

complaint

Mr and Mrs M complain about the information they were given before they sold their property through National Westminster Bank Plc's Assisted Voluntary Sale (AVS) scheme.

background

Mr and Mrs M took out a mortgage and other credit commitments with NatWest. By June 2011, their circumstances had changed and their mortgage account was 12 months in arrears.

NatWest told Mr and Mrs M it intended to pursue possession action. To avoid that, Mr and Mrs M agreed to NatWest's AVS scheme. Under that scheme, NatWest would cover the solicitor's and estate agent's fees for selling Mr and Mrs M's property (up to a stated maximum).

In July 2011, NatWest wrote to Mr and Mrs M to say:

"should we [NatWest] establish at any stage that there will be insufficient funds available for repayment of the Bank's borrowing, your property will be withdrawn from AVS and you will receive notification in writing"

Mr and Mrs M's property was sold in November 2011. The sale price was substantially less than Mr and Mrs M's outstanding debt to NatWest – but NatWest didn't withdraw their property from the AVS scheme. It later told Mr and Mrs M they were liable for the shortfall.

In January 2012 NatWest issued an arrears letter to the previously mortgaged address, despite knowing Mr and Mrs M had moved.

Mr and Mrs M complained to NatWest. It offered to refund an arrears fee, some interest, and an early repayment charge; forgo recovery action on Mr M's business account; and pay £500 to compensate them for distress and inconvenience.

Our adjudicator considered NatWest's offer was fair and reasonable. Mr and Mrs M didn't agree. Briefly, they said:

- They understood that if their property was sold under the AVS scheme, all their outstanding debts to NatWest would be settled. They weren't told that they would still be liable for any shortfall, and they accepted an offer on their property on the understanding the proceeds would completely repay all their debts to NatWest.
- Their property should have been marketed at a higher amount. The new owner put the property back on the market towards the end of 2012, with an asking price above the amount paid in November 2011. Mr and Mrs M say house prices generally fell during 2012.
- The balance on Mr M's business account has already been paid. The account is not overdrawn, and so NatWest shouldn't undertake recovery action in any event.
- NatWest's offer is pitiful, given the distress caused by its actions.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

NatWest should not have told Mr and Mrs M that it would withdraw their property from the AVS scheme if the sale proceeds weren't enough to repay the whole of their borrowing. However, in these specific circumstances, I think it's likely Mr and Mrs M would have agreed to go ahead with the AVS scheme even if they'd known the property sale wouldn't clear all their debts. I say this for the following reasons:

- By June 2011, Mr and Mrs M were already 12 months in arrears on their mortgage account. They had told NatWest there was no prospect of them making any contributions to the arrears, and they were unable to meet their monthly payments. In the circumstances, I consider the eventual sale of their property was inevitable. If Mr and Mrs M hadn't agreed to the AVS scheme, it's likely NatWest would have taken the property into possession.
- The AVS scheme gave Mr and Mrs M several advantages over allowing their property to be taken into possession. Possession action would have resulted in higher legal costs – and NatWest wouldn't have made a contribution to the selling costs. It's unlikely the eventual sale price would have been higher if NatWest had sold the property after taking it into possession.
- The selling price of Mr and Mrs M's property does appear reasonable, bearing in mind the valuations obtained from surveyors and estate agents and the length of time the property was marketed. I accept that the new owner put the property back on the market within a few months – but even if the new owners sold at a profit, that doesn't necessarily mean a higher price would have been available to Mr and Mrs M in November 2011.

On balance, I'm not persuaded that Mr and Mrs M would have acted differently if NatWest hadn't made an error in its July 2011 letter. That means I don't think the letter has any effect on whether or not Mr and Mrs M's debts to NatWest are still outstanding, and I don't think the letter caused them a financial loss.

However, the error clearly caused Mr and Mrs M significant distress and inconvenience – at an already very difficult time. NatWest made a further error in January 2012, when it sent an arrears notice to the previously mortgaged address even though it knew Mr and Mrs M had moved. I've noted Mr and Mrs M's comments about NatWest's offer, but I consider that an amount of £500 for distress and inconvenience is fair and reasonable in all the circumstances of this case.

With regards to Mr M's business account, Mr M says that debt was cleared by a payment made in September 2011, but NatWest says the outstanding debt was higher than that payment. Given that Mr M and NatWest agree that it shouldn't pursue him for any debt associated with this account, there's no need for me to make a finding about the amount of that debt.

I've noted NatWest's offer to refund the September 2010 arrears fee of £35. I'm satisfied this fee was only incurred because of NatWest's error – and so it's fair for NatWest to refund it.

I've also noted NatWest's offer to refund some interest and charges. In the circumstances, I can't fairly require it to do anything more.

my final decision

My final decision is that (if it hasn't already done so) National Westminster Bank Plc should:

- Remove the arrears fee of £35 applied to Mr and Mrs M's mortgage on 7 September 2010;
- Remove the early repayment charge applied to their mortgage;
- Reverse all interest and charges applied to their advantage gold account between 2 July 2010 and 4 July 2011;
- Forego all recovery action on Mr M's business account, arrange for closure of the account, and write off any remaining balance on that account; and
- Pay £500 to compensate Mr and Mrs M for distress and inconvenience.

Laura Colman
ombudsman