

## **complaint**

Mrs F and Mr M complain that National Westminster Bank Plc mis-sold them a mortgage

## **background**

Mrs F and Mr M had an existing mortgage, (the 'Original Mortgage'), with another lender, the (the "Original Lender"), for a certain sum, (the 'Original Loan'). In 2010 they applied to transfer the Original Mortgage to a mortgage which NatWest was advertising which had a lower fixed rate interest. They say that they intended to use the savings on the lower mortgage repayments to repay their unsecured debts, (the 'Unsecured Debts').

Although NatWest initially told Mrs F and Mr M that, subject to a property valuation, their application had been accepted, it subsequently declined to offer them a mortgage at the advertised rate. NatWest said that this was because the level of the Unsecured Debts meant that they were not eligible for it. Its advisor did however recommend that they take out a different mortgage, (the 'New Mortgage'). This was at a higher interest rate and included additional borrowing, (the 'Excess'). Part of the Excess could be used to repay some of the Unsecured Debts. And although the mortgage repayments would be higher, he suggested that Mrs F and Mr M would be in a better position. He said this was because they would be able to repay a substantial proportion of the Unsecured Debts and all of those that were being charged at high interest rates.

Mrs F and Mr M went ahead with the recommendation.

In making his recommendation the advisor incorrectly stated how much of the Unsecured Debts could be repaid by the Excess. And in paying off the Original Mortgage and taking the New Mortgage, Mrs F and Mr M were still left with a shortfall on their monthly expenditure. They say that as a result of this they have incurred further debt and have now entered into a debt repayment plan with their creditors.

In addition to the direct financial losses they say they have incurred as a result of NatWest's error, Mrs F and Mr M say that they had to take time off work and had travel expenses for their meetings. They also say that they have suffered stress and anxiety. They want financial compensation for all this and require the interest rate on the New Mortgage to be reduced.

NatWest accepted that its sales process had not been appropriate because there should have been further discussions about Mrs F and Mr M's financial circumstances. It has paid Mrs F and Mr M £400 compensation for that. However it has not offered any other compensation. It says that the New Mortgage was and is affordable, as Mrs F and Mr M have kept up their payments. (This is despite having said elsewhere that if the correct figure for the outstanding Unsecured Debts had been taken into account, the New Mortgage would not have met its lending criteria because of affordability at the time it was sold.) The adjudicator did not recommend that the complaint be upheld. He concluded that although there had not been a full discussion with Mrs F and Mr M, NatWest's failure in its mortgage process was covered by the £400 payment. Nor did he think that NatWest was required to advise them to seek help from a debt management organisation. Further he did not think that Mrs F and Mr M were worse off as a result of NatWest's actions.

Mrs F and Mr M did not agree so the matter was passed to me to decide.

I issued a provisional decision on 11 June 2015 in which I said that, subject to any further information or comments from the parties, I was minded to uphold the complaint. NatWest did not respond to my decision. But Mrs F and Mr M told us that they used the Excess in

reducing their debts. They have also supplied further details of their debts and the interest rates charged, which I will share with NatWest.

### **my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Where the evidence is incomplete, inconclusive or contradictory, I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

Nothing supplied by Mrs F and Mr M since I issued my provisional decision leads me to conclude that my provisional findings need to be varied. But on reflection, I think that it is fair that all the items in the list of costs and losses which I set out below should attract interest.

I find that Mrs F and Mr M's income and expenditure, as they gave it to NatWest, were such that they could not afford the New Mortgage. This was because it meant that they still had a shortfall between their income and expenditure. So NatWest should not have advised Mrs F and Mr M to take it. NatWest also confirmed in its file of papers that the mortgage application should have failed on affordability. In other words, had the adviser not made an error about the Unsecured Debts, NatWest would not have granted Mrs F and Mr M the New Mortgage. Further I think that its obligation to treat them fairly means that had it declined the lending, it would have suggested that they seek help from a debt management charity or similar organisation.

As I am satisfied that NatWest have made an error I need to decide what it should do, if anything, to put Mrs F and Mr M back into the position that they would have been in had its advice been better.

At the time of their application to NatWest the Original Lender had already refused them an alternative mortgage. So on balance I think that having been rejected by two lenders, they would have kept their existing mortgage and sought help with their debts. Having done so, I find that it is likely that Mrs F and Mr M would have entered a debt management plan. Mrs F and Mr M did enter into such an arrangement in 2012. Most financial institutions will freeze the interest on the debts when such a plan is in place. It is not possible to determine exactly when the debt repayment plan would have been in place in 2010. But it would be reasonable to assess this based on the time it took to make similar arrangements in 2012 and add this to the date of advice which was 21 May 2010, ("date X").

So I find that Mrs F and Mr M have incurred the following costs and losses to date as a result of NatWest's error:

1. The early repayment charge paid in respect of redeeming the Original Mortgage, being £2,227.36.
2. The costs associated with setting up the new mortgage.
3. The interest paid on the Excess from date X to the date of settlement.
4. The additional interest charged by NatWest on the Original Loan over that which would have been charged by The Original Lender until the date of settlement.
5. The interest applied to the Unsecured Debts not paid off by the Excess from date X to the date that the debt repayment plan was put in place in 2012.
6. Interest at 8% simple per annum on the items referred to in the above paragraphs from the date the payments were made or applied to the accounts up to the date of settlement.

Mrs F and Mr M say that they have incurred other debts as a result of NatWest's actions. I accept that this is the case. However, by refunding the additional costs of interest and

charges above, this will equate to the sum that Mrs F and Mr M would have had available to them to contribute to their outgoings. In relation to any interest that has accrued on the debts built up because of the advice given by NatWest, I find that there are too many uncertainties and unknowns relating to these to enable me assess an accurate sum. As such, I have required NatWest to add interest to compensate them for these.

Re-imbursement of the sums set out in the numbered list above will compensate Mrs F and Mr M to the date of settlement. However, Mrs F and Mr M will continue to pay interest on the Excess that was added to the mortgage, which reasonably would have had the interest frozen on it if it had not been consolidated. As such, I consider that NatWest should not charge interest on this proportion of the mortgage until 2022. I have reached this decision as the funds above will allow Mrs F and Mr M to reduce their indebtedness and, given the level of debt they had in 2010, it seems reasonable that they would have had a debt repayment plan of a slightly longer length than that which they currently have.

I am also not minded to require NatWest to compensate Mrs F and Mr M for the costs and time off work incurred by them in going to the meetings. I find that these are reasonable costs in trying to obtain a new mortgage.

Mrs F and Mr M were in financial difficulties anyway and entering into a debt management plan has its own difficulties and stresses. Accordingly, I am also not minded to require NatWest to pay compensation to them for the stresses and anxiety they say they suffered because of its failures.

### **my final decision**

For the above reasons my decision is that I uphold this complaint.

I order National Westminster Bank Plc to refund or pay to Mrs F and Mr M the sums set out in items numbered 1 to 6 in the list above: Tax may be deducted from item 6 if National Westminster Bank Plc considers that it is required to do so. It must however provide the appropriate documentation evidencing this.

I also order National Westminster Bank Plc not to charge interest on the Excess until 31 December 2022.

Under the rules of the Financial Ombudsman Service, I am required to ask Mrs F and Mr M to accept or reject my decision before 23 October 2015.

Ros Barnett  
**ombudsman**