

The complaint

Mrs M complains that National Westminster Bank Plc gave her information about how her jointly held mortgage could be moved into her sole name. She said she relied on this, then had to pay a large Early Repayment Charge when the advice turned out to be wrong.

What happened

Although the mortgage in this case was held in two names, our service has agreed to consider this complaint which is brought by Mrs M alone. Mrs M is supported in this complaint by a representative, but this remains her complaint, so I will address her below.

Mrs M told us she and her former husband were both named on the mortgage for their home, held with NatWest. She said they were divorcing, and in August 2023, he stopped contributing to the mortgage. So Mrs M contacted NatWest in 2023 to discuss her options for the future, with regard to their home.

Mrs M said one of the options suggested was to transfer the house to her sole name and keep her existing mortgage rate. Mrs M said there was no mention of any need to complete an application, or that an affordability check would need to be made. She said it was unambiguously described to her as simply removing her husband from the mortgage. Mrs M said there was also discussion of adding a family member to the mortgage at the same time as her husband was removed. But she said that there was no discussion of the residential status of the family member.

Mrs M said that because of this information from NatWest, she rejected a settlement offer which would sell the house and split the proceeds. She told her solicitor she wanted the family home moved into her sole name instead, and she would pay the mortgage in future. She said this led to a long argument, but she was successful. She said this was agreed in March, and so she contacted NatWest again then, to start the process of removing her husband from the mortgage and transferring it to her sole name.

Mrs M said it was only then she was told it wasn't possible to move the mortgage into her sole name. She said she was also told she would need to apply for a new mortgage product.

Mrs M said she did then try to secure the mortgage with a family member replacing her husband on the mortgage, but NatWest said her family member wouldn't be considered. However, Mrs M said this was irrelevant to her complaint. She was complaining that the information she'd been given in August 2023 was wrong.

Mrs M said the court issued a consent order for the transfer of the property to her sole name in early May 2024. That required the transfer of the property to her sole name within 56 days. But NatWest had told her she couldn't afford her current mortgage, and if she remortgaged elsewhere, she would have to pay about £6,000 in fees. So Mrs M felt NatWest had engineered a situation where she was forced to pay an Early Repayment Charge ("ERC") and remortgage elsewhere.

Mrs M said she'd complained, and NatWest offered £150 for the trouble and upset caused

and any time wasted. Mrs M said she had returned the £150, and she wanted our service to look into things instead. She wanted NatWest to pay back the ERC she'd been charged.

NatWest said it hadn't agreed to the mortgage being transferred into Mrs M's sole name for reasons of affordability. It didn't think that decision was wrong. But it accepted that on 23 March 2024, it had told Mrs M that she could add a relative onto the mortgage, who is resident outside of the UK. NatWest said Mrs M should have been told right away that this wasn't possible. But she'd gone to the trouble of collecting relevant information, calling back and going through an affordability assessment before she was told that she couldn't add this relative, because they weren't UK resident.

NatWest said it had offered Mrs M £150 to say sorry for that, but Mrs M had turned it down. When this complaint came to our service, NatWest offered this again. But it wouldn't pay back the ERC she'd been charged.

Our investigator didn't think this complaint should be upheld. He thought Mrs M would have taken the decision to pursue sole ownership of the family home based on more than just information from NatWest. But he accepted information from NatWest would have influenced things. He said he hadn't been able to listen to any call recordings from August 2023, but he didn't think that affected the outcome of the case.

Our investigator said NatWest did consider Mrs M's application for a transfer of the mortgage to her sole name. He felt it did so fairly and in line with its lending criteria. But NatWest turned this down, as Mrs M couldn't meet affordability on her own, and her family member couldn't be added as he wasn't UK resident.

Mrs M then chose to remortgage to another lender. Our investigator said the consent order Mrs M showed us didn't require her to do this, it only required her to maintain the mortgage payments. Our investigator said it isn't unusual in divorce cases for both parties to remain on the mortgage, and he didn't think there was anything stopping Mrs M from doing that here.

Our investigator didn't think NatWest had done anything wrong.

Mrs M's representative said we really should have asked for the call from August 2023. He said that was key to the complaint. He said Mrs M was told then that she could simply remove her husband's name without completing an application or adding anyone to the mortgage. The representative also said we'd misunderstood the consent order. He said Mrs M didn't have the option to keep her husband on the mortgage, once that was issued.

This case was then passed to me for decision. And I then reached my provisional decision.

My provisional decision

I issued a provisional decision on this complaint and explained why I only proposed to uphold a smaller part of it. This is what I said then:

Our service does now have a recording of a call that Mrs M had with NatWest in August 2023. Our investigator can forward that to Mrs M if she would like to hear it. I realise that this call was some time ago, but I'm sorry to have to tell Mrs M that, aside from there having been no discussion of the residence requirements for someone who might be added to the mortgage, the rest of the call is not as she recalls it.

On the call on 24 August 2023, NatWest's call handler described the process for changing a mortgage from joint to sole, including the affordability checks that would be required.

NatWest also explained that if Mrs M was successful in passing affordability, the mortgage product would stay the same, so she could keep the same interest rate.

Mrs M asked what would happen if she failed the affordability check. The call handler told Mrs M that NatWest would take account of the fact she'd been paying the mortgage herself, but she was quite clear that this would not be a deciding factor, and that NatWest wouldn't guarantee lending.

Mrs M asked about a guarantor, and was told NatWest didn't offer this. She was told if two people were on the mortgage, NatWest would usually expect the same two people to both be named on the deeds. There were very limited options otherwise.

I don't know if Mrs M made other calls to NatWest at the time. Because she has described such a very different exchange, it's possible that she called another time, and was given different information. But if that were the case, I would expect Mrs M to query the different information she was given, rather than simply rely on one of two conflicting versions of what NatWest could do.

Mrs M then rang in early February 2024, asking for an affordability check to transfer the mortgage to her sole name. She was told on this call that she'd unfortunately failed on both affordability, and on her credit file. NatWest suggested that she should look at her credit file, in case there was something there she didn't know about.

Mrs M spoke to NatWest again on 22 March 2024. She said then that a court order was being written up at the moment, and she would have 56 days to remove her husband from the mortgage if she could.

On this call, NatWest said again that she'd need an affordability check. Mrs M said her solicitor had told her she had to secure a mortgage agreement in principle. NatWest said it could check if she could afford the mortgage. It would then either provide the agreement she wanted, or if she was turned down for lending, NatWest would provide a decline letter, letting all parties know she couldn't move the existing mortgage into her sole name. NatWest offered this for the purposes of the court proceedings Mrs M was going through.

Mrs M rang back on 23 March, and again discussed the options. Again, she was told she would need an affordability check, either to put her mortgage in her sole name, or to add someone else. Mrs M was wrongly told on this call that she could add a family member to the mortgage, although he lives overseas. This is the mistake NatWest accepted it had made.

Mrs M then completed an affordability assessment, and was told she was declined. NatWest said she could retry with adding a family member, but NatWest also told Mrs M that without resolving the problem with her credit file, any sole or joint application she made in future would likely be declined again.

Mrs M rang again on 28 March, and discussed adding her relative to the mortgage. It was only at the end of this call that she was told her relative could not be added, because he lives overseas.

Considering the above, I don't think it's likely that Mrs M was clearly told in August 2023 that she could simply remove her husband from the mortgage without any need for affordability checks. The information given on the call recording I have listened to, is that

if Mrs M wants to move the mortgage into her sole name, she will need an affordability check.

I also haven't been able to hear, in the subsequent calls that Mrs M had with NatWest, that NatWest told her any successful application to move the mortgage into her sole name would mean she'd lose the existing interest rate on her mortgage.

Mrs M has sent us a court order which appears to have been signed on 16 April 2024, then finalised by the court on 7 May.

Listening to the calls in February and March, it's clear Mrs M was concerned then that she wouldn't be able to afford the mortgage. And she was told as early as 4 February 2024 that NatWest wouldn't move the mortgage into her sole name. I note that this was before the court order was finalised, so at this stage, Mrs M did have options on how to proceed. Mrs M later said her solicitor had told her to obtain a mortgage agreement in principle, so it appears that in late March, Mrs M was checking she could secure the lending that she understood would be required to put the property into her sole name.

I understand that Mrs M did then secure that lending elsewhere.

It's not clear on the face of the consent order Mrs M has sent us, that Mrs M was required to remove her husband from the mortgage within 56 days of the order. The order itself says Mrs M is only required to *"... use her best endeavours to procure the consent of the mortgagee to release [her husband] from his liabilities in respect of [the mortgage]"*.

However, even if Mrs M was under an absolute obligation to remove her husband from the mortgage, as she's suggested, I would still say it wasn't NatWest's fault that Mrs M had opted for a divorce settlement which required this. I've explained I don't think NatWest did wrongly suggest to Mrs M, back in August 2023, that she would definitely secure the lending she wanted in her own name. And listening to the calls from February and March 2024, it appears Mrs M had already been told there may well be difficulties with securing the lending she wanted from NatWest, over two months before the order appears to have been signed.

So I don't think it's NatWest's fault that Mrs M was then asked to pay an ERC, when she decided to move her lending elsewhere. Mrs M was told when she took out the fixed interest rate deal that it came with an ERC, which was still payable when she remortgaged elsewhere. So I don't think NatWest was wrong to charge this, and I don't think it has to pay this back.

I do think NatWest wasted some of Mrs M's time, because it wrongly told her that she could add a relative who lives overseas. That's why NatWest paid Mrs M £150. I do think that provides a fair and reasonable outcome to this part of the complaint, so I think NatWest should, as it has offered, pay this now.

I understand Mrs M will be very disappointed by my decision, but I don't think NatWest has to do more than this, because I don't think the rest of Mrs M's complaint should be upheld.

I invited the parties to make any final points, if they wanted, before issuing my final decision.

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.

NatWest confirmed it had nothing to add. Mrs M didn't reply. So neither side has offered any further evidence or argument, and I haven't changed my mind. I'll now make the decision I originally proposed.

My final decision

My final decision is that National Westminster Bank Plc must pay Mrs M the sum of £150 that it previously offered for this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 13 January 2025.

Esther Absalom-Gough

Ombudsman