

## **The complaint**

Mr M complains that he'd understood National Westminster Bank Plc had capitalised the arrears on his mortgage, so his monthly payment was repaying those arrears. But then NatWest started legal action to repossess his property, because the arrears were unpaid.

## **What happened**

Mr M told us that in 2021, he was declared bankrupt, and was only in a position to cover the interest payments on his mortgage. He said that led to an accumulation of almost £200,000 in arrears. Mr M said after he was discharged from bankruptcy, he contacted NatWest in April 2023 to discuss the mortgage. He said he was then in a position to restart contractual monthly payments.

Mr M said he'd fixed his mortgage rate in May 2023, and he had understood then that the arrears had been capitalised – which means they were added into the total owed on his mortgage, and didn't require a separate plan for repayments. But Mr M said he then found out this wasn't the case. He said he called NatWest to sort this out, and it confirmed changes would be made to his account from the end of the following month.

Mr M said NatWest then told him he'd called the wrong department, and so the very large arrears remained unpaid. Mr M said he only realised that when a legal firm working for NatWest got in touch and said NatWest was going to repossess his home.

Mr M raised a complaint, and the repossession hearing was cancelled because of that. But Mr M said NatWest's response didn't offer to capitalise the arrears now, although it must have known that if he'd been speaking to the right department, these arrears would already have been capitalised. Mr M said the legal firm would only agree a repayment plan over 24 months.

Mr M said he wanted NatWest to talk to him before it took any further steps.

NatWest didn't think it had done anything wrong. It said Mr M spoke to it in April, and he said his bankruptcy wasn't yet discharged, so he didn't want to set up a repayment arrangement, as he didn't want to increase the equity in the property. NatWest said it warned Mr M of the impact of this on that call.

NatWest said it then spoke to Mr M again on 6 and 11 May, and set up a new fixed interest rate for him. But it said on that call, it was clear with Mr M that he would then need to speak to the Financial Health team to discuss the arrears. The advisor told Mr M he would need to set up an additional repayment plan.

NatWest said Mr M didn't then contact it again until 25 July, when he said he'd heard from its lawyers. NatWest said Mr M's mortgage had been in arrears since July 2018. NatWest didn't think Mr M had been wrongly directed, had spoken to the wrong team, or had been misadvised about the status of his mortgage.

Our investigator said he could only look at issues arising since our service last dealt with a complaint from Mr M, on 3 October 2022. He said there was no evidence that NatWest did agree to capitalise Mr M's arrears in May 2023. And given the scale of those arrears now, he didn't think it was unreasonable for NatWest to have started litigation action.

Mr M replied to disagree. He accepted he was told, when he fixed his interest rate on the mortgage, that he would need to speak to another team to set up a repayment arrangement. But Mr M said he did then speak to another department, and he was led to believe that the payment he was making covered his full mortgage balance. Mr M said it was only when he spoke to NatWest's lawyers that he discovered the arrears were outstanding. Those lawyers offered to allow Mr M to repay the arrears over two years, but they wouldn't capitalise the balance into the mortgage and allow him to pay those arrears off over the remaining term.

Mr M said NatWest had then responded to his complaint, but it said the second call he made to discuss capitalisation of his arrears was made to the wrong team, and that team just changed the date for payment. Mr M said he didn't know that at the time, he felt he was misled into believing that capitalisation was in place.

Mr M said he'd never told NatWest he didn't want to pay the full monthly payment to avoid increasing equity in the mortgage. He said he was now in a position to resume full payments for the rest of the mortgage, and he wanted the arrears to be capitalised so he could stay in his home.

Our investigator didn't change his mind. He said NatWest had never agreed to capitalise Mr M's arrears. And he didn't think it would be fair to ask NatWest to stop litigation now. He said the mortgage had been in arrears for some years, the arrears were very substantial, and it did look as if Mr M didn't want to engage with NatWest to get those arrears repaid until his bankruptcy was discharged.

Our investigator noted that it would take very considerably larger payments from Mr M to clear this mortgage within its term, even if NatWest did agree to capitalisation now. He said in all the circumstances, it wasn't unreasonable for NatWest to have handed things over to its lawyers.

Mr M replied to say he wasn't withholding payments, and could afford a much larger payment. Mr M was adamant he hadn't suggested that he was withholding payment from his mortgage because of the bankruptcy, he said NatWest had taken a different discussion out of context. Mr M said the arrears were an affordability issue, and he'd slowly increased his payments. He was now making an overpayment, which would reduce his arrears.

Mr M said there was a second charge on the property, and if NatWest took repossession action then he feared this would trigger action over the second loan which would cause him to re-enter bankruptcy. He wanted our service to uphold his complaint, so NatWest would stop its litigation action, and agree capitalisation.

### **What I've decided – and why**

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

I've reached the same overall conclusion on this complaint as our investigator.

I understand there has been some discussion between our investigator and Mr M about how his mortgage arrears arose, and whether Mr M deliberately withheld payment to this

mortgage. But that's not the complaint I'm asked to consider here. Mr M's complaint to NatWest was that, after he'd set up his fixed interest rate, he thought capitalisation was agreed. NatWest says it wasn't.

We know that NatWest did speak to Mr M on 6 May then again on 11 May. I've listened to call recordings from those dates.

I can hear that on the first call, Mr M was asked what his contractual monthly payment was. He clarified that this wasn't what he was paying, and then offered a figure which was rather more. So I think Mr M was aware at that time that he was paying less than his contractual monthly payment.

On the second call, the agent set up a new rate for Mr M, and then very clearly explained that Mr M would need to go back to the Financial Health team to agree a plan for the arrears. I don't think that Mr M could, after this call, have considered that he was paying towards arrears which had been capitalised into his mortgage.

Mr M has suggested that actually, he'd spoken to a different team after this, and it was that team who had misled him. Mr M said NatWest told him this call he made to discuss capitalisation of his arrears was made to the wrong team.

But I don't think NatWest said that. NatWest's complaint response letter says it didn't think Mr M had spoken to it after he fixed his mortgage rate on 11 May, until 25 July 2023. And by then, he'd already heard from NatWest's solicitors.

After the clear warning given to Mr M on 11 May, I would have expected Mr M to contact the Financial Health team soon after this. And the series of events Mr M described, makes me think that if there was another call from Mr M to NatWest, it would have been in the next few days, after 11 May. But NatWest has already checked for calls during this period, and has found none. And our service also asked NatWest again to search for calls for the whole of May from Mr M, and it has confirmed again that it has no other records of Mr M contacting it during this time. So I don't think it is likely that Mr M spoke to NatWest after 11 May, and was told that his contractual monthly payment also covered the arrears, or that his arrears had been capitalised.

I know that Mr M will be disappointed, but I don't think that the complaint Mr M brought to our service should be upheld.

Mr M expressed the hope that if this complaint was upheld, that would prompt NatWest to stop litigation and to seek to reach agreement with him. I note that the arrears on Mr M's mortgage are very substantial and are longstanding. I don't think it would be appropriate, in the circumstances of this case, for me to comment on, or seek to intervene, in the litigation action which NatWest is now pursuing.

**My final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 17 June 2024.

Esther Absalom-Gough  
**Ombudsman**