

The complaint

Ms T complains that NATIONAL WESTMINSTER BANK PUBLIC LIMITED COMPANY (NatWest) won't allow her to take a new fixed rate on her mortgage without the consent of her ex-husband, who is a joint borrower on the mortgage. Ms T's ex-husband is not a party to this complaint.

What happened

Ms T has had a mortgage with NatWest for a number of years which was in joint names with her now ex-husband. A court order in 2016 passed all interest in the property to Ms T and required her to indemnify her ex-husband against all future payments due to the mortgage. Over the years Ms T has been able to take a new fixed rate product for the mortgage without having to gain agreement from her ex-husband, most recently in 2022.

In 2024, Ms T's fixed rate was coming to an end, and she contacted NatWest to arrange a new fixed rate. But NatWest wouldn't allow Ms T to take a new fixed rate product without the consent of her ex-husband. Ms T complained about this saying that she'd always been allowed to do this previously. She referred to the court order which said she was required to indemnify her ex-husband against this mortgage and that her relationship with her ex-husband was not good.

Ms T explained that she was now required to sell the property because of the court order, and she was trying to do so, but she couldn't afford the payments if the mortgage reverted to NatWest's standard variable rate (SVR). Her monthly payment was due to increase by more than £2,500 per month. Ms T accepted that an early repayment charge (ERC) would be applied if she took a new fixed rate and then redeemed the mortgage before the fixed rate ended, but she said this would be paid out of the equity in the property which her ex-husband had no interest in as per the court order.

NatWest didn't uphold the complaint. It explained that a new support team had been set up since she last took a fixed rate to consider requests such as this. And that her request for a new rate without the consent of her ex-husband had been declined by the support team on this occasion. NatWest told Ms T that her request had been declined because she'd previously made overpayments and it was satisfied the mortgage was affordable to her.

Unhappy with this response, Ms T referred her complaint to our Service. She didn't agree with the reasons that NatWest declined her application for a new fixed rate. One of our Investigators looked into matters. He didn't think NatWest had acted unfairly in declining Ms T's application for a new fixed rate without the agreement of the joint borrower.

Ms T didn't agree with this and asked for the complaint to be referred to an Ombudsman. So, it was passed to me to consider.

I issued a provisional decision on 9 April 2024. In this, I said:

NatWest told Ms T during a phone call that her request for a new fixed rate had been declined because she'd made overpayments, and the monthly payment was considered

affordable to her. However, in its response to our initial request for information, NatWest told us that Ms T has stated that her ex-husband has now objected to a new rate being requested. More recently, NatWest has told us it no longer agrees to any fixed rates without the consent of both parties. Based on this, it's very unclear why NatWest has declined Ms T's request on this occasion, despite agreeing to the same on many previous occasions.

I've seen a copy of internal notes which suggest that NatWest isn't willing to agree to a new fixed rate because it believes Ms T is able to afford the current payment and is making overpayments. I asked for a copy of the affordability assessment NatWest has carried out to confirm Ms T can make payments at the SVR, and it's confirmed no affordability assessment has been completed. Whilst I can see Ms T has made some over payments over the past, none of these overpayments are to the level of the new monthly payment once the mortgage reverted to the SVR. Furthermore, making ad-hoc voluntary payments is very different to being able to make a significantly higher payment every month. Affordability of the SVR doesn't prevent existing customers from doing a rate switch so it is unclear why NatWest is imposing an additional standard on Ms T and therefore treating her differently to its other consumer groups.

I've also seen no evidence that Ms T's ex-husband has objected to a new fixed rate for this application. NatWest says Ms T said he had objected in her complaint form to us, but this is wrong. The part of our complaint form NatWest is referring to says he did object in 2022, but that NatWest provided her with a new fixed rate following her making a complaint. I've seen nothing to suggest Ms T's ex-husband has intervened again since. In fact, during a phone call when NatWest confirmed that Ms T's application for a new rate had been declined, she is specifically told that it has had no recent contact with him.

I've seen a copy of the court order Ms T refers to. And it's clear that she is responsible for indemnifying her ex-partner against all mortgage payments from the date of the order and for now selling the property. She's also entitled to the full proceeds from the sale. So, other than a liability for the mortgage, it seems Ms T's ex-husband has no further interest in the property. I've also taken into account that Ms T has maintained the payments on this mortgage for many years on her own without the input of her ex-husband. Given that Ms T is required to indemnify her ex-husband against the mortgage, and that if she's unable to make payments at the SVR his credit file would be adversely affected, it's likely he would be disadvantaged by NatWest's refusal to grant a new fixed rate.

The matter of an ERC applying whilst Ms T is trying to sell the property shouldn't be a factor here. Ms T has confirmed she's aware of this, and that there is sufficient equity to repay this on sale of the property. And, given that the court order gives her ex-husband no rights over the property on sale, I see no reason why the ERC should be a reason to prevent Ms T taking a new fixed rate so that she can maintain her payments.

The court order applies to Ms T and her ex-husband and is not binding on NatWest. Nor does it remove her ex-husband from the mortgage or his liability to pay an ERC. However, given he has not been paying for a number of years and Ms T is legally obligated to indemnify him against any potential ERC, I don't think NatWest would be acting fairly if it declined the rate switch due to the presence of an ERC.

NatWest has previously agreed to rate switches without the agreement of Ms T's ex-partner. I asked NatWest what had changed since then, and it confirmed its process has changed and it now no longer allows this. While NatWest may have introduced a new process for requests like Ms T's, it must still ensure it is applying that process fairly to Ms T's individual circumstances. And for the reasons given above, I am not persuaded it has been able to demonstrate that it has done that here.

In summary, it's very unclear exactly what NatWest has considered, and exactly why it's declined Ms T's application for a new interest rate. Regardless of the reasons, I need to decide whether it was fair for NatWest to not allow Ms T to take a new rate. And, for the reasons set out above, I don't think it was.

For the reasons set out above, I cannot see how NatWest can say the new payments at the SVR are affordable to Ms T. I don't think it's fairly assessed whether these payments are affordable, or the impact of Ms T moving to the SVR. Furthermore, if the payments on the SVR were considered to be affordable, then I see no reason why the fact that the SVR is considered affordable should be a barrier for taking a lower rate. I also don't accept that Ms T's ex-husband has objected to this recent rate change, so I don't believe this is a fair reason for NatWest to decline her request for a new interest rate.

Ms T has also explained to NatWest that she's in a vulnerable position. She's said she does not have a good relationship with her ex-partner and has previously had to report him to the police. I think NatWest should've taken this vulnerability into account when considering this request, and I can't see that it has in this instance.

Overall, I'm not satisfied that NatWest has given Ms T's request fair consideration. It's said it's not willing to agree to the request because it considers the new payments to be affordable at the SVR, despite having carried out no affordability check. And that Mr T has objected to a new interest rate, despite no evidence that this is the case. I think it would've been in Ms T's best interest to have been allowed a new fixed rate. She's explained she cannot afford the SVR payments, she doesn't know how long it may take to sell the property, her priority is to maintain the payments and abide by the court order and is willing to accept an ERC in order to achieve these goals. So, I think NatWest should've agreed to her request.

I think this has had a significant impact on Ms T causing distress and inconvenience. She's had her request for a new fixed rate declined, with no clear reasons provided to her about why this is the case. She's had to pay a number of months at a significantly higher rate than she should've been. And, she's had the worry of not being able to meet these payments which would lead to her both breaching a court order and potentially meaning contact with her ex-husband who she is not on good terms with.

Lastly, Ms T wishes to have her ex-husband removed from the mortgage so that she doesn't have to go through this again. I understand why she wishes to do so, but NatWest has explained that she would need to make a formal application in order to do this. Whilst she has been making the payments on her own for a number of years, I don't consider it unreasonable for NatWest to require a new application to be completed to transfer the mortgage into her sole name. If, once the application is made, Ms T is unhappy with the outcome of this, she may be able to bring this as a new complaint, but I can't consider that matter here.

I invited both parties to respond before 23 April 2024.

Ms T responded. She said she was relieved that what she considered to be common sense had prevailed, but she requested again that we tell NatWest to remove her ex-husband from the mortgage without a formal application being submitted. She also asked for calculations of any redress to be made available to her so she could be confident any redress was correct.

NatWest didn't respond by the deadline.

The complaint is now back with me to consider again and make a final decision.

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.

Having done so, I see no reason to depart from the outcome I reached within my provisional decision. This findings within my provisional decision, and set out above, should be read in conjunction with this final decision.

For the reasons set out above, I remain of the opinion that NatWest hasn't fairly considered Ms T's request for a new fixed rate. It's been inconsistent with the reasons for why it hasn't been able to agree to this. And it's provided nothing further to dispute this. So, I'm satisfied NatWest should allow Ms T to select a fixed rate that would've been available to her when she first requested it.

As I said within my provisional decision, I think this has had a significant impact on Ms T and that NatWest needs to pay compensation for this.

Ms T has asked that I tell NatWest to remove her ex-husband from the mortgage without the need for a formal application. I'm afraid I cannot do so. Lenders are required to assess affordability when granting new mortgages or making changes to existing mortgages such as this. And it's not for me to decide whether Ms T can afford this mortgage on her own or not.

Whilst I can understand why Ms T believes she's demonstrated that she can afford the mortgage on her own, this doesn't mean that she can continue to afford it in the long term. And it doesn't mean NatWest doesn't need to consider a formal application to remove her ex-husband from the mortgage. NatWest would in effect be removing one party that is jointly and severally liable for the mortgage, so it needs to be satisfied that the remaining party (Ms T) can afford the mortgage on their own. And it will do this via a formal application. The court order does require Ms T to indemnify her ex-husband against the mortgage. But the court order doesn't require NatWest to take any action to support this, nor is it binding on NatWest.

I know Ms T will be disappointed by this, but she will need to get in touch with NatWest directly to make this application. I would remind NatWest of its obligations to treat Ms T fairly when assessing this application. If, once the application is made, Ms T remains unhappy, she may be able to bring this to us as a new complaint. But she'd first need to complaint to NatWest.

Lastly, Ms T has requested NatWest provide her with the calculations of any redress due to her so she may check this. This isn't unreasonable, so I'm going to tell NatWest to do so.

Putting things right

For the reasons I've set out above and within my provisional decision, I uphold this complaint.

To put matters right, I direct NATIONAL WESTMINSTER BANK PUBLIC LIMITED COMPANY to:

- Allow Ms T to select a new mortgage rate from those that were available to her when she first got in touch in 2024 to arrange a new rate.
- Back date this rate to her existing mortgage refunding any overpayments she's made directly to her. These payments should have 8% simple interest added from the date they were paid to the date they are repaid to her.

- Ms T's credit file should reflect that she is up to date with her mortgage payments once the above is carried out. If there has been any negative impact to Ms T's credit file since she's been on the SVR, NatWest should remove this.
- NatWest should pay Ms T £750 compensation for the distress and inconvenience this matter has caused.
- Once the above has been done, NatWest should write to Ms T in a clear to understand format showing it's calculations of the redress it has paid her.

My final decision

I uphold this complaint and require NATIONAL WESTMINSTER BANK PUBLIC LIMITED COMPANY to put matters right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms T to accept or reject my decision before 22 May 2025.

Rob Deadman
Ombudsman