

complaint

Mr and Mrs G complain that National Westminster Bank Plc wasn't helpful when they found themselves in financial difficulties. In particular, it didn't allow them to rent out their property while they were trying to sell, didn't accept their offer of full and final settlement and failed to communicate with them properly.

background

The background to this complaint is complex and I will only set out the basic points here. Mr and Mrs G owned two cottages with additional adjoining parcels of land. They took out a loan for £50,000 with NatWest in 2005 for renovations. By 2009 the debt had risen to around £250,000 secured with a first charge over the first cottage and a second charge over the second cottage. They also had a buy-to-let mortgage on the second property of around £205,000 with another provider. Mr and Mrs G had intended to live in the first property along with other family members and ultimately sell the second property to clear the debt on the first property once they'd finished renovation works.

Unfortunately the renovation got out of control with changes to the specifications and delays which meant the debt rose to an unaffordable level. NatWest started to roll the interest up into the loan as Mr and Mrs G were unable to service the debt so the amount they owed continued to rise.

When they tried to sell the second property in spring 2010, the financial crisis meant that prices had dropped. They were unable to sell the property over the following 4 years. During that time, they asked for NatWest's permission to let the property out so they would have additional income to help cover their mortgage interest. A quote from an estate agent in 2009 indicated rental income for the second property would have been around £1,100 per month at that time. But NatWest didn't agree to the property being let until 2014, by which time the end of the mortgage term was close and the property was finally sold in July 2014.

Mr and Mrs G used the proceeds of the sale to pay off some of their debt and made an offer in full and final settlement of the rest to NatWest. Their offer involved getting an equity release mortgage on their home and using the proceeds to pay NatWest around £185,000 as well as giving it a charge over land they were trying to sell which was worth around £70,000. But NatWest didn't accept this. It said it still had a charge over Mr and Mrs G's home and there was sufficient equity in it for them to pay the debt off in full. It wanted a higher offer before agreeing to settle the debt. They complained to NatWest about its refusal to agree to their offers to manage their financial difficulties but it rejected these parts of their complaint.

As well as their financial difficulties, both Mr and Mrs G have been suffering from health problems over the period since their difficulties with the debt started. When it seemed that the debt was becoming unmanageable, NatWest handed their case over to its solicitors which resulted in repossession proceedings although their home wasn't ultimately repossessed. Mr and Mrs G complained that their contact at NatWest didn't tell them this and didn't respond to their emails. NatWest accepted that it hadn't communicated as it should have and upheld this part of their complaint. It offered £100 as compensation for the trouble this caused. It also offered an additional £75 as a refund for fees for a RICS valuation which was unnecessary.

Mr and Mrs G also asked for information about the solicitors' fees which were finally produced when the complaint came to this service. Our investigator thought NatWest's offer was reasonable but Mr and Mrs G disagreed. So they asked for review by an ombudsman. I issued a provisional decision upholding the complaint on 4 October 2016. Having considered responses to my provisional decision and to the redress I suggested on 24 October 2016, my findings haven't changed substantially though I have clarified some of the detail around the redress ordered.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I can see this has been a really difficult time for Mr and Mrs G and I was sorry to hear about their health problems and financial difficulties. While I can understand NatWest's reasons for some of the decisions it took, taking all the circumstances into account, I don't think NatWest treated Mr and Mrs G fairly and reasonably overall and I'll explain why.

refusal to give permission to rent

It's clear that, by 2009, the lending was out of hand and the renovations had been delayed and become more expensive than expected. So the sale of one property to clear the debt provided a clear path out of Mr and Mrs G's financial problems. But I can understand that Mr and Mrs G wanted to rent out their property while trying to sell it when they discovered how difficult the property market was.

NatWest says the rental income wouldn't have been enough to service their debt taking into account their other income and expenditure. So it says renting the property wouldn't have solved the problem on the long term but might have made it harder to sell the property quickly. NatWest says it was a legitimate exercise of its commercial judgement to refuse permission to let the property, but I would appreciate clarification on the basis for its power to prevent rental of the property given it held only a second charge on the property.

If it did have such a power, while it may have been reasonable to refuse consent to let in 2010, by spring 2011 one sale had fallen through and it was clear the property was going to be hard to sell. At that point, I think NatWest ought to have been more flexible and allowed Mr and Mrs G to rent out the property. Mr and Mrs G's debt was increasing as the interest was being rolled up. Renting out the property would have given them some extra income which could have been used to pay some interest. I've seen NatWest considered the possibility of rental in January and May 2011. In my view, if NatWest had the power to stop them renting the house, consent to rent should have been given at the latest in May 2011.

refusal to accept full and final settlement offer

The proceeds of sale of the second cottage were used to pay off a part of the outstanding debt. But as the debt had continued to escalate, through the rolling up of interest, it wasn't enough to pay it off in full. NatWest has taken possession proceedings for the first cottage but has so far decided not to repossess the property. The debt is secured on the first cottage.

Mr and Mrs G had an offer for an equity release mortgage on their home for around £185,000. They said if NatWest agreed to release the charge on the cottage, they would give the proceeds from that to NatWest and would cover the outstanding debt with a charge

on land they said was worth around £70,000. They made this proposal in August 2015 but still didn't have a clear answer by the end of December. By that time, the offer for the equity release mortgage had expired.

NatWest refused their offer in the end and said it was entitled to refuse their offer because it has full security through their home. It says it wants an offer closer to the full amount. NatWest has an obligation to treat Mr and Mrs G sympathetically in their financial difficulties and repossession of their home should be a last resort. It seems to me that, at the time of their offer, the value of the land and the amount they could raise through the equity release mortgage taken together were around the amount of the outstanding debt. Ongoing interest added to the loan meant that over the months while NatWest considered their offer, the amount they owed continued to go up and Mr and Mrs G's options reduced. I don't think this is fair.

solicitors' fees and involvement

Once the complaint reached this service, NatWest provided details of the solicitors' fees added to Mr and Mrs G's account. Those fees totalled more than £4,000. I can see that they've been queried by NatWest internally and the notes gave me some concern.

NatWest has apologised for mistakes in communication about the transfer to solicitors and offered £100 compensation for that along with a refund of £75 for an unnecessary RICS valuation on their land as part of their offer of full and final settlement. I think the refund of £75 is appropriate but I will address redress for the problems caused to Mr and Mrs G in NatWest's handling of their account overall.

redress

I asked for more information in order to decide on redress to compensate Mr and Mrs G for their lost rental income, the costs related to the delays in considering their settlement offer and the discrepancies in the solicitors' fees.

I'm grateful to NatWest for its confirmation that it has recalculated the debt as if rental income had been applied at the rate of £1100 from September 2011. It also reconsidered the legal fees and reduced them by £1059.60. This left a total outstanding balance of £218,164.70. But NatWest has agreed to accept £185,000 in full and final settlement of the debt. It's also agreed to take no action if the debt is settled within 3 months of my decision with no interest accruing and confirmed that Mr and Mrs G don't need to make any further monthly payments on the debt pending settlement within that time.

Because of the significant reduction in the debt, I don't think there's any need to look in detail at the additional costs highlighted by Mr and Mrs G but I'm grateful for the information they've provided about their circumstances.

I can see that this loan was complex to manage. But as I've said, I think the way NatWest responded to Mr and Mrs G's attempts to resolve things after 2010 wasn't helpful and caused a lot of stress. As well as their financial difficulties, NatWest was aware of Mr G's serious health problems from mid 2011 and should have taken their circumstances into account. It's clear that the situation has caused and continues to cause Mr and Mrs G a great deal of distress. So I suggested and NatWest has agreed to pay them £1,000 for the significant upset caused to them from 2010 to date. This payment should be made on

acceptance of the decision by way of two cheques for £500 each to Mr and Mrs G separately.

I hope that this decision will help Mr and Mrs G to resolve some of their issues and move on with their lives after a very difficult period.

my final decision

For the reasons given above, it's my final decision that this complaint is upheld.

National Westminster Bank Plc should accept £185,000 as full and final settlement for Mr and Mrs G's secured debt. They should take no further action or apply any interest to this amount if the debt is settled within 3 months of this decision and should not require Mr and Mrs G to make monthly payments to their account within that period.

National Westminster Bank Plc should also pay Mr and Mrs G £500 each (a total of £1000) for the upset caused by the unfair treatment they've suffered.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs G to accept or reject my decision before 7 December 2016.

Susie Alegre
ombudsman