020, later extended to March 2021.

In May 2021 Mr O told NatWest his building works had been delayed by bad weather. NatWest wouldn't agree to a further extension. But it said it wouldn't take legal action at that time because of the coronavirus pandemic.

NatWest says it made further attempts at contact over the following months; Mr O disputes that. In any event, by mid-2022 the mortgage remained outstanding, and so NatWest instructed solicitors. The solicitors issued possession proceedings, and a hearing was listed for January 2023. Mr O said he would be away at the time of the hearing, so NatWest agreed to an adjournment and said it would allow a further 90 days for the mortgage to be repaid. A new court date was set for 31 March 2023.

In February 2023 Mr O said that the property was now on the market. He said that he was also in the process of selling another property and would use the proceeds of sale to repay the balance on the NatWest mortgage.

In March 2023 Mr O said he had around £80,000 in liquid investments and £60,000 in cash savings. He proposed paying £60,000 immediately, followed by £5,000 a month for 12 months. NatWest rejected this offer and said it would expect full repayment immediately. But it agreed to a further adjournment of the court proceedings to allow Mr O more time to complete on the sale of his other property.

When no payment was received, NatWest applied for another court date. In July 2023 Mr O told NatWest that the sale of the other property had fallen through. He said that the property was back on the market. He said he understood that the government had agreed with mortgage lenders to delay possession proceedings for 12 months. He said he would pay £23,000 within 7 days, followed by monthly payments of around £4,000, until the property was sold.

A new court date was set for October 2023. Mr O complained about the court proceedings

and that the legal costs were being added to his mortgage balance. He complained that NatWest had declined his applications to extend the term and not responded to his latest proposal. The hearing was adjourned pending resolution of the complaint.

NatWest didn't uphold the complaint, so Mr O referred it to the Financial Ombudsman Service. Our investigator didn't think NatWest had acted unfairly, so Mr O asked for the complaint to be reviewed by an ombudsman. In the meantime Mr O has made a series of payments, substantially reducing the outstanding balance. But he remains unhappy that NatWest has included legal fees in the amount it expects him to pay.

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 think it's important to say that the starting point here is that Mr O agreed to repay the capital balance at the end of the term of the mortgage, in 2020. It's therefore fair and reasonable for NatWest to expect him to do so – though where he wasn't able to, it should act fairly and show reasonable forbearance, and should give fair consideration to any alternative proposals or applications he makes. It's also important to bear in mind that this is a buy to let mortgage – meaning that Mr O is not a risk of losing his home, and that this is not a regulated mortgage subject to the rules that apply to residential mortgages. It's also not subject to the government's mortgage charter for the same reasons.

Although this was partly due to the coronavirus pandemic, NatWest allowed Mr O until 2022 to find a way to repay. In May 2022 it sent a letter notifying Mr O of its intention to take possession proceedings unless the mortgage was repaid.

Shortly afterwards Mr O spoke to NatWest. I've listened to the call recording. There was no agreement reached on that call. Mr O said he had done some renovations to the property. He also said he was owed a substantial amount of money by his company. He said he was currently abroad but when he returned to the UK he would send NatWest evidence that the property was on the market. NatWest said that it would only stop further action if there was an agreed sale with a completion date – just being on the market wasn't enough.

As there was no sale imminent, NatWest instructed solicitors. The solicitors wrote to Mr O in June 2022 saying they had been instructed to issue proceedings. This wasn't a formal "letter before action" as required by the pre-action protocol for mortgage possession proceedings – but one wasn't required, because the protocol doesn't apply to buy to let mortgages.

The solicitors didn't take action immediately, but legal proceedings were issued in December 2022. Mr O filed a defence on the basis that NatWest had not acted fairly because it had previously been content to allow the refurbishments to continue and then the property be sold, and had issued proceedings without contact or notice that it planned to do so. He also said he would be out of the country at the time of the hearing listed in January 2023.

The January hearing was adjourned and re-listed for 31 March 2023. After Mr O provided evidence that his other property was being sold NatWest agreed for an adjournment to allow that to happen. It told Mr O in an email on 13 March that it would require updates on progress every 28 days.

Mr O didn't send in regular updates and as no payment had been received, and Mr O hadn't told it what was happening with the sale of the other property, NatWest instructed its solicitors to apply for a new hearing date in June 2023. The court listed the hearing for 6 October.

The solicitors wrote to Mr O notifying him that they were going back to court, and he contacted NatWest in early July. He explained that the sale had fallen through, and offered to pay a lump sum of around £23,000 followed by £4,166 per month. There were several calls over the following days as Mr O was having difficulty making the payment – he managed to pay £10,000 on 18 July and again on 20 July. NatWest accepted the payments but didn't respond to Mr O's proposal at this time.

Mr O paid £4,000 in early September 2023 and called NatWest to discuss taking out a new buy to let mortgage to replace this one, or extending the term of this mortgage. NatWest said it would need various pieces of information about his finances to consider an application. It instructed the solicitors to stop the legal action while this happened. By early October Mr O's application hadn't been decided – the underwriter asked for copies of Mr O's bank statements and a tenancy agreement for the property. However, Mr O made a series of payments to reduce the balance.

Following those payments, the remaining balance was around £8,500. Mr O has not repaid this amount – other than paying monthly interest – as he disputes that he owes it. This sum is largely made up of legal fees added to the mortgage balance.

I appreciate this is something Mr O feels strongly about. But I'm not persuaded that NatWest has acted unfairly. By the time it issued proceedings, at the end of 2022, the mortgage term had expired over two years before but Mr O hadn't repaid the capital. He had kept up with the interest payments, but that wasn't enough – the whole mortgage was outstanding. NatWest had allowed Mr O more time to repay, but it had also made clear it wouldn't allow further time. Even after it made clear that it was instructing solicitors to take repossession action unless there was a completion date for sale of the property, Mr O had a further six months to repay before proceedings were actually issued.

Taking into account that this is a buy to let mortgage – and so Mr O was not at risk of losing his home, and was instead renting out property as a commercial venture – I think NatWest allowed a reasonable time for him to find a way to repay the capital before it took legal action.

The costs of the legal action increased because of the adjournments. But NatWest wasn't responsible for the hearing dates set by the court – including those arranged when Mr O was out of the country. NatWest allowed a series of further adjournments for Mr O to make arrangements to repay. I don't think it's unreasonable that the costs of the adjournments are added to the mortgage balance. Given the time that had passed before December 2022, it was reasonable to take legal action. And it was reasonable to allow Mr O further time even after proceedings were issued. But doing so came at a cost to NatWest – and the mortgage terms and conditions allow it to add those costs to the mortgage balance. NatWest should have responded to Mr O's proposal in July 2023, but I don't think this made any difference – since it had already asked the court for a hearing (which was listed for October). The hearing was vacated when Mr O began to make capital overpayments.

I'm therefore satisfied that it's fair and reasonable for NatWest to expect Mr O to pay the legal costs as well as the mortgage borrowing before it will agree that the loan is repaid in full. It had allowed Mr O over two years to repay his mortgage balance, and he only began to do so after it had begun legal action. I don't therefore uphold this complaint.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or

reject my decision before 7 January 2025.

Simon Pugh
Ombudsman