

complaint

Ms B and Mr C complain that National Westminster Bank Plc ("NatWest") failed to take due care of the title deeds of their property, which resulted in difficulties selling the property and additional costs for them. Ms B also complains that NatWest froze her current account without warning which caused her a great deal of distress and inconvenience.

background

Ms B inherited property including the family home, which was unregistered land, and two plots of registered land. In the 1990s Ms B took out a mortgage on the property with NatWest. She and her then husband Mr C took out further borrowing on the property with NatWest in 2005 and 2007. As security for the lending on the property, NatWest took possession of the title deeds to the unregistered property. When the 2007 loan was taken out, NatWest insisted that the title on the unregistered property needed to be in the names of both Ms B and Mr C. Lawyers were instructed to alter the title accordingly which should have resulted in the property being registered at that point.

It came to light during the course of Ms B and Mr C's divorce proceedings in 2008-2009 that the conveyancing work that should have resulted in the registration of their home had not been done. Ms B's divorce lawyer tried to ascertain the situation at that point and asked those who had been involved in the conveyancing, including NatWest's lawyers, to put things right so the property could be sold. At this point, it seems that the title deeds were lost and the registration of the property was done on the basis of documents that NatWest's lawyers had to hand.

In December 2011, Ms B accepted an offer to buy the property. Unfortunately, it became clear that the title on the property was still faulty. It seems that the registration of the property was done with the inclusion of two non-existent leases. This, it seems, led to the sale falling through. Ms B was then obliged to hire a specialist lawyer to remedy the problems with the title. As Ms B could only get the property registered with a possessory title, she was obliged to take out an indemnity policy in order to finally sell the property in 2013 at a significantly lower price.

Ms B complained to NatWest about the delays in selling the property because of the defective title. In July 2012, NatWest rejected the main complaint and referred Ms B back to either her own conveyancing solicitors or NatWest's solicitors to make a complaint to them about the way in which the title had been registered. It upheld the part of Ms B's complaint that related to customer service and credited her bank account with £250.

Ms B disagreed with NatWest's response and brought her complaint to this service. While the complaint was being considered by this service, it seems that NatWest froze Ms B's joint and sole bank accounts and Ms B was obliged to arrange banking services elsewhere.

The adjudicator who considered this case was of the view that the complaint should be upheld in part. Due to the number of parties involved in the errors made, she thought that it was difficult to apportion responsibility. She did, however, feel that NatWest had contributed to Ms B's predicament and therefore it would be appropriate for the bank to compensate her to some degree. The adjudicator thought that NatWest should therefore pay 50% of the legal costs Ms B has incurred to sort out the title on the property, as well as refunding six months of interest paid on the mortgage following the failed sale in December 2011. In addition, she recommended that NatWest should pay Ms B £450 for the distress and inconvenience caused.

Both Ms B and NatWest disagreed with that view and asked for an ombudsman to review the complaint. During the ombudsman's review, it became clear that Mr C was still named on the mortgage and had been on the title of the property when it was sold, he therefore joined as a party to the complaint with Ms B at that stage.

my provisional findings

I issued two provisional decisions on this complaint. The first outlined my findings in relation to the main part of the complaint relating to the title deeds and the second set down my findings about the freezing of Ms B's current account as well as amending some details of the proposed redress.

- first provisional decision

This complaint is complicated by the involvement of a series of law firms blaming each other for the failures in registration of Ms B's property. There is a long history of errors. In my view however, the basic problem which led to Ms B's costs and the losses she suffered was the misplacement of the title deeds. If the title deeds had been available when Ms B wanted to sell the property, I thought it was unlikely that she would have encountered the problems that she did and it would have been easier for her lawyers to resolve the problems of title on the property.

The papers that I considered showed that the trail of the title deeds was lost somewhere between NatWest, its lawyers and the lawyers involved on behalf of Ms B. In order for NatWest to lend on the property in the first place, it appeared to me that NatWest took possession of the title deeds, presumably in the 1990s and I felt that it was responsible for the handling of those deeds from that point as I couldn't see any clear evidence that the responsibility had been transferred to another party. I therefore found that NatWest was responsible for the safekeeping of the title deeds over the entire period of its lending. How the title deeds were lost and who by was, in my view, a matter for NatWest to take up with its agents independently of this complaint if it so wished. I found that NatWest was responsible for the consequences of the title deeds being lost and should compensate Ms B and Mr C for that.

I found that the freezing of Ms B and Mr C's joint account was reasonable due to the fact that a marker had been put on the account because of the on-going marital dispute.

- second provisional decision

NatWest said that it froze Ms B's sole current account in line with its 'one view' approach to debt recovery, whereby if one account falls into arrears, all linked accounts become affected. The current account was, it said, frozen because of the arrears on the mortgage account. I found it likely that Ms B and Mr C would have completed on the sale of their property by early 2012 if there hadn't been problems with the title. If the sale had gone through, there probably wouldn't have been any arrears on the mortgage account by March 2012. As I was minded to find that NatWest was responsible for the issues relating to the failed sale, I didn't think it was fair that Ms B should have been penalised for the mortgage arrears through the freezing of her current account.

The account frozen by NatWest was the account that Ms B received her pension into and from which she was making mortgage payments. This was her only income. In my view, by freezing the account, NatWest made it all the more difficult for Ms B to address the problems with her mortgage. In addition, Ms B suffers from serious health issues and the need to re-bank elsewhere caused significant inconvenience to her. For these reasons I didn't find that it was fair to freeze Ms B's account in the circumstances.

In the light of further information regarding Ms B's legal fees, I considered that NatWest should only be responsible for fees directly relating to the amendment of title on her property.

my findings

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

I have taken into account submissions received from NatWest and Ms B in response to my first provisional decision and outlined relevant changes to my initial view in my second provisional decision. I haven't received any further submissions from the parties following my second provisional decision. My findings as set out in my provisional decisions read together haven't altered substantially.

I find that NatWest was responsible for Ms B and Mr C's title deeds at the time they were lost and therefore that it should compensate them for losses resulting from the loss of the deeds. Those losses include legal fees directly related to the amendment of the title deeds and the cost of the indemnity insurance needed to sell the property. As I find that it is likely that the property sale would have completed in January 2012 but for the problems relating to the title, I believe that NatWest should rework Ms B and Mr C's account to reflect no interest being applied to the account from that point until the sale of the property in October 2013.

Although Mr C joined the complaint at a late stage, I recognise that the delays in selling the property prolonged the divorce settlement and that this caused him a degree of distress and inconvenience.

In my view, the freezing of Ms B's current account in the circumstances of this case wasn't fair or reasonable. The reason given for freezing the account was the arrears on the mortgage. I find it likely that the mortgage would have been redeemed before the point the account was frozen but for the problems with the property title. As I have found that NatWest was, to a large degree, responsible for those problems, I don't think it was reasonable to freeze the current account.

I find that the combination of the delays in selling the property due to the issues with the title and the impact of freezing Ms B's current account caused her an exceptional level of distress and inconvenience. I have considered Ms B's submissions about her personal circumstances and ill health. The need to re-bank as a result of her current account being frozen was particularly problematic for Ms B because her only income was being paid into that account and her health problems meant that the additional travel involved was both costly and difficult. In addition, the delays in selling the property and resolving this complaint have meant that the settlement of finances in her divorce proceedings has gone on for longer than necessary causing her a great deal of distress. For these reasons I find that an exceptional award of £1200 for Ms B is merited in this case.

my final decision

It is my final decision that this complaint is upheld in full.

National Westminster Bank Plc should:

- refund legal fees of £1163.75 plus interest of 8% simple from the date of payment of invoices until the date of settlement to Ms B;
- refund the indemnity insurance fee of £372.72 plus interest of 8% simple from the date of payment until the date of settlement with 50% to Ms B and 50% to Mr C;
- rework the mortgage account to reflect no interest applicable from 11 January 2012 until redemption in October 2013 and to refund any additional amounts to Ms B and Mr C which should be divided between them in accordance with their divorce settlement;
- pay Ms B £1200 for the distress and inconvenience caused to her by events stemming from the loss of the title deeds to her property and the freezing of her current account;
- pay Mr C £200 for the distress caused to him by the extended sale period of the property resulting from the loss of the title deeds; and
- ensure that Ms B and Mr C's credit records accurately reflect the situation.

Susie Alegre
ombudsman