

The complaint

Mr and Mrs C's complaint relates to an application to National Westminster Bank Plc (NatWest) for a new mortgage along with the port of an existing interest rate product. They consider mistakes were made by NatWest, which resulted in them being unable to port their interest rate product and having to pay an early repayment charge.

What happened

In the spring of 2021 Mr and Mrs C had an existing mortgage with NatWest. It had an interest rate product attached to it with a term that was due to end on 31 March 2026. If the mortgage was repaid before that date an early repayment charge (ERC) was payable.

In June 2021 Mr and Mrs C complained about the sale of the interest rate product and the information they had been given regarding porting it to a new property. This complaint was responded to in a letter of 26 August 2021. NatWest didn't uphold the complaint.

In September 2021 Mr and Mrs C applied for a mortgage on the property they wanted to buy and port the existing interest rate product to. The first appointment was made with the mortgage adviser for 13 September 2021, but it was cancelled, as were others. It was not until 28 September 2021 the meeting took place. An application was made and a valuation commissioned.

The valuation was completed and it identified the method of construction as poured concrete and with a build date of around 1906. This type of construction, if built before 1945, falls outside of NatWest's lending criteria. As such, the valuing surveyor confirmed the property was not suitable security for a mortgage. Mr and Mrs C were informed of this on 12 October 2021 and they were asked to contact it to discuss the next steps.

Mr and Mrs C provided reports from a testing company and a consulting engineer regarding the integrity of the concrete the walls were constructed of, which they hoped would mean NatWest would change its decision. These reports had been commissioned by the vendor of the property in March 2020 and March 2021 respectively. The reports were forwarded to the valuing surveyor, which considered the additional information. However, it did not change its mind about the suitability of the property as security for a mortgage.

Mr and Mrs C then had their own survey completed on the property and forwarded it to NatWest at the end of November 2021, along with a letter from a local estate agent confirming the saleability of the property. This again was forwarded to the valuing surveyor, but it didn't change its decision. Mr and Mrs C were made aware of this decision within a few days. They remained unhappy about the decision to decline the mortgage application and asked if NatWest could commission a survey from a more local surveyor as they thought more local knowledge might result in a different outcome – they were told there would be no point, given the reasons for the decline.

Mr and Mrs C subsequently repaid the mortgage in December 2021. They paid an ERC of approximately £20,500. Mr and Mrs C were unhappy that they had to pay the ERC and NatWest looked into what it was able to do to assist them. It offered them a concession in

the middle of April 2022 – to allow them to port the interest rate product to a new mortgage if they purchased a second property within six months of the date they paid off the original mortgage. Mr and Mrs C were happy with this concept, but have told us they were unable to take advantage of it due to the amount of time it would take to get a mortgage appointment with NatWest – vendors were not happy to take the properties they were looking at off the market while it was confirmed if Mr and Mrs C would be granted a mortgage.

NatWest responded to the complaint in a letter dated 3 February 2023. It didn't uphold the complaint. It said it was satisfied that Mr and Mrs C had been aware of its porting process and eligibility criteria before they completed their purchase. It confirmed that the property they bought had not been considered suitable security for the mortgage they had applied for. However, it had offered a concession – that they could port the interest rate product to a new mortgage for a rental purchase within six months of their old mortgage being redeemed, which would have resulted in the ERC being refunded. NatWest didn't consider it had made any errors or mistakes in relation to the mortgage application process. It also said that it could not be held responsible for the vendors of potential properties not being willing to wait for Mr and Mrs C to see a mortgage adviser.

Mr and Mrs C weren't happy with the response they received and referred the complaint to the Financial Ombudsman Service on 28 April 2023.

The complaint was allocated to one of our Investigators. When Mr and Mrs C spoke to him, they confirmed they wanted us to consider both of their complaints. The Investigator explained that we couldn't consider the complaint that had been responded to in the August 2021 final response letter, as they'd asked us to consider outside the time limit for a referral. Mr and Mrs C accepted that we could not consider the earlier complaint.

Mr and Mrs C explained their understanding was that they didn't need to have a property to buy to put in a porting application, so they believed they had been given incorrect information by NatWest on multiple occasions. In addition, they explained the issue with the valuation was not only that it produced a nil valuation, but that NatWest had been asked to provide a homebuyer's report and didn't do so. In relation to appealing the surveyor's conclusions, Mr and Mrs C said they were asked by NatWest to provide additional reports, which caused delays and meant they couldn't buy a new property to port the interest rate product over to in time. They also said after they found new properties, they couldn't secure a purchase because NatWest would not give them a mortgage offer, so they were not considered suitable buyers. They couldn't even get a mortgage in principle letter to show to estate agents. Furthermore, Mr and Mrs C said they were not told about the amount of time the concession to the porting window gave them, so they didn't know what they were working with and don't believe they could have completed on a purchase within two months, especially given there was a three-week wait to speak to a mortgage adviser at the time.

The Investigators considered Mr and Mrs C's second complaint, but he didn't recommend that it be upheld. He was satisfied the mortgage application on the property Mr and Mrs C wanted to buy was declined reasonably, as it didn't fit with NatWest's lending criteria. As there was not a mortgage in place for the interest rate product to be ported to when the existing mortgage was repaid, the Investigator was satisfied the ERC was chargeable. The Investigator was also satisfied Mr and Mrs C were aware of the porting process and it was not NatWest's fault that they purchased a property that did not fit with its lending criteria or that they were unable to source another property to port the product to. As for not commissioning the homebuyer report, NatWest had confirmed this had not been done because the property was not mortgageable, which wasn't unreasonable.

Mr and Mrs C didn't accept the Investigator's conclusions. They reiterated their previous comments about NatWest having made it impossible for them to port their interest rate

product to a mortgage on another property. This meant it was impossible for them to claim back the ERC they'd paid.

I issued a provisional decision on 8 February 2024, in which I set out my conclusions and my reasons for reaching them. Below is an excerpt.

'Mr and Mrs C have said during their complaint that they were told they had to have an offer on a property accepted to be able to put in a porting application, but they believe this is not the case. When applying to port, a borrower is not applying to port the mortgage borrowing to a new property, but rather just the interest rate product that is attached to the existing mortgage. So a porting application is technically a separate process to the mortgage application, but the former can't happen without the latter also having been started. Quite simply, in order to port the product to a new mortgage, a new mortgage has to exist and so has to have been applied for when the porting is applied for. In order to apply for a mortgage, an offer from the borrower has to have been accepted by the vendor.

Most lenders will require the porting application to be made at the same time or after a mortgage application is made, and before the existing mortgage is paid off. NatWest also requires this. In this case Mr and Mrs C applied to port the product when they applied for the new mortgage in September 2021. Again, in general, if a mortgage application is declined because the property is unsuitable security, most lenders will allow the porting application to stand and be linked to a further mortgage application on a different property, as long as completion on the eventual mortgage happens either when the existing property is sold, or within a certain number of months if the lender allows a porting window. NatWest allows a porting window of four months from the date the existing mortgage is repaid.

At the core of this complaint is the fact that NatWest rejected Mr and Mrs C's application for a mortgage on the property they wanted to buy. A lender will decide what types of property it is willing to provide mortgages for. Many lenders won't lend on a non-standard construction built during specific periods because of known problems with the integrity of the building type or a lack of knowledge about the building methods and materials. A lender is entitled to decide what types of risk it is willing to take when it lends, and that's not something this service would normally look to interfere with.

When Mr and Mrs C applied for a mortgage NatWest agreed in principle to lend them the money. It employed a suitably qualified expert to assess the property and decide whether it was suitable security for the amount Mr and Mrs C wanted to borrow. This assessment took into account the types of property NatWest was willing to lend on. This is normal when a valuation is done. The surveyor concluded the property was not suitable security for the residential mortgage Mr and Mrs C had applied for.

NatWest was entitled to rely on the expert opinion it had commissioned. So I can't find it was unreasonable for NatWest to decline Mr and Mrs C's application for a mortgage on the new property. In the circumstances, when the mortgage was repaid, it was also not unreasonable for NatWest to have charged the ERC.

It is clear that Mr and Mrs C wanted to buy the property they had selected. They've told us they had put down funds when their offer was accepted to ensure the property couldn't be sold to someone else, which would have been lost had they chosen to find another property that was acceptable to NatWest. We don't have recordings of the conversations that took place between NatWest and Mr and Mrs C thereafter. Mr and Mrs C have said NatWest asked for reports to be provided. A lender would usually only request inspections or reports to be commissioned if the surveyor completing the valuation recommended it, which was not the case. I also note that the concrete testing and engineering reports existed long before the mortgage application was submitted, which would again indicate they were not reports

NatWest requested, but rather Mr and Mrs C had to hand. I think there were discussions about what Mr and Mrs C could provide that might allow the surveyor to change its conclusions, and some guidance might have been given on what any evidence provided would need to do to allow a reconsideration. However, I am not persuaded NatWest instigated the provision of information or Mr and Mrs C's decision to appeal the surveyor's conclusion that the property they wanted was not suitable security. As such, if those appeals delayed matters, NatWest can't be held responsible.

As for what happened after that, by the time Mr and Mrs C had accepted the situation with the valuation, there was little of the porting window left if they were to buy another property. NatWest agreed to extend the porting window to six months to allow them to port it. Mr and Mrs C have said they weren't told when the porting window ended. The NatWest member of staff involved has said he gave them this information verbally when the decision was made in April 2022.

To uphold this part of the complaint I must be persuaded that Mr and Mrs C's recollections of events is more likely than NatWest's. However, I am not persuaded that is the case. That is not to say that I doubt Mr and Mrs C are giving us their genuine recollections of events, but simply their recollections are not more persuasive than the evidence NatWest has provided. I note a few weeks after the porting window was extended Mr and Mrs C emailed NatWest to ask it to confirm when they needed to have an offer on a property accepted in order to benefit from the concession. Had Mr and Mrs C not been told when the window ended, I would have expected that to be asked, but they asked when within that window they needed to start their mortgage application to be able to complete the purchase within the window. I also note that this question was not asked until more than three weeks after the concession was offered, and Mr and Mrs C confirmed they hadn't started looking for an alternative property at that point.

As Mr and Mrs C have highlighted, the property market was buoyant at the time they needed to find an alternative property to port to. This meant demand for properties and mortgage appointments was high, meaning availability was limited. That is not something I can hold NatWest responsible for, nor the fact that the vendors of potential purchases were not willing to accept their offers. I note that Mr and Mrs C have blamed the inability to get an offer accepted on NatWest refusing to provide them with an offer or decision in principle (DIP). An offer is not something a lender can provide until an application has been submitted and accepted, so that was never something that could have been expected. As for providing them with a new DIP, that was not possible until they met with a mortgage adviser, although they would have still had the one provided in the previous September to use if needed.

I note that Mr and Mrs C have indicated they were disadvantaged because NatWest didn't commission the Homebuyer's survey they had asked it to. If a consumer has asked for this additional level of survey, a lender will usually commission it at the same time as the valuation, so that only one visit to the property is needed. NatWest has confirmed it didn't commission the survey as it should have. Mr and Mrs C were aware of this mistake at an early stage – by 27 October 2021. They commissioned a replacement survey shortly thereafter. Given what was happening at that time, I am not persuaded this mistake impacted the process that occurred. However, it's not clear from the file provided whether NatWest returned any fee Mr and Mrs C had paid for the Homebuyer's survey. NatWest should ensure that happened.'

NatWest confirmed that it had nothing further to add.

Mr and Mrs C said that they considered I had missed the point of their complaint completely and there was a lack of understanding of their position. They said they assumed that I had only read and agreed with the Investigator's notes, rather than reviewing the complaint

independently. Mr and Mrs C said they felt NatWest had been evasive and selective with the evidence it had provided. They said that all they asked for was a genuine opportunity to port their mortgage and being denied that opportunity meant they lost £23,000 in the form of an ERC. Mr and Mrs C reiterated their previous comments about NatWest not doing enough to assist them buying an alternative property to port to after it told them not to appeal its decision further.

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.

Before I comment further on the merits of this complaint, I can assure Mr and Mrs C that I reviewed all of the evidence and submissions made by both parties before I reached my provisional decision. I did not, as they assumed because I didn't uphold their complaint, simply rely on the Investigator's opinion.

Mr and Mrs C have said that all they asked for was the opportunity to port their interest rate product and avoid paying the ERC associated with it. I can understand this, but the evidence shows that they were given that opportunity. Any porting application was always subject to Mr and Mrs C and the property they wanted to buy falling within NatWest's criteria. Unfortunately for Mr and Mrs C the construction of the property they wanted to buy was not an acceptable risk for NatWest. They chose not to accept this decision and to try to alter the surveyor's opinion – that was their choice, but any time that process took could not be laid at NatWest's door. Mr and Mrs C knew NatWest would not lend on the property they wanted in October 2021, but they chose to go ahead with the purchase, knowing that the ERC would need to be paid. That was their decision and one that they were entitled to make, but I can't hold NatWest responsible for the consequences of that decision.

When they repaid the mortgage, Mr and Mrs C had a porting window of four months as all of NatWest's other customers would have had, in order to find an alternative property to port to. NatWest then tried helping them by extending the porting window by another two months. NatWest didn't have to do this as it had not made a mistake in its decision not to lend on the property they bought. It did it to try to assist long-term customers. As I said in my provisional decision, it is unfortunate that the housing market was such that Mr and Mrs C weren't able to buy a second property within the extended porting window, but again, I can't hold NatWest responsible for that.

I have reviewed the file again in its entirety in light of Mr and Mrs C's further comments, and I have revisited my provisional decision. However, my conclusions remain the same.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs C to accept or reject my decision before 25 March 2024.

Derry Baxter
Ombudsman