

complaint

Mr H complains that National Westminster Bank Plc (“NatWest”) acted unfairly by possessing his property, selling the property too cheaply, and then asking him to pay the shortfall. He wants the shortfall written off and compensation.

background

Mr H is a professional landlord and had a secured interest only loan with NatWest over one of his buy-to-let properties. He didn't pay the loan when it was due to end and NatWest repossessed the property in 2015. It then sold the property, but didn't get enough from the sale to pay the mortgage in full. It asked Mr H to pay the shortfall. He felt NatWest repossessed the property unnecessarily, and should have sold it as three flats, not as one property, possibly with tenants in place paying rent. Mr H said this meant the property had been sold for too little, which caused the shortfall. He also said NatWest had charged excessive fees.

Mr H complained to NatWest. It said the property was in a poor condition and needed repair and maintenance. This affected the value of the property. NatWest said it took professional advice from valuers. It also denied that its fees were excessive.

Mr H complained to us, accepting that the property was “run down and needed attention”. NatWest said that Mr H didn't get planning permission to turn one property into three flats. The investigator's view was that NatWest hadn't acted unreasonably in taking possession of the property or in how it sold the property. He didn't think it was unreasonable to rely on professional advice. The investigator didn't think NatWest had overcharged either.

Mr H disagreed. He said the investigator's findings were flawed and NatWest had admitted that it had undersold the property. Mr H said as the flats had existed for over ten years, planning permission was automatically in place, but he couldn't prove to the council the flats had existed for that long. Mr H also disagreed with the professional valuation obtained by NatWest.

my findings

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

Lenders have to treat those in financial difficulty fairly and are under a duty to act reasonably when selling a property it has repossessed. They and their agents have to take reasonable steps to get the best price.

In Mr H's case, the court gave NatWest a possession order. I can't interfere with court orders – the court decided it was appropriate to give possession to NatWest. In the circumstances, given no payments had been made since 2012 and the loan was overdue for payment in full I can't say NatWest acted unfairly in asking the court to give it the possession order, particularly as it had explored whether it could agree a new loan for the property with Mr H.

Mr H says the property should have been sold as three flats with tenants in place. But there wasn't any planning permission for the flats according to the professionals; the three flats were also not separately registered with the Land Registry which would be needed to sell them separately. Holiday flats aren't the same as tenanted flats and clearly getting planning permission wasn't a formality given the number of times Mr H had failed to get it.

The tenants had left by the time NatWest took advice about how to sell the property. It isn't reasonable to expect NatWest to get planning permission (which Mr H had failed to do), arrange three registrations with the Land Registry, or place tenants in the property as that could cause problems if the property needed to be sold later. It was also reasonable for NatWest to rely on professional advice from a valuer and estate agent; they didn't recommend the property was sold as three flats.

Mr H says NatWest admitted it had undersold the property when it asked him to get evidence supporting his allegation. I disagree. NatWest was simply asking Mr H if he had evidence supporting his belief.

The valuer gave NatWest a valuation for the property in its poor condition, as did the estate agent. The property was sold for more than the valuer and the estate agent thought it would be the sale price. The evidence shows NatWest didn't accept the first offer and ensured the property was reasonably marketed by a local agent. I think it took reasonable steps to take the best price possible and didn't sell the property too cheaply. I appreciate Mr H disagrees with the valuation, but it's from a professional and NatWest is entitled to rely on it.

Mr H says NatWest's fees were excessive. I think he also refers to the fees of its agents. But it's entitled to require Mr H to pay the costs of possession and sale, and there's no evidence NatWest has charged more than its usual fees or that its agents have overcharged.

my final decision

My final decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 24 July 2017.

Claire Sharp
ombudsman