

The complaint

Mr K's complained about the way National Westminster Bank Plc (Nat West) dealt with the charges and interest on one of his accounts – and about closing both his accounts with them.

What happened

Mr K had a student account with Nat West. By 2017, Mr K says the account was overdrawn by about £2,500 – partly as a result of Nat West applying interest and charges, which he thought were unfair and unlawful. Mr K had a second account with Nat West, which was largely in credit.

During a trip overseas, Mr K found that his accounts were closed. So he was left in the embarrassing position of having to borrow money for expenses while away. He later moved his day to day banking to another bank.

Towards the end of 2018, Mr K complained to Nat West about the interest and charges applied to his student account and his accounts being closed ("the 2018 complaint"). In addition, he said letters sent to him about the student account were sporadic and threatening. And that he'd been contacted by a debt collector after hearing nothing from Nat West for a year.

Nat West investigated the 2018 complaint and sent Mr K their final response on 28 December 2018. They said that charges had been applied in line with the account terms and conditions. And that they'd written to Mr K regularly, including sending a default notice and formal demand, but he'd not replied. So they'd referred the account to their collections team, and later to debt collectors. Nat West said that the account was transferred from one debt collection agency to another and no error had occurred.

But, as a gesture of goodwill, Nat West said they would refund interest and both arranged and unarranged overdraft charges debited since Mr K had last used the account. These totalled £505.59 and were applied to reduce the overdraft on Mr K's account. And Nat West confirmed which debt collection agency he should contact to deal with the remaining debt.

Following his complaint, Mr K made three proposals to deal with the debt and asked Nat West to advise on which was best. But he didn't get a reply. So, in August 2019, he raised a second complaint about this ("the 2019 complaint") – and about Nat West setting off the credit balance in his other account against the overdraft.

Nat West investigated. They apologised for not replying and paid Mr K £50 compensation. And they confirmed the account had been passed to a new debt collection agency and said Mr K should now deal with them. In respect of setting off, they said they had the right to do this and had advised Mr K of this in December 2014.

In July 2020, Mr K brought his complaints to our service. Our investigator considered them and concluded we couldn't investigate the 2018 complaint, because our rules say that, unless there are exceptional circumstances which mean they can't, complainants should bring their complaint to us within six months of a business's final response.

But the investigator did consider we could look at the 2019 complaint. He did this and concluded £50 was a fair sum of compensation for what had gone wrong. And he noted Nat West had the right to set off the credit balance of Mr K's account against what he owed. So he didn't think they needed to do anything different to resolve his complaint.

Mr K asked for an ombudsman's decision, so the complaint was passed to me. I made a provisional decision because I didn't think either of Mr K's complaints had been brought to us within six months of Nat West's final responses – which would mean we didn't have jurisdiction to look at either of them.

In response to my provisional decision, Mr K provided information which he said shows there were exceptional circumstances why he didn't bring his complaints to us until July 2020. And he said his complaints about communication from Nat West about the default still hadn't been considered.

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.

Having done that, I think exceptional circumstances did exist which meant Mr K couldn't bring the 2019 complaint to us within the required time. But I'm not upholding that complaint. I'll explain why.

Jurisdiction

In response to my provisional decision, Mr K explained that, sadly, a family member became seriously ill in August 2019 – which is when Nat West sent their final response to the 2019 complaint. Mr K provided regular care, eventually moving in with his relative to do so on a full time basis.

The relevant part of our rules (DISP 2.8.1) says:

“The Ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service:

- (1) *more than six months after the date on which the respondent sent the complainant its final response....*
- (2) *...*

unless:

- (3) *in the view of the Ombudsman, the failure to comply with the time limits in DISP 2.8.2...was as a result of exceptional circumstances....”*

I do think the circumstances Mr K has described were exceptional and his focus would – naturally and understandably – be on caring for his relative rather than pursuing his complaint. So I think we should consider the 2019 complaint.

But I've not seen any information to suggest exceptional circumstances apply to the 2018 complaint. Nat West sent Mr K their final response in December 2018 – so he had until June 2019 to refer it to our service. He didn't do that. So I've decided that we can only consider the issues raised in the 2019 complaint.

Merits

The 2019 complaint raised two issues. First, Mr K said Nat West didn't reply to his letters setting out various proposals to settle his debt. And, second, he complained about Nat West setting off the credit balance in one of his accounts against the overdraft in the other. I've thought about both of these.

I've seen Nat West confirmed in their final response to the 2018 complaint that Mr K's account had been referred to a debt collection agency and that, in future, he should contact the debt collection agency about repaying his debt and getting any balance released from the account which had a credit balance. And Mr K's given us a copy of a letter he received from the agency in early January asking him to get in touch to discuss his account.

I'm satisfied from these letters that Mr K was made aware he should contact the debt collection agency, rather than Nat West, about options for repaying his debt.

I note Nat West have paid Mr K £50 for not replying to his letter. And, while I understand why he contacted Nat West, I don't think that stopped Mr K from taking the action Nat West and the debt collection agency had advised him to. I think the payment of £50 is a fair amount for the inconvenience he was put to and Nat West don't need to do anything more to resolve this.

I've also looked at the complaint that Nat West set off Mr K's credit balance on one account against what he owed them on the other. I can see that Mr K acknowledged in his complaint to us that Nat West's terms and conditions give them the right to do this. And I can see from Nat West's notes that they wrote to him about setting off and that Mr K contacted them about this.

As I'm satisfied Nat West had the right to set off and that Mr K was aware of their intention, I don't think they need to do anything else to resolve this part of his complaint.

When he responded to my provisional decision, Mr K said his complaint about Nat West's communication – and specifically about the default notice they sent – hasn't been addressed.

I've thought about this. But the only references to communications are made in the final response sent to the 2018 complaint. As I've explained above, that wasn't referred to us within the time limit set out in our rules. So I don't have the authority to consider it any further.

My final decision

For the reasons I've explained, I'm not upholding Mr K's complaint about National Westminster Bank Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 17 March 2022.

Helen Stacey
Ombudsman