

complaint

Ms K complains that National Westminster Bank Plc (NatWest) has failed to provide redemption figures for a mortgage secured over her property, withheld information from her, threatened her with court action, and has wrongly charged her interest and pursued her for borrowing taken out by her former husband.

background

Ms K's complaint arises out of difficult divorce proceedings. Prior to the divorce, Ms K's property was owned by her former husband and was the subject of a mortgage with NatWest in his sole name. Ms K registered an interest in the property before the divorce proceedings began, in 2008.

Ms K's former husband took further borrowing on the mortgage in 2009 and 2010, after Ms K had registered her interest in the property. Ms K was awarded the property in the divorce and it was transferred into her sole name at the Land Registry in late 2013. But the mortgage, in Ms K's former husband's name only, remained outstanding and secured on the property. He has borrowed further money from NatWest since the divorce.

Ms K complained to this service about NatWest's decision to allow further borrowing despite her registered interest in the property. In 2013 we said we couldn't look at the complaint because Ms K wasn't a customer of NatWest and didn't own the property. But we did look at it when Ms K complained again in 2016, as by this time she was the owner of the property and thus liable for the debts secured over it by NatWest, which made her eligible to complain. By this time Ms K's former husband was in arrears on the mortgage and NatWest was taking steps to repossess Ms K's property. An ombudsman issued a final decision, in which she said, in summary:

- She wasn't able to comment on Ms K's assertion that her former husband had committed fraud – as it wouldn't be right to make findings about that;
- Ms K wasn't party to any of the borrowing agreed between her former husband and NatWest;
- But NatWest should have known, because of Ms K's registration of interest, that there was a dispute about the property. Lending Mr K further money secured on the property prejudiced Ms K's claim on it;
- NatWest was entitled to refuse Ms K a mortgage in her own name, and hadn't acted wrongly in doing so;
- To put matters right, NatWest should
 - Allow Ms K to redeem the mortgage for the amount of the balance as at the date of the registration of her charge, plus interest at the mortgage rate from time to time between then and redemption. But that obligation was subject to Ms K raising the necessary finance within 12 months of the decision – that is, by February 2017;
 - Separate the affairs of Ms K and her former husband and pursue only him for his other borrowing, not pursue Ms K or secure it against the property;
 - Pay Ms K £1,000 for her trouble and upset.

Ms K wasn't able to raise a mortgage to redeem the charge within the 12 months the ombudsman gave her. NatWest agreed to extend this for a further three months. But Ms K still wasn't able to raise the funds. So NatWest said that its obligation to accept a lesser amount to release the charge had lapsed and it would require the full amount to be repaid.

Ms K has been requesting information from NatWest for many years. She has received many documents and call recordings. But she believes material has been withheld from her. She is unhappy that NatWest has not, as she sees it, honoured the earlier ombudsman's decision by requiring her to discharge the full debt and issuing possession proceedings in both her and her former husband's name – even though the ombudsman said their affairs should be separated. She says she's been given different redemption figures and wasn't given one at all when she first asked in 2015, and the bank won't give her a breakdown of the figure. She also says she's not been made aware of court action and the bank has acted in an intimidating and threatening way towards her. And she said the ombudsman directed that interest shouldn't be charged after February 2008.

Our adjudicator recommended that NatWest pay Ms K £750 compensation, which it agreed to do. Ms K asked for an ombudsman to review her complaint. I decided to issue a provisional decision to allow one more chance for the parties to comment before I make my final decision.

my provisional decision

In my provisional decision, I said:

I'm sorry to hear of Ms K's health problems. I can see she's had a very difficult time in recent years, and she has my full sympathy for the situation she finds herself in. She's asked for a meeting with me to discuss her case. I've carefully considered her request but I don't think it's necessary in this case. I'd like to reassure her that she and her representative have clearly explained her case and I do understand what she feels has gone wrong. I don't think a meeting or a formal hearing is necessary for me to understand the complaint or the background, or for me to obtain evidence that couldn't be got in another way. Our process is intended to be informal. I am issuing a provisional decision, which gives Ms K and her representative another opportunity to draw matters to my attention before I make a final decision.

However, I don't think that I can fairly uphold this complaint in the way that Ms K wants, so I'll explain why.

This whole situation stems from Ms K's separation from her former husband, the agreement they reached on divorce and the difficult relationship between them. The problem is that Ms K owns a property which is security for Mr K's debts. Mr K isn't in a position to repay his debts so the bank wants to enforce its security – which means repossessing Ms K's property.

Much of this was dealt with in the previous ombudsman's decision. I don't have the power to set aside her findings or change the outcome of her review of that case. But I do think there's been some confusion about the implications of what she directed, so I'll set out what I think is the appropriate way forward.

Mr K took a mortgage with NatWest. He gave a charge over the property – which, at the time, belonged to him. He took further advances on the mortgage, even after Ms K registered her interest in the property. The previous ombudsman said that NatWest should not have allowed that to happen, and that Ms K should be given the opportunity to redeem the mortgage for the amount it stood at on the date the charge was registered. That was a time limited obligation – and Ms K didn't do so within 15

months (the 12 directed by the ombudsman, together with the extra 3 NatWest allowed her). As a result this obligation has lapsed. In accordance with what the ombudsman said, NatWest is now entitled to recover from the proceeds of sale the total mortgage borrowing Mr K took out.

I'm afraid Ms K is wrong that the previous ombudsman's decision said that NatWest could only charge interest up to February 2008. In fact, it said the opposite – NatWest can continue charging interest from February 2008 as well. What the ombudsman was saying was that, if Ms K was able to redeem the mortgage within the 12 months, the redemption figure would be the February 2008 figure plus interest on it since.

When Mr K took out the mortgage, he gave what's known as an "all monies" charge. This sort of charge secures not just the mortgage debt – but also all Mr K's other borrowings, such as loans, overdrafts and credit cards. This is what the ombudsman meant by her third direction – that Mr K and Ms K's financial affairs be separated and NatWest should not pursue Ms K for his other borrowing since February 2008 or secure it against the property.

The effect of the previous ombudsman's decision, now the 12 months has lapsed, is that NatWest can use the charge over the property to recover Mr K's full mortgage borrowing, including interest. But it can't use the "all monies" charge to recover his other debts. Any redemption figure should be calculated accordingly.

It's not clear to me whether NatWest has done that, so for the avoidance of doubt I'll direct it to do so now.

It seems the property may very recently have been sold; if so, and non-mortgage borrowing was included in the charge redemption, the redemption figure will need to be re-calculated. I would be grateful if the parties clarify this point when they respond to this decision.

As the mortgage borrowing is outstanding, and Mr K isn't making payments, NatWest was entitled to take possession proceedings to exercise its security over the property once the time set by the previous ombudsman has passed. I know that Ms K is very upset about this. But I don't think NatWest has been unreasonably threatening her or treated her unfairly. From what I've seen it's explained the position fairly and clearly, and I think it's recognised the difficulties of Ms K's position and handled it relatively sensitively.

I know Ms K has been taking steps to sell the property and so I hope possession proceedings won't become necessary. It appears that in fact she may have very recently sold the property. But if not, she'll need to keep in touch with NatWest while she's doing so. Ultimately the property will need to be sold, if it hasn't yet been, and if it doesn't prove possible for Ms K to do that, further proceedings are likely. It wouldn't be fair for me to direct NatWest not to exercise its security at all; I simply remind it to treat Ms K fairly and sympathetically as it recovers a debt that, ultimately, isn't hers.

As regards the other issues, I agree with our adjudicator that NatWest could have done more in communicating the redemption figure with Ms K. It refused to do so at all for some time. While it might not be her debt, it is her property over which the debt is secured. She can't discharge the charge unless she knows how much it secures.

Then there were mistakes in calculating the redemption figure. I agree that all this caused Ms K considerable upset over a long period. I'm pleased NatWest has agreed to the adjudicator's recommendation that it pays £750 compensation, and I think that's fair in all the circumstances.

Finally, if Ms K is unhappy about how NatWest handled her subject access requests and her various requests for copies of documentation, that's a matter she'll need to take up with the Information Commissioner's Office.

the responses to my provisional decision

While the complaint's been with us, matters have moved on and the property's now been sold. In responding to my provisional decision, NatWest gave more details about the redemption figure it recovered against the charge on sale of the property. It explained – and provided copy statements to show – that it only recovered costs associated with the loan secured over the property. There were no other debts of Mr K's which were recovered.

NatWest recovered the loan balance itself – which included the loan as it stood in February 2008, as well as the further advances to Mr K since. It said that because Ms K hadn't redeemed the charge within the time allowed by the previous ombudsman, it was allowed to recover the full borrowing, not just the amount as it stood in February 2008. It said the only other sum it recovered was the legal fees associated with the possession proceedings and enforcement of the charge – which form part of the loan debt. So in practice there was no other borrowing of Mr K's which should have been separated off from the debt recovered by the charge.

Ms K said that she didn't consider the proposed compensation of £750 to be fair. She wanted a much higher figure. She said she should be awarded £500,000 – though she recognised our award limit is £150,000. She said NatWest had been obstructive, negligent and fraudulent. It had repeatedly failed to give her a redemption figure so she could pay off the charge in the 12 months. It should never have lent Mr K the further borrowing – which was a result of collusion with a member of staff. She explained the ongoing problems she was having with Mr K and the difficulties he'd caused her in respect of the property – and more widely. She felt should not be held liable for his debts.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

As I explained in my provisional decision, much of what Ms K is complaining about – including the additional lending to Mr K after February 2008 – was dealt with in the previous ombudsman's decision. She set out her findings on that, and what she thought NatWest should do to put matters right. Ms K accepted that decision at the time and so it became legally binding. I don't have the power to set that decision aside, revisit it or change the outcome.

As I said, therefore, in this case I'm looking at the action NatWest has taken since then, and in particular how it implemented the previous decision and has dealt with Ms K since. So I'm afraid I won't be commenting on NatWest's decision to lend further sums to Mr K, how it dealt with the initial dispute or anything covered by the previous ombudsman in her decision.

I'm satisfied from the information NatWest has provided that it only recovered the loan secured on the property, and its costs, when Ms K sold the property. It didn't recover any other debts Mr K may or may not owe it. So I'm satisfied that it's complied with that part of the previous ombudsman's award too.

However, as I said in my provisional decision, NatWest could have done more in how it communicated with Ms K, in particular around the redemption figure – though it did eventually do so, and indeed allowed her a further three months to raise the finance. I think the way, at times, NatWest dealt with Ms K – and taking into account her difficult situation – did cause her real distress. NatWest has agreed to offer £750 compensation for that.

I think that's a fair figure. I don't think it would be fair to require it to pay Ms K £150,000 – which is rather more than the amount paid to redeem the charge. The court order on divorce makes clear that Ms K is responsible for the borrowing up to February 2008. And the previous ombudsman's decision set out that NatWest is now entitled to recover the rest as well, Ms K having failed to raise finance in time. So it wouldn't be right to require NatWest effectively to write that debt off via compensation to Ms K, and I don't think the figure she's requested is in line with the sorts of awards the Financial Ombudsman Service makes for trouble and upset. I'm satisfied £750 is fair in all the circumstances.

my final decision

For the reasons I've given, my final decision is that I uphold this complaint and direct National Westminster Bank Plc to pay Ms K £750 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms K to accept or reject my decision before 26 April 2018.

Simon Pugh
ombudsman