

complaint

Mr and Mrs S complain that National Westminster Bank Plc mis-sold a loan to them. It did not treat them fairly, forcing them to agree new loan agreements and sell assets to repay the debt. This affected their health. They ask that NatWest refunds interest, costs and fees (about £25,000) and compensates them for costs of advisers and capital gains. Mr and Mrs S are represented by a family member, who I will call Mrs D.

background

Mr and Mrs S had a property business as well as other interests. In mid 2007 they needed money to buy a property for development. Mrs D says:

- NatWest did not follow usual lending practice and breached its lending criteria when offering the loan. NatWest made two loans, allowing it to by-pass restrictions on lending 100% of the property value.
- Market conditions deteriorated. The cost of developing the property increased and its completion date was put back. In April 2008 the two loans were consolidated into a 20 year term loan. While this released capital for use in developing the property, Mrs D says Mr and Mrs S had financial difficulties and borrowed from family, hoping to finish the development and sell the property.
- In 2009, NatWest put pressure on Mr S to repay debt related to other interests. It made a secured loan to Mr and Mrs S, part of which was used to repay Mr S's debt. NatWest did not recommend that Mrs S take independent advice about this. Mrs S felt she had no choice but to agree the loan.
- In 2011 NatWest pressured Mr and Mrs S to agree less favourable loan terms, even though they had not missed any payments. Mrs D says this was because it had made errors with the security. Mr and Mrs S had to sell properties to repay some of the debt to NatWest, resulting in financial loss. They missed out on capital growth and cash flow. NatWest did not let them use sales proceeds to repay the mortgage on their home, which would have helped with cash flow. In mid 2013 Mr and Mrs S were able to refinance some of the debt, but NatWest would not allow them to repay the remainder over a longer period.

The adjudicator did not recommend that the complaint should be upheld. She said:

- *Sale of the loan in 2007*: NatWest made a commercial decision to lend to Mr and Mrs S. It already held security over other properties and the new loans met its lending policy.
- *Consolidation of the loans*: NatWest told Mr and Mrs S it wanted to consolidate the loans with the intention that the properties would be sold. Mr and Mrs S agreed to the changes to the terms of the loans.
- *Sale of the properties*: it was not reasonable to expect NatWest to wait until Mr and Mrs S thought it was a good time to sell. The loans had to be repaid in accordance with their terms.
- *Unfair treatment*: NatWest had not acted unfairly. Mr and Mrs S could have sought financial or legal advice.

Mr and Mrs S did not agree. On their behalf, Mr D said the adjudicator did not take all of the background into account. The re-scheduling of the loans did not benefit Mr and Mrs S: it was done to generate income for NatWest. The additional interest and arrangement fees were applied in breach of the banking code.

my findings

I've considered all the available evidence and arguments to decide what's 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.

Offer of the loans in 2007/2008

NatWest is entitled to make a commercial decision whether to lend to a customer and the terms on which it will lend. NatWest offered to lend to Mr and Mrs S in 2007 with security over the new property and existing security. So the loan to value ratio was significantly less than 100%. NatWest says the loan met its lending criteria and it followed its own processes when deciding whether to lend. While Mr and Mrs S say the loan did not meet NatWest's policy, the evidence does not support this.

The 2007 loans were for 12-18 months. It's likely NatWest and Mr and Mrs S expected the property development to be completed and the loan repaid within this period. This was not possible and in 2008 NatWest converted the two loans into a 20 year loan with an additional amount for use in developing the property. Mr and Mrs S agreed to the new loan. I have not seen anything that persuades me NatWest acted unreasonably when offering the new loan.

Consolidation/change to loan terms in 2009/2011

Mr and Mrs S had debts related to their other businesses. I don't think it was unreasonable for NatWest to look at their borrowing as a whole.

In 2009 Mr and Mrs S agreed a secured loan. The proceeds were used to repay debt in Mr S's name and joint borrowing. I don't think NatWest had a duty to recommend that Mrs S take separate legal advice about this.

Mr and Mrs S's borrowing was reviewed again in 2011 and debts consolidated. The new loan was on a short term basis with interest only payments and an expectation it would be repaid from the sale of assets.

NatWest's records say Mr and Mrs S were retirement planning and intended to sell properties to repay their debts. Its notes say there were regular updates and Mr and Mrs S were happy to continue with the arrangement. NatWest's notes record its concern about whether Mr and Mrs S could afford loan repayments without selling properties. Mrs D has also said Mr and Mrs S were struggling financially and had cash flow problems.

Mr and Mrs S agreed to the restructure of their debt and repayment by sale of properties. I think they agreed to this because of their financial situation.

Sale of the properties.

I think Mr and Mrs S agreed with NatWest in 2011 they would sell the properties to repay their debts. I don't think it's reasonable to say NatWest should have allowed them to hold onto the properties in the hope of making more profit. The sales happened over two years, so I think NatWest gave Mr and Mrs S a reasonable amount of flexibility with the sales.

Mr and Mrs S would have liked to use the proceeds of sale to repay their house mortgage. I don't think NatWest was unreasonable to refuse this. It was entitled to expect the sale proceeds to be used to repay the secured debt.

While there were errors with the security, I am not persuaded from what I have seen that NatWest restructured the loans or forced property sales due to problems with the security.

NatWest was entitled to apply fees and use its commercial judgement about interest rates when it offered new loans. Mr and Mrs S agreed to the terms of the loans. I have not seen anything to persuade me it would be reasonable to require NatWest to refund fees or interest or pay compensation to Mr and Mrs S. I understand that Mr and Mrs S felt they had little choice about restructuring their debts and selling properties to repay it. I think though this was the due to their financial situation.

my final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs S to accept or reject my decision before 4 December 2015.

Ruth Stevenson
ombudsman