

The complaint

Mr B complains that National Westminster Bank Plc is chasing him for debts which he believes are unenforceable or statute barred. He wants collection activity to be stopped.

What happened

Mr B complains that NatWest has been chasing him for some historic debts. He says that it hadn't provided him with copies of the agreements or other information he'd sought. And had continued to chase him for the debts even though he'd made it clear he thought they were unenforceable and / or statute barred. And after he'd indicated that he wouldn't be paying. He also complained that he'd not received much of the correspondence which NatWest claimed to have posted.

NatWest told us that the debt had been in recoveries for several years. It stated that the account remained open but was non-operational. Meaning that it was open only for payments to be received. It stated that correspondence had been sent to the address it had on record. It didn't accept that it had acted incorrectly in the way it handled the debt.

Our investigator didn't recommend that the complaint should be upheld. He felt that NatWest had reasonable grounds for believing the debt to be Mr B's. Given that he'd previously appointed an agency and made payments towards the debts. He went on to say that overall, he thought NatWest had treated Mr B fairly.

As Mr B wasn't happy with this outcome an ombudsman's been asked to make the 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.

I'm sorry that Mr B has faced financial difficulties over a number of years. And I can understand that being chased for debt can be a stressful experience.

Mr B has provided a detailed history of the background to the complaint. And whilst I'm limited into the aspects that I can look at due to time limits, it's been helpful in providing a wider context.

I understand that in 2018, Mr B made a complaint to NatWest which led to the defaults recorded on the accounts to which this complaint relates being re-dated to 2012. The effect of which was that NatWest ceased to report the accounts to credit reference agencies after March 2018. A final response letter (FRL) was issued in July 2018 which Mr B states that he didn't receive. But I've seen a copy of the letter and I'm satisfied it was sent to the address held by NatWest. I can't hold NatWest responsible for the non-delivery by a third party mailing service. And as our investigator has explained, we can't look again at the issues dealt with in that complaint.

In August 2020, Mr B complained to NatWest after he'd received a letter from a collection agent seeking repayment of the sums allegedly due on these accounts.

Mr B's complaint comprises a number of elements. These relate to whether the sums being sought are accurate; if the debts are unenforceable or statute barred; if NatWest has been fair in the manner it has pursued the debts.

I'm aware that I've summarised this complaint in far less detail than the parties and I've done so using my own words. I'm not responding to every single point made by all the parties involved. No discourtesy is intended by this. Instead, I've concentrated on what I think are the key issues here. Our rules allow me to do this.

This reflects the nature of our service as an informal alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

Let me say at the outset that I'm not able to make legal rulings on whether the debts are Mr B's. And whether they are unenforceable or statute barred. Nor can I say that he has to repay them. Those would potentially be matters for a court to determine. I gather from his latest reply to our investigator's view that Mr B understands this.

In short, what I have to decide is if NatWest has reasonable grounds to believe that Mr B is the debtor. And if so, has the manner in which it has sought to collect the debts been fair.

Where information is incomplete or unclear - as some of it is here - I reach my conclusions on the balance of probabilities. That is, what I think is most likely to have happened in light of the available evidence and the wider surrounding circumstances.

Mr B isn't disputing the debts are his. But as part of my enquiries and for completeness, I viewed all the account history notes supplied by NatWest. These show the accounts went to recoveries in 2013. And Mr B had previously appointed a debt manager, a business I'll call "M", through which he made a payment arrangement with NatWest.

I find, based on the above, that NatWest reasonably believes the debts are those of Mr B.

Turning now to the issue of it's fair for NatWest to chase these debts if they are – as Mr B alleges - statute barred or unenforceable. Put briefly, a statute barred debt is one where the limitation period for issuing a court claim has expired. An unenforceable debt is one that is not necessarily statute barred. But where the creditor cannot, for other reasons, enforce the debt through the courts.

The debts here relate to a current account and personal loan. The limitation period (within which a creditor is required to issue a court claim) is six years from the time the cause of action arose. But the limitation period may in effect be restarted if payments are made by or on behalf of the debtor.

The notes I've seen show that payments were made by Mr B, through M, until July 2015. Mr B has advised that he terminated his contract with M in 2015. So it would be consistent if the last payments made through M were at that time.

The only other payment I saw was a credit recorded in 2018 which was described as "*redress*".

Given the evidence of payments being made by Mr B or on his behalf, until July 2015, it seems more probable than not that the debts won't become statute barred until July 2021 at the earliest.

Debts may also become unenforceable if the creditor is unable to supply the debtor with certain information about an alleged debt.

I understand that NatWest hasn't been able to provide Mr B with copies of the relevant agreements. Although it's supplied some statements of the sums allegedly due. This may make these debts unenforceable. But even where a debt may be unenforceable, doesn't mean a business can't seek to collect it. Our investigator explained in detail that it's acceptable for a business to pursue unenforceable debts. I concur with this view.

Mr B has suggested that NatWest has broken FCA rules by continuing to seek to collect the debt. He's referred to some specific rules.

CONC 7.14.1 R 01/04/2014

- (1) A firm must suspend any steps it takes or its agent takes in the recovery of a debt from a customer where the customer disputes the debt on valid grounds or what may be valid grounds.*

CONC 7.14.2 G 01/04/2014

Valid grounds for disputing a debt include that:

- (1) the individual being pursued for the debt is not the true borrower or hirer under the agreement in question; or*
- (2) the debt does not exist; or*
- (3) the amount of the debt being pursued is incorrect.*

Mr B suggests that the sums he's alleged to owe might not be accurate. And that he's only been provided with statements from 2014 – not the sums due at the start of the agreements. He's referred to other issues including NatWest having a major IT failure in 2012. And an error in identifying the business which was managing the debt on his behalf.

There's no objective information to show that these issues were likely to have affected Mr B's accounts. And in the absence of some specific evidence, I agree with our investigator. I don't think they provide *valid* grounds for suggesting the account balance is inaccurate.

As I don't find there are any objectively valid grounds for disputing the debts, I see no reason why NatWest was required to suspend its collection activity. And I don't think the appointment of an alternative collection agent when the complaint was referred to this service was unfair. I've seen nothing that leads me to believe that the manner in which NatWest has sought to collect the debt is unfair.

Whilst I'm not upholding this complaint, I recognise that the situation is fluid. I'm sure that Mr B will be anxious to know what collection activity NatWest might seek to pursue in future. And it's fair to say that a business needs to ensure that collection activity remains fair.

Going forward, I'd expect NatWest to be aware of Mr B's stance on the issue of the debt and its enforceability. Also the potential effect on its collection activity if the debt becomes statute barred.

CONC 7.15.8 R states:

A firm must not continue to demand payment from a customer after the customer has stated that he will not be paying the debt because it is statute barred.

In summary, I find that NatWest has reasonable grounds to believe Mr B owes the debts it was seeking to collect from him. And that it hasn't misled him or otherwise acted unfairly in trying to collect them. Accordingly, I'm not upholding this complaint.

My final decision

For the reasons given above, my final decision is I'm not upholding this complaint

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 13 July 2021.

Stephen Ross
Ombudsman