

The complaint

Mr P complains that National Westminster Bank Plc (NatWest) sold his debts. He doesn't think the bank had the right to sell them – and says he's been given conflicting information about the balances of the accounts when sold, and the date on which they transferred.

Mr P is also unhappy with how NatWest handled his subject access request (SAR).

What happened

In 2017 NatWest sold two debts owed by Mr P. They were originally credit card accounts, defaulted years earlier, that Mr P had been paying £1 a month towards for a long time.

Mr P complained to NatWest about the accounts being sold. He said the terms of his credit card agreement had been breached when NatWest reduced his limit in 2008 without giving him the proper notice – this meant the contract had been void since then, and the bank couldn't rely on its terms to justify selling the accounts.

The bank responded in March 2019 to say a complaint about what happened in 2008 was now out of time. The letter also said its collections agent had been “unable to reach a way forward” with Mr P on repaying the debts – and so NatWest had sold them. But Mr P was upset by that suggestion as he'd always paid the same amount and hadn't been asked to increase his payments.

Mr P made a SAR to get more information about the transfer, and NatWest asked him to provide proof of identity in order to proceed. Mr P complained about what he was being asked to provide, and that NatWest had spelt his name wrong in an email about the SAR. NatWest responded in July 2019 to say he could satisfy the security requirements by providing a signature specimen to compare to the one on file, and apologised for the error it made with his name. But Mr P didn't agree NatWest should still have a copy of his signature on file as it had sold the accounts.

Mr P later complained that he'd been given different dates for the transfer of the accounts, and questioned whether the balances NatWest had reported at the point of transfer were correct. Mr P also wanted to know the amount paid for the accounts by the new owners, and he wasn't happy that NatWest had at one point referred to the accounts as being open.

The bank responded in August 2019 and explained that as thousands of accounts were included as part of the sale, it was a long process with many different dates involved. NatWest apologised for any confusion caused, offering £30 compensation, and confirmed the amounts outstanding when the accounts were sold.

Mr P wasn't happy with any of the responses he received from NatWest – and so referred his complaints to our service for review.

An investigator here looked at all the complaints and didn't think they should be upheld. His view was that the terms did allow NatWest to sell the accounts, and the bank was free to make such commercial decisions. The investigator acknowledged NatWest had made some

mistakes, like misspelling Mr P's name, but thought NatWest's apologies were enough. He also said the explanation given for the different sale dates was reasonable and the stated balances on sale were correct. Overall, he didn't think any further compensation was due.

As Mr P didn't agree with the investigator's view, the complaints were referred to me for a decision. I previously wrote out to both parties to confirm the complaint about the lowering of Mr P's credit card limits in 2008 wasn't in scope – as it had been brought too late.

I issued a provisional decision upholding Mr P's complaint on 9 July 2020. I've quoted the main body of my findings below:

“There's a balance between keeping a customer's information safe and putting in place too many barriers to them being able to access it. In respect of Mr P's SAR, I don't think asking for some proof of identity was unreasonable – and when challenged, NatWest attempted to make the process easier for him by only requiring a signature to compare to them copy on file. The bank was entitled to retain some of Mr P's data following the sale for a certain period – and it was important that it did, given NatWest was forwarding on Mr P's payments to the new owners of the debts after the transfer completed. So I don't think NatWest needs to compensate Mr P for anything related to the SAR process. Similarly, spelling his name wrong – while mildly irritating I'm sure – didn't impact the fulfilment of his SAR. NatWest apologised and I think that's enough.

I can understand why Mr P questioned the date on which the sale happened. He'd seen several 'sale' dates mentioned in system notes and had been given differing information by the staff he spoke to. NatWest accepts it caused some confusion, but gave a reasonable explanation as to why different dates had been mentioned – saying it was complex process, involving many steps, with the sale being agreed long before the accounts transferred. The account balances would only have been slightly different depending on which date was referred to (given only token payments were being made), and Mr P would have been provided copies of his statements with his SAR. Having reviewed all the information relating to the account balances, I'm satisfied that when Mr P sought clarity NatWest provided him with the correct information in its response to his complaint. The bank offered Mr P £30 compensation, to recognise any confusion caused – and I think that was sufficient.

NatWest later referred to the accounts as being open – and I can understand why Mr P found that contradictory. But NatWest apologised, and again I think that was enough. I also don't think Mr P was entitled to know how much NatWest sold his accounts for.

Mr P's argument against NatWest being able to sell on the debt is a legal one, and relates to an issue he had in 2008 that we can't look at – his card limits being reduced. It's common practice, though, for debts to be sold in this way and would've been something Mr P was on notice could happen when he signed up to the terms of his agreement. One party not complying with a particular term in the way he's described wouldn't necessarily render the entire agreement void anyway. So it seems NatWest could sell the debts, and did – but the real question for me to decide is whether NatWest should have sold Mr P's accounts. Based on what I've seen so far, I'm minded to say that wasn't fair and reasonable in the circumstances.

I appreciate that Mr P's accounts were sold along with thousands of others – but Mr P's circumstances appear to have been well known to NatWest prior to the sale being agreed. Mr P has only been able to make nominal payments towards the debts since the accounts defaulted. He hasn't been able to work since 2012, which he's told us is connected to long term mental health issues, for which he takes medication. NatWest wasn't able to complete an income and expenditure assessment with Mr P for many years, because he didn't have any income – and he told us that during this period he had to rely on help from friends and

family. I can't see Mr P's health issues mentioned in NatWest's notes, though he's told us he let the bank know on many occasions. But there were clear signs he was struggling, and that his circumstances weren't stable.

By 2016 the system notes indicate that while Mr P had started to receive benefits, he no longer had a fixed address or his own phone (he was using his brother's phone to call the bank). NatWest sent out an income and expenditure form around this time, and didn't hear back from him – but I don't think it likely reached Mr P given what he'd told the bank about his circumstances. NatWest has said this was why it referred to being 'unable to reach a way forward' with him in one of its final response letters. Without the proper context I can understand why that turn of phrase upset Mr P – especially given he'd always ensured he made the agreed nominal payments. But even without that income and expenditure form, NatWest were aware that his situation had worsened.

At the time of the sale, NatWest was registered with the Lending Standards Board. Its guidance for dealing with customers in financial difficulty said businesses "should take into account the customer's circumstances and consider whether it would amount to a fair customer outcome to pursue, or to continue to pursue, the amount owed". It also set out some examples of factors that could indicate a business should write off a debt – and they included things like the repayment history, anticipated time to repay the debts, how long the account has been in arrears, employment history and last known income.

The Money Advice Liaison Group said in its 'Debt and Mental Health Guidelines 2015' that "Creditors should consider 'writing off' unsecured debts when mental health conditions are long-term, hold out little likelihood of improvement, and are such that it is highly unlikely that the person in debt would be able repay their outstanding debts". I can't see that NatWest was a member of The Money Advice Liaison Group (though other brands in its group were) – but its guidelines still reflected what good practice looked like at the time in question.

I've taken both sets of guidance into account in deciding what I think is fair. NatWest had specifically signed up to one, and both signal good industry standards for the time – so I think it would've been reasonable for NatWest to have acted in line with them as well, bearing in mind Mr P's circumstances. That means the bank ought to have at least considered writing off the debts before they were sold – but I can't see that it did so.

Given the history of nominal payments on the accounts, the length of time it would take Mr P to repay on that trajectory, his mental health and the low chance that his situation would improve – it seems likely that a reasonable lender, who had properly considered Mr P's circumstances, would have written off the debts (instead of selling them) if it was acting fairly and giving due regard to its customer's interests."

Mr P said he accepted my findings and had nothing further to add. NatWest raised the following points in response to the provisional decision:

- While Mr P's debts had been managed by the NatWest's debt management team for some years prior to the sale, his account was not marked as 'vulnerable' – and the bank has seen nothing to suggest that wasn't correct.
- Even if a customer is on benefits or has entered into a reduced payment plan it doesn't necessarily mean a debt should be written off. Many customers who are struggling want to pay off their debts, which is why debt management plans (including £1 per month) are widely used across the industry.

- Mr P continues to pay the token payments to reduce the debts and that doesn't reconcile with wanting them written off.
- The investigator on the complaint considered the same information as I did, and agreed the bank had taken the right course of action in Mr P's circumstances.
- A finding of the nature indicated in the provisional decision seemed to be disproportionate given NatWest's systems and records indicate that it was not made aware of Mr P's vulnerability at the time of the sale.

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 also considered the further points raised by NatWest. Having done so, I've decided to uphold Mr P's complaint – and for broadly the same reasons as set out in my provisional decision.

I don't think a customer's willingness to comply with any payment plan put in place absolves the bank from its responsibility towards that customer. Regardless of whether Mr P chose to struggle to make the token payments over the years, NatWest still needed to give due regard to its customer's interests and consider what was right in the circumstances. I also agree that being on benefits or entering into a reduced payment plan doesn't mean that a debt should be automatically written off. But had NatWest assessed things as it should have in the circumstances of Mr P's accounts, I think that's the outcome it should have reached instead of selling.

NatWest has said it didn't add a 'vulnerable' marker to Mr P's account. I don't know what NatWest's internal criteria is for flagging an account in this way – but I've looked to see whether I think NatWest knew, or ought to have known, Mr P was vulnerable. The Financial Conduct Authority's (FCA) 2015 Occasional Paper on 'Consumer Vulnerability' defined a vulnerable consumer as *"someone who, due to their personal circumstances, is especially susceptible to detriment, particularly when a firm is not acting with appropriate levels of care"*. The Paper explained that many customers wouldn't necessarily define themselves as vulnerable, and so put the onus on firms to identify potential vulnerability by looking for indicators that their customer could be at risk. It also encouraged proactive and open conversations – with low income, debt, sudden changes in circumstances and mental health issues given as examples of potential risk factors.

When NatWest sold Mr P's account, the bank knew he'd been in financial difficulty for many years – there were no payments taken from him for a long time, as well as years of token payments towards the debt. By 2016 the system notes indicate Mr P no longer had a fixed address (which he's confirmed was the case) or his own phone number – clear signs his circumstances weren't stable and had in fact worsened. So I think NatWest ought to have known Mr P was vulnerable, and particularly susceptible to detriment, in the period just prior to the sale.

The bank recorded on its system in 2013 that Mr P had lost his job the year before. Other than limited insights like "not working", nothing further is mentioned in the notes to evidence that the bank sought to understand why he still wasn't working years later and couldn't afford to pay more than token amounts. Mr P has said he hasn't been able to work since 2012 due to mental health issues – and that he told NatWest about this. He's been open with us about the long-term health challenges he's faced, so it seems unlikely to me that this didn't come up in conversation with NatWest over the years. But even if Mr P didn't volunteer that

information to NatWest, I think the FCA's guidance in this area meant the bank ought to have asked questions, and had open conversations, about his circumstances – particularly given there were signs of vulnerability. There's no evidence in the notes that NatWest did this – and I think it's likely the underlying cause of Mr P's enduring financial difficulty would have come to light had this happened.

It was important that NatWest understood why Mr P was unable to repay the debt, and only able to make token payments for such a long period, in order to decide how to proceed at each juncture – including whether to sell the accounts. Based on what I've seen, I don't think NatWest did enough in that regard. I explained in my provisional findings what I think the guidance from the *Lending Standards Board* and *The Money Advice Liaison Group* meant NatWest ought to have done in the circumstances – and I haven't reviewed anything further that persuades me otherwise. So overall, I'm still of the opinion that given the history of no or nominal payments, the length of time it would take Mr P to repay on that trajectory, his mental health and the low chance that his situation would improve – it seems likely that a reasonable lender, acting fairly, who had properly considered Mr P's circumstances and had due regard for his interests, would have written off the debts instead of selling them.

Putting things right

After considering the individual circumstances of this complaint, taking into account the relevant guidelines and good industry practice, I think it would be fair and reasonable for NatWest to now write off the debt – as this is what I think it ought to have done in 2017. So to put things right, NatWest should first buy back the accounts, cancel the remaining balances and notify the credit reference agencies.

NatWest adequately put right the individual concerns that formed part of Mr P's overall complaint as they arose (like the issues with his SAR and the different transfer/sale dates). But Mr P has had to pay towards the debt for longer than I think he should have, and deal with the bank during that period. So a lot of the extra frustration and inconvenience he's experienced since the accounts were sold could have been avoided. Mr P has also mentioned that even maintaining the token payments has since been a struggle. Taking those factors into account, I think NatWest should pay Mr P £250 compensation to recognise the practical and emotional impact its mistake has had on him.

My final decision

For the reasons I've explained above, I uphold Mr P's complaint and direct National Westminster Bank Plc to:

- Buy back the debts, write off the balances and notify the credit reference agencies.
- Pay Mr P £250 compensation for the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 10 October 2020.

Ryan Miles

Ombudsman