DRN-6141950

The complaint

Ms B is a sole trader. She complains National Westminster Bank Public Limited Company mis-sold her a business loan that wasn't suitable for her circumstances. She says this error has had a number of consequences, including a failure to obtain a five year lease over part of the premises.

What happened

Ms B owns two commercial properties, which I'll refer to as property A and property B. Both the purchases were financed by NatWest via fixed rate commercial loans. Ms B later took out further loans to refurbish the properties.

Ms B also owns a limited company, which I'll refer to as the operating company ("opco"). The opco occupies 80% of property B and has done since the property was purchased.

Ms B says that the opco initially occupied 20% of property A, with the remainder leased to other tenants. In 2020, she says this increased to 40% opco occupancy.

In mid-2024, the opco agreed to sell some of its assets and goodwill to a third party, which I'll refer to as the TP. As part of this sale agreement, the TP would move into 40% of A and Ms B agreed to establish a lease in the name of the TP over this portion of the property.

In September 2024, a week before the sale was due to complete, NatWest told Ms B that the sale would cause a breach of the terms of the loan and asked her to pause it. The bank said they should have been asked for consent to the lease.

After various conversations with the bank, a six month licence to occupy was arranged as a temporary measure instead of a lease.

The bank told Ms B that they would not consent to a lease. Her relationship managers ("RMs") told Ms B the only way forward was to refinance the loan as Real Estate Finance (REF") lending, with a higher interest rate and new fees

Since the complaint has been with our service, Ms B has also told us that the bank refused to let her extend the TP's six month licence and so she repaid the borrowing against property A in full. However, the TP, which is now in financial difficulties, has refused to sign a lease and is now on a rolling periodic tenancy.

I issued a provisional decision on 22 January 2026, in which I partially upheld Ms B's complaint and thought the bank should cover the legal costs of the unused lease and licence totalling £2,100, ongoing legal costs of £600 relating to the TP and a £999 fee to refinance Ms B's residential mortgage. I also said the bank should refund any penalty interest charged and proposed compensation of £750 for the strain and distress caused by the bank. I said:

… I have concluded that the bank made an error when it initially offered to lend to Ms B by proposing a product that was not appropriate for her needs. I say this because the opco was never the sole – or even the majority – occupant of property A. I think the bank ought reasonably to have known this from the start of the lending, not least because both the valuations undertaken make it clear that there are other tenants. I also note that NatWest appears to accept that this was a mistake in their latest correspondence with this service.

I am unclear as to whether the bank had another product more suitable for Ms B at the time of the original lending. My view is that, if they did have an investment property loan at that time, then they should have offered that product and if they did not, then they should have made it clear that they didn't have a suitable offering. If they had done so, I think it's more likely than not that Ms B would have sought a more suitable loan elsewhere, thereby avoiding her current problems with the lease.

The bank has argued that Ms B has not suffered any detriment from the opco structure. But I think their error left Ms B in a difficult and stressful position in 2024, when she agreed to sell part of the opco's business, only to find that the bank wouldn't consent to the creation of a lease. The bank insisted that the only remedy was for Ms B to refinance onto a more expensive product, citing a requirement for 50% minimum opco occupancy – a condition which is not in the loan agreement and which I've seen no evidence had ever been mentioned to Ms B previously.

NatWest says there has been no detriment in part because they suggest Ms B would have paid more interest since 2017 had she had an investment loan. No evidence to support this has been provided and I am not persuaded that I should take this into account in its absence, particularly given that Ms B contributed a large deposit to the purchase cost, which would usually bring down the cost of risk-based lending.

My aim in deciding compensation in cases like this is to put Ms B back (or as close to it as I can) to the position she would have been in were it not for the bank's error.

I note that it was NatWest's relationship manager who suggested using a licence to occupy as a temporary workaround. I say this because the first time I've seen a licence mentioned by any parties, including Ms B's legal representatives, was on 17 September when the bank said "Would you be able to manage this on a licence basis for a short period while we work out the Consent to Lease?". Ms B's lawyer then took this forward and asked further questions regarding what the bank would consider acceptable. I think it's fair to say that the licence, with its associated costs, would never have existed were it not for the bank's error.

Ms B is now free to grant a lease, since she has repaid the borrowing secured on property A. But the TP has unfortunately declined to sign (to date) and is now on a rolling periodic tenancy. This means Ms B has less income security, since the TP is able to give 20 days' notice. It is also in general terms no easier to evict a tenant than it would be under a lease. Ms B says that the lack of a lease also has an impact on the valuation of the property, although it is not my understanding that Ms B intends to sell imminently, so I think this is a potential future problem rather than a current loss. As such, I don't think I can reasonably direct NatWest to compensate her for any loss of property value.

Whilst it isn't NatWest's fault that the TP is now in financial difficulties, I do consider it more likely than not that a five year lease would have been signed and agreed in 2024, if the bank hadn't objected because of the product type. Had that been the case, Ms B would not have incurred the ongoing legal costs and a second set of costs relating to the lease (although she would have likely paid for one lease). So I'm minded to direct NatWest to compensate Ms B for these fees.

Without the bank's error, Ms B would still have had to pay arrangement fees for a suitable product, and I have no reason to believe they would have been any lower than those she paid for the opco loans. Indeed, the bank has suggested they would have been higher. I am therefore not going to direct the bank to refund the arrangement fees.

However, Ms B would not have had to pay the fee to refinance her residential mortgage in order to repay NatWest's loans, if the bank had sold her the right product in the first place. I think this cost flows directly from the bank's error so, if Ms B provides evidence of this fee, I consider NatWest should refund it.

Ms B alleges NatWest charged her 56 days of penalty interest on redemption of the lending on property A. If there was indeed penalty interest charged for the repayment of a product that was never appropriate, then I don't think this was fair. I can also not see that any such penalty is included in the relevant terms and conditions. However, I haven't seen the redemption statement and it's possible that the interest was already accrued to the loan, but not yet debited. In the latter case, I would consider it fair to charge all accrued interest up to the date of redemption. I invite either side to provide further submissions and evidence on this point…

Finally, I am satisfied that, by recommending to Ms B the wrong product, the bank has caused her considerable inconvenience and stress over a long period starting in 2024 and extending over most of 2025. We publish information about our approach to awards for distress and inconvenience on our website at:

https://www.financial-ombudsman.org.uk/businesses/resolving-complaint/understanding-compensation/compensation-for-distress-or-inconvenience .

I think the bank's error has caused Ms B significant trouble and disruption that has needed a lot of extra effort to sort out. I also think dealing with this issue will have taken Ms B away from her business for a material amount of time, resulting in reduced earnings. My provisional intention is to award compensation of £750 for this.

NatWest responded disagreeing with my decision, which they said was based on incorrect assumptions. They said there was no error and they had acted in line with bank policy. They made the following points:

- They did not sell an incorrect product. REF lending wasn't possible for Ms B due to the absence of formal lease agreements.
- Risk was assessed in reliance on the opco income, not on rental income, as the opco was occupying the premises.
- They did not refuse to consent to a lease in 2024, rather consent required a reassessment of risk due to Ms B's decisions regarding the sale and vacating of the property.

- The recommendation to refinance on REF terms was driven solely by Ms B's decisions.

- No penalty interest was charged when Ms B redeemed the loan against property A.

- Throughout this period, they had tried to obtain required information, liaise with solicitors, and arrange meetings to support their customer's objectives.

Ms B raised various points regarding the compensation as follows:

- She argued that my proposed award of £750 for strain and distress was insufficient. She estimated she had spent 40-50 hours on this matter and that in her professional capacity, she would have billed £4,800 to £6,000 for that time.

- She provided evidence of severe health conditions, which she said had been triggered by stress caused by NatWest's actions.

- Overall, she considered the length of time taken merited an award in the top bracket of up to £5,000.

- She thought the behaviour of the relationship managers, who had denied mentioning the licence, amounted to gaslighting and merited an apology.

- The £999 fee to refinance her mortgage had been added to the loan and therefore incurred interest at a loan rate.

- The refinancing had also left her in a less advantageous tax position, which should be taken into account.

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 haven't been persuaded to change my provisional view. I think NatWest have acted unfairly by offering Ms B an opco loan that didn't meet her needs and without explaining its implications. And I think this has resulted in Ms B incurring some additional costs, as well as distress and inconvenience. I'll explain why below.

The crux of Ms B's complaint was that, in late 2024, the bank refused to consent to a lease and told her that the opco needed to occupy 50% of property A. She said the opco had never at any point occupied 50% of property A and the bank had never mentioned this requirement previously, so either the bank was wrong in 2024, or they were wrong to have sold her the loan in 2019.

In an earlier response to my enquiries prior to my provisional decision, the bank seemed to accept that Ms B was correct and they were wrong in 2019. They said "We lent borrowing under opco structure at the outset when we should have lent under an investment structure. When we noted the borrowing hadn't been given under the correct structure in line with our policy, we had to put things right." This led me to believe they had accepted their error.

The bank now seem to have changed their stance and are arguing that there was no error. They also seem to have retreated from mentioning the requirement for 50% opco occupancy. Nonetheless, I'm satisfied that Ms B was told this was a requirement in 2024, both verbally and by email. Ms B's email of 10 October 2024 is a clear response to being told of this requirement. She said:

> "Specifically what % of the building am I required to occupy to be classified as Owner/ Occupant. This information was requested over a month ago on September 11th, 13th, 16th 17th and again on October 7th". Please note that I currently have my admin office and storage located at [property A]."

NatWest replied:

> "As owner occupier we look for minimum 50% occupation by the owner of the trading business for the loan to be classed as Owner/Occupant".

The bank now denies that there is a requirement for 50% opco occupancy, saying this is just one option under their policies. But here Ms B has unequivocally been told that opco occupation level was the problem with the TP transaction, even though the bank knew that the opco only occupied 20% of property A at the outset.

At this point, I will say that the loan agreement does not mention this 50% requirement, nor make any reference to a reliance on the opco occupying the property at all. The opco is mentioned, but only in the context of needing to maintain the necessary licences and in the form of an opco default clause. So this is not simply a case of Ms B not reading the agreement.

Further, Ms B has explained that it was always her plan to carry out a transaction along the lines of the sale to the TP, so there was always a likelihood of her wanting to grant new leases and she explained this to her RM at the time. I haven't seen evidence of this, but the bank's RM has changed and Ms B has maintained this point consistently. She is a focussed business person with a clear strategy and I consider her testimony on this point to have the ring of truth.

In response to my provisional decision, the bank have made a new argument to justify the type of loan given to Ms B. They now say they knew from the start that the opco only occupied 20% of property A, in contradiction to what they said before. They have also confirmed that REF lending was available in 2019. But they say Ms B wasn't eligible for REF lending, because there were no formal tenancy agreements.

Ms B says this is untrue. She says that a formal agreement was and remains in place with the other occupant of the building, who has been a longstanding tenant since the 90s, and that a copy of this lease was provided to the bank in 2019. I haven't seen this lease, so I make no finding on this point, but if the bank is right and there was no lease, then it seems to me that still applies now - and yet now they seem to think they can only provide REF lending. I do also note that the 2016 valuer believed there to be a lease, albeit unseen.

Given that the longstanding tenant remains in place, and that Ms B's main tenant, across her two properties, is still the opco, I am not persuaded that the bank would in reality have sanctioned a REF loan, even if they had consented to the new lease to the TP. I find the bank's stance to be contradictory on this point.

It seems to me that the bank further confused this position by repeatedly misunderstanding the nature of Ms B's transaction with the TP. I say this because NatWest have referred on several occasions to Ms B having "sold the opco", most recently in their response to my provisional decision. But this is not correct. Ms B hasn't sold the opco. Rather it is clear that the opco still exists as a profitable enterprise and in fact still occupies a small part of property A. The opco's balance sheet would appear to be of similar size to when the lending was last restructured in 2019 and is still under Ms B's complete control. Ms B says its turnover has grown substantially since then. It's therefore unclear to me why it is no longer a suitable repayment vehicle in the bank's eyes.

In my opinion, if the bank felt they could only lend in reliance on the opco – and that the opco needed to occupy a minimum proportion of property A to remain suitable – then this should have been clearly explained to Ms B, both when she first took out the loan, and in 2024. I'm satisfied that the loan agreements do not make this clear. And I've seen no evidence that this was ever explained. I think that by failing to explain this – and by making inconsistent statements regarding a 50% occupancy requirement – the bank has failed to treat their customer fairly or in line with industry practice, which I am obliged to take into account.

I consider The Lending Standard Board's Standards of Lending Practice, to which NatWest was a signatory at the time, as a useful indicator of best practice for unregulated lending. These standards mention more than once the requirement for firms to provide customers with "clear and understandable information" to enable them to make an informed choice. I think the bank have failed to do this here. They only told her about their requirements when it was too late.

In saying this, I don't dispute that clause 8.3.3 of the sole trader terms and conditions that applied to Ms B's loans gave the bank the right to consider whether they wished to agree to any proposed leases. It says:

> "The Customer will not, without the consent of the Bank
>
> grant, vary, waive any term of, or accept a surrender of any lease or licence of any property charged to the Bank, or consent to a tenant assigning or sub-letting".

I make my decisions on the basis of what's fair and reasonable in all the circumstances, and my conclusion is that relying on this clause in the specific circumstances here is not fair.

Whilst the clause quoted above gave the bank an option, it clearly envisages the possibility of leases being granted. In other words, it did not say that the borrower could not grant a new lease, only that the bank's consent was required. In reality, the bank seem to have treated granting the new lease as inimical to the existing loan.

I note that the the bank have denied that they refused to consent to the lease to the TP, but I think they effectively refused, by making it contingent on a refinancing. I have looked carefully at the email exchanges between Ms B and the RMs and it's clear that they repeatedly said that they would not consent to the lease and that "the only way forward" was a restructuring, at a higher interest rate and with a new suite of fees.

Because the bank's stance was that they would not consent to the lease without a refinancing, I don't think Ms B could reasonably have mitigated her risk by approaching the bank for consent earlier.

The bank has also mentioned clause 9.1.3 of the loan agreement, which said that "any other circumstances occur in relation to opco which cause the Bank to believe that the customer's obligations to the bank will not be met". However, I am not convinced the bank could reasonably rely on this clause, since, for the reasons already given, I haven't seen any evidence suggesting that the customer's obligations would not have been met, or that the opco was in poorer financial health than in 2019.

I have thought about what would have happened here in the counterfactual where the bank properly explained in 2019 that the loan they proposed relied on the opco's income and that the opco needed to remain a material occupant of property A. Ms B has told us that she already had a plan to grant more leases at that point. As the bank says Ms B wasn't eligible for REF lending, I think it more likely than not that she would have gone elsewhere for funding more suitable for her needs. She would then have been able to grant the lease to the TP without incurring additional legal costs, including those for the licence, which I remain firmly of the view was suggested by the bank.

The bank have made another new argument about mitigation in response to my provisional decision. They've said that they were trying to help Ms B but that she was failing to provide the information they had asked for. In particular, they've said they needed a draft lease. I am not persuaded by this, as I can see at least two emails from the RMs in September, in which they confirm receipt of the draft lease. There may have been other information outstanding, but in any case, I think that were it not for the bank's earlier error, the situation where they were looking for more information would never have arisen.

NatWest also argue that Ms B has not suffered any detriment because Ms B would have paid more interest since 2019 on an investment loan. That may be the case at NatWest, but as they've said they would not have given her an REF loan, I'm not persuaded that is relevant. I don't think there is any certainty as to what she might have paid elsewhere in 2019, so I don't propose to take this into account.

In summary, I still think that the bank's errors left Ms B in a difficult and stressful position in 2024 and that it is fair for the bank to compensate her for this.

Putting things right

I understand why Ms B feels she would like an apology from the RMs, but I have no power to order individuals to act. My intention here is to put her in as close as I can to the position she would have been in without the bank's mistake. I remain satisfied that the compensation proposed in my provisional decision achieves that aim.

I know Ms B still believes that the bank added some penalty interest to the loan when she redeemed it. She says that the balance she was given was the same as the balance over six months earlier. I haven't seen evidence of this earlier balance. However, I'm now satisfied that she hasn't paid any penalty interest. Interest on loans is often debited in arrears as was the case here, and I'm satisfied that the bank added interest up until 8 October and the loan was redeemed on 9 October. I'm therefore not making any award relating to penalty interest.

I would like to thank Ms B for her submissions regarding her health conditions, which she says were triggered by stress caused by the bank. I am sorry to hear she has been through such a difficult time. I have considered this evidence carefully, but I'm afraid I still think that £750 compensation for this stress is fair and consistent with the awards made by this service.

I have taken Ms B's comments regarding her tax position and the £999 fee having been added to the loan into account. But I'm afraid I think it was Ms B's choice to decide to refinance in this particular way. I am already awarding 8% interest for being deprived of the money for a period and I do not intend to increase compensation further.

My conclusion is that NatWest should pay compensation as follows:

- Legal costs incurred for the unused lease and licence totalling £2,100;
- Ongoing legal costs of £600 relating to the TP;
- £999 fee to refinance mortgage
- Compensation of £750 for the strain and distress caused by the bank.

Interest should be added to the first three points above at a rate of 8% simple a year pro rata, calculated from the date Ms B paid each item until the date compensation is paid by the bank. This represents compensation for being deprived of those funds.

If NatWest considers that it is required by HM Revenue & Customs to deduct income tax from that interest, it should tell Ms B how much it has taken off. It should also give Ms B a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

For the reasons set out above, I uphold this complaint and direct National Westminster Bank Public Limited Company to pay compensation as described.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 12 March 2026.

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Louise Bardell
Ombudsman