

## **complaint**

Ms K's complains that:

- that National Westminster Bank Plc ( National Westminster) behaved incorrectly during and after her divorce proceedings in respect of a mortgaged property, and that this has given her a lot of difficulties;
- that her own mortgage application was declined; and
- that National Westminster is now attempting to re-possess the mortgaged property.

## **background**

I explained in my provisional decision of 16 December 2015 why I was intending to uphold Ms K's complaint. A copy of that decision is attached.

I then invited both National Westminster and Ms K to provide me with any further information that they wanted me to consider before I made a final decision on this case.

## **my findings**

I understand that Ms K has recently been very unwell. May I first say that I hope Ms K makes a rapid recovery and that her good health is soon restored.

I've considered all the available evidence and arguments of this case to decide what's fair and reasonable in the circumstances. This included revisiting the file and considering additional information sent to me as a result of my provisional decision.

National Westminster provided no additional testimony or evidence in response to my provisional decision. But Ms K has provided a substantial amount of further evidence about how the circumstances of this complaint came about and how severely it has affected her personal and financial situation.

I have looked at this additional information with great care. But in the end it does not really change my view of the case. I have explained my reasons below.

I appreciate that Ms K is arguing that she should receive greater compensation for the distress and trouble that National Westminster has caused her by this whole episode. But as I said in my provisional decision, we do not make awards to 'punish' a business for poor performance or customer service. We simply try to put customers back into the position they would have been in if the business's failings had not occurred. I believe that my proposed redress would achieve that.

I can only imagine what a difficult time Ms K has had over many years, or the anger and frustration that the actions of National Westminster and her ex-husband have caused her. But, despite that, my award for distress and inconvenience is not intended to address those issues. The award reflects the poor customer service that National Westminster has provided to Ms K in handling her complaint and concerns, rather than its failings over a longer timeframe.

I would note that Ms K does not have to accept my view on this issue. Subject to any time limits that a court might impose, Ms K's right to take legal action against the business will not have been prejudiced by my consideration of her complaint.

Similarly, if Ms K wishes to pursue her concerns about fraud then that is a matter for the financial regulator or the police and courts. It is not something our service can consider.

So, despite Ms K's very understandable views, the additional information she has provided does not change my decision in this case.

I am satisfied that our service is able to consider Ms K's complaint even though she is not a customer of National Westminster. That is because National Westminster's attempts to recover the arrears on the mortgage account by repossessing a property owned by Ms K mean that Ms K is a person from whom National Westminster has sought to recover payment under a credit agreement. So she is an eligible complainant.

But the original debt was an agreement between National Westminster and Ms K's ex-husband alone. So I am satisfied that the arrangement between National Westminster and Ms K's ex-husband cannot be fairly regarded in any way as an agreement with Ms K.

Ms K's solicitor placed a registration of unilateral interest at the land registry on 15 February 2008 indicating that Ms K would be seeking ownership of the property involved in this complaint. This is an attempt to notify any interested parties that Ms K had an interest in this property, despite the fact that it belonged to her then-husband and National Westminster.

National Westminster has stated that there was nothing to prevent the bank lending further sums of money to its client on such terms as it considered fit. But in the usual run of events I would have expected its conveyancing solicitor to have checked the land registry to ensure there was no other charge or borrowing upon the property that the new charge was being placed against. So it seems likely to me that National Westminster knew, or should have known, of the registration of unilateral interest.

That, in turn, means that National Westminster should have known that this was an actively disputed property before it lent the new money to its client.

I note that National Westminster has said that it was not named in the court proceedings, so did not have to take notice of them. Our service cannot take the place of the court, and I accept that that is National Westminster's chosen stance.

But National Westminster lent further funds to its client when it knew – or ought to have known - that this was a disputed property. I am satisfied that this prejudiced Ms K's potential claim on the property.

I accept that National Westminster has a substantial and legitimate vested interest in Ms K's property. But I think that not taking note of the registration of interest against the property was a failing by National Westminster and was detrimental to Ms K in the longer term.

So I uphold this element of Ms K's complaint.

I think fair redress would be to allow Ms K to pay-off the charge on the property at the value that it was in February 2008. That is, before the re-financing and further borrowing took

place. That puts Ms K back in the position she should have been in if National Westminster had acted on the registered interest and so not granted the further borrowing to its client.

So she can acquire the property free of restriction in return for paying off the mortgage balance as it was at the time. But I don't think that it was National Westminster's fault that Ms K couldn't raise the funds to do that. So it can charge interest on that balance from February 2008 to the date of settlement.

I believe that this will also resolve Ms K's complaint that National Westminster is attempting to re-possess the property.

That only leaves the matter of whether National Westminster unfairly refused Ms K a mortgage. Based on what I have seen, I do not think that National Westminster treated Ms K unfairly or unreasonably at the point when it declined her mortgage application. I say this because it appears that National Westminster declined the mortgage application because there were two planning issues relevant to the property that had not been satisfactorily resolved.

So I do not uphold this element of her complaint.

Finally, I have looked at how National Westminster has dealt with Ms K and these difficult circumstances. I have seen little evidence that National Westminster gave much regard to the legal process which was clearly designed to 'draw a line' under the affairs of Ms K and her then-husband. As a result, I think that Ms K has been caused a great deal of trouble and has had to spend a lot of time and effort in trying to resolve her complaint.

My award for distress is a small reflection of the difficulties that Ms K has experienced.

### **my final decision**

For the reasons that I have set out above and in my provisional decision, I uphold one element of Ms K's complaint. My final decision is:

- that, subject to Ms K raising the necessary capital, National Westminster Bank Plc should release the charge on the property for the balance of the mortgage as it was at the start of February 2008. For the absence of doubt, this is before the property was re-financed. I would note that this is a conditional obligation on National Westminster Bank Plc. If Ms K does not choose to, or is not able to, raise the required capital to repay the charge within 12 months of my final decision, the obligation will be extinguished;
- I am satisfied that there were other reasons - beyond National Westminster Bank Plc's control - why Ms K did not take full possession of the building before November 2013. So I think it is fair that National Westminster Bank Plc may add cumulative monthly interest, at the mortgage rate applicable from time to time, to the amount that Ms K will need to repay to clear the mortgage. No other retrospective charges should be applied;
- that National Westminster Bank Plc separates the financial affairs of its customer and Ms K going forward, such that all charges against its customer for his further loans are pursued with him, not Ms K, and not secured against her property. This should be backdated to the start of February 2008;

- that National Westminster Bank Plc pay £1,000 to Ms K for the distress and upset that its customer service has caused her; and
- that I do not uphold Ms K's complaint about her own mortgage application being declined.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms K to accept or reject my decision before 2 March 2016.

Roxy Boyce  
**ombudsman**

## **provisional decision 16 December 2015**

### **complaint**

There are a number of elements to Ms K's complaint. In summary these are:

- that National Westminster Bank Plc ( National Westminster) behaved incorrectly during and after her divorce proceedings in respect of the mortgaged property, and that this has given her a lot of difficulties;
- that her own mortgage application was declined; and
- that National Westminster is now attempting to re-possess the property.

### **background**

At the start of divorce proceedings, Ms K placed a unilateral registration of interest with the land registry on a property owned by her husband. Ms K and her husband were divorced in 2009. As part of the divorce settlement Ms K was awarded the property. The land registry record suggests that she became the sole owner of the property in November 2013. The mortgage on the property was, and remains, in her ex-husband's sole name.

In March 2008 Ms K's ex-husband refinanced the property with National Westminster. Then in July 2009 and March 2010 after the divorce Ms K's ex-husband took further borrowing against it.

In 2013 Ms K complained that this was inappropriate behaviour and that both National Westminster and her ex-husband had committed fraud. An ombudsman explained why we were not able to consider her complaint. This was because she was not a customer of National Westminster in relation to the mortgage account she was complaining about.

The mortgage account remains substantially in arrears, and National Westminster has started proceedings to re-possess Ms K's property.

Ms K has again brought her complaint to this service.

Our adjudicator explained why he did not think that we could consider Ms K's complaint. Ms K did not accept this view and so it falls to me to make a decision on this complaint.

### **my provisional findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I believe that we are able to consider Ms K's complaint and it is my intention to uphold it. I have explained my reasons below.

I agree with my colleague that we were not able to consider Ms K's complaint when she brought it to us in 2013. But since that time, National Westminster has started possession proceedings against Ms K. In my view, that makes Ms K an eligible complainant. I say this

because complaints made to the Financial Ombudsman Service are subject to strict guidance, known as the DISP Rules. At DISP 2.7.6 (12) it says that an eligible complainant is a person

*“from whom the respondent has sought to recover payment under a credit agreement or consumer hire agreement ( whether or not the respondent is a party to the agreement);”*

I am satisfied that National Westminster’s attempts to recover the arrears on the mortgage account by repossessing a property owned by Ms K mean that Ms K is a person from whom National Westminster has sought to recover payment under a credit agreement. So she is an eligible complainant.

I recognise that National Westminster still owes a duty of confidentiality to Ms K’s ex-husband with whom it has a contractual arrangement, but that does not mean that it cannot also deal fairly with Ms K.

Having decided that I am able to consider this complaint, I have then turned to the merits of the case.

Ms K has provided our service with large amounts of evidence and information about this complaint. This includes copies of the property deeds, the court order relating to her divorce, letters from her solicitors to National Westminster and a great variety of correspondence. I would like to assure her that I have reviewed everything that has been provided. I have also listened to the recording of her discussion with one of our team managers in 19 August 2015 where she explained her views on this case.

I am aware that Ms K would have liked the opportunity to talk to the ombudsman about her case. We generally only grant hearings where there is something that has either not been covered or adequately explained in the written submissions from either party. In this case, I am satisfied that the detail and quantity of submissions mean that I can understand what has happened and do not feel the need to request further information through a hearing. Also, this provisional decision allows both parties to understand my thinking on the case and submit anything further they think necessary in support of their position. So I will not be offering Ms K the opportunity for a hearing.

I hope that Ms K will also excuse me not attempting to address the issue of whether National Westminster or her ex-husband committed fraud. That is a matter for the courts or the financial regulator. Ours is an informal service which allows me to look at whether a consumer has suffered a loss – financial or otherwise – as a result of poor practice or unfair dealings by a financial service. That is how I have approached Ms K’s complaint.

Overall, I have attempted to find a fair and reasonable solution to this very difficult situation for all concerned. That is, I believe, reflected in my proposed redress, below.

It is clear that the original debt was an agreement between National Westminster and Ms K’s ex-husband alone. In the same way, National Westminster also dealt only with him in re-financing the property and extending further lending to him. So I am satisfied that the arrangement between National Westminster and Ms K’s ex-husband cannot be fairly regarded in any way as an agreement with Ms K.

I am satisfied that Ms K’s solicitor placed a registration of unilateral interest at the land registry on 15 February 2008 indicating that Ms K would be seeking ownership of the

property. This is an attempt to notify any interested parties that Ms K had an interest in this property, despite the fact that it belonged to her then-husband and National Westminster.

Ms K has also told us that she also formally notified National Westminster of the registration of interest at the time.

National Westminster has told us that it re-financed the property in March 2008. This was to assist its client with a significant amount of indebtedness.

In its final response to Ms K, National Westminster has stated that there was nothing to prevent the bank lending further sums of money to its client on such terms as it considered fit. National Westminster has, rightly, declined to provide much information to us about the transactions at the time. This is because its client is not a party to this complaint. So I cannot know what actions National Westminster took to ensure due diligence around the re-financing in 2008.

But in the usual run of events I would have expected its conveyancing solicitor to have checked the land registry to ensure there was no other charge or borrowing upon the property that the new charge was being placed against. So it seems likely to me that National Westminster knew, or should have known, of the unilateral interest registration.

That, in turn, means that National Westminster should have known that this was an actively disputed property before it lent the new money to its client.

I can see that the further advances provided to National Westminster's client were made after the divorce proceedings and after the court order relating to the property was in place.

I note that National Westminster has said that it was not named in the court proceedings, so did not have to take notice of them. Our service cannot take the place of the court, and I accept that that is National Westminster's chosen stance.

But having looked at this with care, I am satisfied that National Westminster's action in lending further funds to its client when it knew – or ought to have known - that this was a disputed property *did* prejudice Ms K's potential claim on the property. I also think that Ms K had done everything reasonable to put the claim into the public domain in an attempt to prevent just this sort of difficulty in a challenging divorce process.

National Westminster may choose to provide our service with more information about why it was right to ignore the public registration of interest and why it offered further advances against the disputed property in response to this provisional decision. And if it does so, that may change my view on this case.

But at present, I think that not taking note of the registration of interest against the property was a failing by National Westminster, and was, I think detrimental to Ms K in the longer term.

So I think that this part of Ms K's complaint should be upheld.

But the matter of appropriate redress in this case is not an easy one.

National Westminster has a substantial and legitimate vested interest in Ms K's property. But Ms K also has the right to be able to move on with her life in the way that I believe the

divorce settlement was intended to facilitate. This would be without being impacted or disadvantaged by her ex-husband's behaviours and borrowing.

I have looked at this complex case with care, and I think it would be appropriate for Ms K to be put back in the position she would have been in had National Westminster appropriately recognised the unilateral register entry in 2008. I believe this would have resulted in Ms K's recorded interest in the property preventing the re-financing of her husband's debts, despite the mortgage and property then being in his name only.

So I think fair redress would be to allow Ms K to pay-off the charge on the property at the value that it was in February 2008. That is, before the re-financing and further borrowing took place.

This puts Ms K back in the position she should have been in if National Westminster had acted on the registered interest and so not granted the further borrowing to its client. It means she can acquire the property free of restriction in return for paying off the mortgage balance as it was at the time. But, as I say below, I don't think that it was National Westminster's fault that Ms K couldn't raise the funds to do that. So she can charge interest on that balance from February 2008 to the date of settlement.

I believe that this will also resolve Ms K's complaint that National Westminster is attempting to re-possess the property.

That only leaves the matter of whether National Westminster unfairly refused Ms K a mortgage. I have looked at the paperwork from the time. It appears that National Westminster declined the mortgage application because there were two planning issues relevant to the property that had not been satisfactorily resolved. Based on what I have seen, I do not think that National Westminster treated Ms K unfairly or unreasonably at the point when it declined her mortgage application. So I do not uphold this element of her complaint.

Finally, I have looked at how National Westminster has dealt with Ms K and these difficult circumstances. I am not persuaded that it engaged actively with the realities or intention of her registering a unilateral declaration of interest. It is not for me to determine the spirit of the court orders made in this case, and I recognise National Westminster's view that as it was not named in the case it had no obligations associated with it. But I have also seen little evidence that National Westminster gave much regard to the legal process which was clearly designed to 'draw a line' under the affairs of Ms K and her then-husband – National Westminster's client.

We do not make awards to 'punish' a business for poor performance or customer service. But I think the time and effort that Ms K has had to allocate to resolving this distressing affair warrants a substantial award for distress and inconvenience.

### **my provisional decision**

Subject to any further information or evidence that Ms K or National Westminster Bank Plc choose to provide to me, my provisional decision on this case is:

- that, subject to Ms K raising the necessary capital, National Westminster should release the charge on the property for the balance of the mortgage as it was at the start of February 2008. For the absence of doubt, this is before the property was re-financed. I



would note that this is a conditional obligation on National Westminster. If Ms K does not choose to, or is not able to, raise the required capital to repay the charge within 12 months of my final decision, the obligation will be extinguished;

- I am satisfied that there were other reasons - beyond National Westminster's control – why Ms K did not take full possession of the building before November 2013. So I think it is fair that National Westminster may add cumulative monthly interest, at the mortgage rate applicable from time to time, to the amount that Ms K will need to repay to clear the mortgage. No other retrospective charges should be applied;
- that National Westminster separates the financial affairs of its customer and Ms K going forward, such that all charges against its customer for his further loans are pursued with him, not Ms K, and not secured against her property. This should be backdated to the start of February 2008; and
- that National Westminster pay £1,000 to Ms K for the distress and upset that its customer service has caused her.

I now invite both Ms K and National Westminster Bank Plc to give me any more information or submissions that they want me to consider before I make my final decision on this case. This should be provided to me by 18 January 2016.

Roxy Boyce  
**ombudsman**