

The complaint

Mrs M complains that National Westminster Bank Plc incorrectly recorded her payments with Credit Reference Agencies (CRA's) and they have charged her an annual fee and interest despite her being in financial difficulties.

Mrs M is represented by her son in bringing this complaint. But for ease of reading, I'll refer to any submission and comments he has made as being made by Mrs M herself.

What happened

Mrs M had a credit card with NatWest. As she was suffering financial difficulty, she wrote to NatWest on 30 October 2018 to explain this to them. The letter explained that she was taking advice from a debt management charity and that she was gathering the relevant information that they required to assist her to set up a debt management plan (DMP).

Mrs M made a token payment of £5 and she said it was her intention to make payments via the debt management charity once a DMP had been set up for her. She asked NatWest to put her account in breathing space and to suspend any collections activity until they had heard from the debt management charity.

Mrs M made a complaint to NatWest. She said that despite making them aware of the steps she was taking to deal with her financial difficulties, NatWest charged her an annual fee of £24 and interest of £20.24, which she wanted them to consider refunding. She also said that NatWest should amend her credit file to show that they received a token payment when they first contacted her, and for the credit file to reflect that NatWest received a payment as part of the DMP.

NatWest did not uphold Mrs M's complaint. They said that Mrs M had advised she had made a token payment for £5 in November 2018 and December 2019. They said that when the account defaulted this is when the DMP was officially put in place. NatWest said that due to no official plan being in place until the account officially defaulted, the interest and annual fee were applied correctly. They said that although token payments were made to Mrs M's account, the late markers were applied correctly as no plan was in place in November 2018 or December 2018 and the process was still being completed. NatWest also said that when a plan is made with a debt management company, the charges and credit file impacts will continue until the plan is officially in place and the account is closed.

Mrs M brought her complaint to our service. She said that NatWest had been reporting missed payments to her account between November-December 2018 despite the existence of an arrangement to pay and her credit file should be updated with this status as this was the accurate status. She said that because the business reported missed payments as opposed to an arrangement to pay, then this suggests she was not dealing with her financial difficulties. She said it was unfair to charge an annual fee on the account which she could no longer use as part of her financial difficulties or to charge her interest.

Our investigator did not uphold Mrs M's complaint. He said that the account fee and interest had been charged in line with the terms and conditions of the account. He also said that the

account was officially defaulted by NatWest on 1 February 2019, once their internal process had been completed – as they had to wait for her account to default and terminate internally before they could apply the official default marker to her credit file. He said this is when the debt management plan was official and put into place.

Mrs M asked for an Ombudsman to review her complaint. She made a number of points. In summary, she said that it was inaccurate to state that the DMP took two months to be arranged as the DMP was arranged around three weeks after she had written to the business informing them of her financial difficulties. Mrs M said that the cornerstone of the response from NatWest was that they could not setup the DMP until February 2019 which she did not (and does not) feel is right or correct. She also said that NatWest had not addressed all of her points and that they refused to explain their rationale or consider the matter further.

As my findings differed in some respects from our investigator's, I issued a provisional decision to give both parties the opportunity to consider things further. This is set out below:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint."

Mrs M has made a number of points to this service and I've considered and read everything she's said and sent us. But, in line with this service's role as a quick and informal body I'll be focusing on the crux of her complaint in deciding what's fair and reasonable here.

I must explain to Mrs M that complaint handling by a business isn't a regulated activity and as such, the issues she's raised that relate directly to how NatWest have investigated her complaint, such as refusing to explain their rationale after a final response has been issued or to consider the matter further do not come under my powers to consider.

I will display my findings under headings, to help with the readability of my provisional decision.

How NatWest have reported payment activity to the Credit Reference Agencies (CRA's)

NatWest would be required to accurately report Mrs M's payment status to the CRA's. I know both parties have opposing views as to what should have been reported to the CRA's. So I'll look to see if NatWest have acted outside of how I would expect them to report the payment status/history of the account involved here.

I've considered what the Information Commissioner's Office (ICO) says about what should or shouldn't be reported. The ICO is the body created which deals with an individual's data, and it has released a document called "Principles for the Reporting of Arrears, Arrangements and Defaults at Credit Reference Agencies". It is entirely reasonable to rely on this, because when determining a complaint, amongst other things, I am required to take into account good industry practice and in my view, these principles constitute good industry practice in this area.

Section three of this document shows "If you offer or make a reduced payment, how it is reported (to the CRA's) will depend on whether it is agreed with the lender."

NatWest did accept the DMP. But in saying this, it is important to look at the dates of what happened and when, to see if NatWest reported to the CRA's what they should have done. Mrs M has provided me with information from either a CRA's directly, or by a third party company who extract data from the CRA's even if they don't appear to be directly CRA's themselves. These show for two consecutive months (which appear to be November and

December 2018), that there have been late/missed payments made to the account.

I'm satisfied this information is correct and I'll explain why. I've looked at the dates involved here. Mrs M's statement which was issued on 12 October 2018, shows that her minimum payment due is £54.53. The statement confirms that this should reach her account by 6 November. Mrs M pays £5 on the 30 October. On the same day she writes to NatWest to inform them of her financial difficulties and that she's in talks to arrange a DMP.

But as Mrs M did not make the minimum payment by the requested date, without an agreed DMP in place at the time, then I'm satisfied that NatWest accurately reported to the CRA's that Mrs M missed her minimum payment due. So I can't say they made an error in November's status here. I say this as although they received Mrs M's letter on 1 November, no proposal had been put to them yet, so I can't say they had agreed to a DMP at this point, so they would not be able to report an arrangement to pay here.

NatWest's notes show that the DMP was accepted on 28 November 2018. I know this differs to what NatWest told Mrs M (1 February 2019) and I'll move onto that point later. Looking at Mrs M's statement which was issued on 12 December, which covers the period from 13 November – 12 December 2018, Mrs M does not make a payment at all during this statement period. I asked Mrs M if she was aware of this and she said that the DMP had already commenced during that period, which confirmed what the first payment date would be and what the monthly date would be moving forward and that NatWest did receive a payment in December 2018.

But while I agree with what Mrs M has said about the DMP already commencing during the period in question, I need to look at whether NatWest accurately reported the status of her account to the CRA's during the statement period in question. And I'm satisfied they correctly did reflect that there was no payment made during the statement period. It would be Mrs M's responsibility to ensure at least the payment she offered would be made by the due date. Even if the first payment arranged as part of the DMP was after the payment due date. So I can't hold NatWest responsible for this if she did not make a payment by this due date and therefore, as they have a duty to do so, they reported this to the CRA's. While NatWest may have received a payment in December, this was after the due date and was accounted for in the following statement period.

From the CRA information Mrs M provided, this shows that her balance was reducing and therefore she was clearly trying to be proactive in what would be a difficult time. Mrs M may wish to consider registering a "notice of correction" with the CRA's to explain what happened during the timeframe in question. This is a short explanatory note that she can add to an entry on her credit file, to explain the background to that entry. So anyone who searches her credit report would see the notice of correction and take the notice into account if they viewed her credit file. Mrs M would need to contact the CRA's to do this. But I won't be asking NatWest to amend her credit file as they have reported activity accurately.

Interest/annual fee charged and customer service NatWest gave Mrs M

I've considered whether NatWest were fair to charge Mrs M interest on her account, despite her writing to them about her financial difficulties. The interest was charged to the account on 12 November. It's important to note that interest is charged in arrears. So the interest which was charged was accrued from the previous months statement period. And the previous month's statement period was between 13 September – 12 October 2018. This was before Mrs M informed them of her financial difficulties and before she made an arrangement through a DMP.

So I can't say that NatWest have acted unfairly by charging this interest. I can see that no

more interest had been charged after this, so I do think that they showed Mrs M forbearance. I've also considered the other actions they have taken once Mrs M informed them of her financial difficulties. NatWest applied breathing space as Mrs M asked them to. NatWest's procedure at the time was to allow breathing space for 30 days to stop charges, however, interest would continue to be charged. NatWest say that the breathing space would allow Mrs M time to speak with the debt management charity. During this time they would stop default sum fees such as late payment fees, overlimit fees and returned direct debit fees, but it would not prevent the annual card fee of £24.

I can see that NatWest did not charge Mrs M a fee for the minimum payment not being made by November, before the DMP had been arranged and they did not charge her a missed payment fee when she did not make a payment by 7 December, as displayed on her statement. So I'm persuaded that they did show Mrs M forbearance and treated her sympathetically when she informed them of her financial circumstances. After November, when the DMP was in place, they did not charge her interest. So I can't say it would be proportionate for NatWest to refund the interest she incurred for the time period prior to her informing them of her financial difficulties and prior to the DMP being arranged.

I've considered what Mrs M has said about the annual fee of £24 being charged to her account after she had informed NatWest about her financial difficulty. Again, this was prior to the DMP being agreed. But, I do need to think about what's fair and reasonable in all the circumstances of a complaint. In doing so, there will be times that a strict application of any terms and conditions, will result in an unfair outcome for a customer in the individual circumstances of a dispute.

In my view that's what's happened here. I say this as Mrs M was effectively paying an annual fee of £24 when she could not use her account due to financial difficulty, the restriction of her card and the subsequent default of her account. Unlike the interest being paid in arrears, it appears through NatWest's website that the annual fee is charged up front (or annually after the customer first uses their card). I'm not persuaded that Mrs M being unable to use her card would have been apparent to NatWest at the time the annual fee was charged, as although Mrs M had indicated financial difficulty, NatWest would not reasonably have been aware to what extent or how long Mrs M's financial difficulty would last for, based on the letter she sent them, where she had asked for breathing space until the debt management charity contacted NatWest.

So although NatWest had acted in line with their terms and conditions and applied the charge in line with their processes, due to the individual circumstances of this complaint, I'm persuaded that it would be fair for NatWest to refund the £24 as Mrs M had no benefit of the card due to her financial difficulties over the coming year. NatWest have provided a template letter that they sent Mrs M which says "we think the best course of action now is to withdraw your credit card facility" so as they took this action, I think it would be proportionate to ask them to refund this fee. In addition, the account defaulted less than three months after the annual fee had been charged. So I'm satisfied refunding the fee will lead to a fair outcome here.

I've also considered the customer service that Mrs M had with NatWest and how this would have impacted her. NatWest told Mrs M incorrect information which would have impacted her and distressed her, which ultimately made her bring her complaint to our service. I say this as Mrs M was told by NatWest that the DMP was put in place after her account had defaulted. This is not correct. As evidenced by NatWest's systems, the DMP was put in place on 28 November 2018.

NatWest also said that the late markers had been applied correctly as no plan was in place in November 2018 or December 2018 and the process was still being completed, but this

was not correct. I would have expected NatWest to have explained the reasons why the late markers were showing, as I mentioned earlier, due to the minimum payment not being met prior to the acceptance of the DMP and for her not making a payment at all in the following statement period.

So I agree with Mrs M that it was inaccurate for NatWest to state that the DMP took until February 2019 to be arranged, as the DMP plan was arranged around four weeks after she had written to the business informing them of her financial difficulties. While Mrs M said it was three weeks after, (and it may have been three weeks when she had arranged this with the debt management charity themselves), NatWest's system shows it was 28 November that the debt management charity contacted NatWest to propose the DMP. So I'm satisfied NatWest were made aware of the offer – and the offer was accepted on 28 November 2018.

Mrs M said that the cornerstone of the response from NatWest was that they could not setup the DMP until February 2019 which she did not (and does not) feel is right or correct. I agree with what Mrs M has said here. So I've considered what would be fair and reasonable to compensate Mrs M for the incorrect information which has caused her distress. I know she wants NatWest to amend her credit file, but as I've already mentioned, I'm satisfied they have made no error here, so I can't say the wrong information NatWest gave her should result in them changing her credit file, as this would not reflect what actually happened.

So in considering the impact the incorrect information would have on her, I'm satisfied that £75 would be fair and reasonable. I say this as NatWest led her to believe that the DMP she entered into could not be put in place until after her account had been defaulted. This may also be part of the reason why she feels her credit file is incorrect based on the answers NatWest gave her. So I'm satisfied that £75 recognises the impact that the wrong information NatWest gave her would have on her. So I intend to ask NatWest to put things right for Mrs M."

I invited both parties to let me have any further submissions before I reached a final decision. Mrs M wanted to make some final points. In summary, she said that once under the DMP, the payment schedule from the debt management charity to the business would not be in her control. She said the administration was handled by the debt management charity and communicated by them to the business so it doesn't seem fair that she is penalised by having the payment for December being marked as missed/late as opposed to being marked as under an arrangement.

She said that regarding the £20.24 interest charged, it does not help anyone by adding to the debt owed. She hoped they would have considered the similar forbearance that they showed her when they received the DMP proposals – even as a gesture of goodwill, to be extended to the £20.24 interest charged when they were aware of her financial difficulties.

Mrs M asked for clarity on what I proposed in my provisional decision as regards to how the compensation is paid. She said it would be reasonable that the compensation is paid directly to her as the compensation I award would be for Mrs M to use as she wishes. She said while it is understandable that any refund of fees or interest may need to be credited to the outstanding debt, she would appreciate clarity on this so it is clear to the business how they should make any such payments. Mrs M also asked me to reconsider whether the compensation payment being revised to £100 may be more reasonable and appropriate.

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 considered what Mrs M has said about her being penalised for the December payment as being marked as missed/late as opposed to being marked as under an arrangement when the debt management charity had set out a payment schedule. But while Mrs M made a payment in December, there was no payment made in the entire statement period covering late November/early December.

So there was no payment for NatWest to mark as being under an arrangement and therefore I'm satisfied that they had marked this correctly on the file. While an arrangement may have been set up for Mrs M, I would only be able to uphold this point if NatWest had done something wrong here, and for the reasons set out in my provisional decision, I'm satisfied that they didn't do anything wrong on this point.

I've considered what Mrs M has said about the interest being charged and that NatWest could have made a goodwill gesture to refund this. But as I said in my provisional decision *"I've considered whether NatWest were fair to charge Mrs M interest on her account, despite her writing to them about her financial difficulties. The interest was charged to the account on 12 November. It's important to note that interest is charged in arrears. So the interest which was charged was accrued from the previous months statement period. And the previous month's statement period was between 13 September – 12 October 2018. This was before Mrs M informed them of her financial difficulties and before she made an arrangement through a DMP."* I can't say that NatWest have acted unfairly by charging this interest. So it would not be proportionate for me to ask them to refund this.

I'm happy to clarify how any compensation should be paid. First of all though, I consider £75 compensation to be fair and reasonable for the reasons I set out in my provisional decision, so while Mrs M has asked me to consider £100 compensation, I do not think this is proportionate – or I would have recommended this amount in my provisional decision.

The refund of the annual fee of £24 can be either paid to reduce the debt, or if NatWest wish to do so, they can pay this directly to Mrs M. The reason why it would be more appropriate to reduce the debt is because this was added to her statement as opposed to Mrs M directly paying the full fee at the time. So it would be more appropriate for this to help reduce the debt – as the fee increased the debt. But I'm also comfortable if NatWest prefer to make one payment to Mrs M as opposed to a payment to the debt collection company who currently own the debt and a separate payment to Mrs M.

As far as the £75 compensation, this should be paid directly to Mrs M if she accepts my decision, as this is a payment to her for the distress and inconvenience she suffered as set out in my provisional decision. NatWest already understand this, as their response asks for Mrs M's bank details if she accepts my final decision. They have also said they can issue a cheque for Mrs M if she prefers.

In summary, Mrs M's response hasn't changed my view and my final decision and reasoning remains the same as in my provisional decision. I know Mrs M will be disappointed that I won't ask NatWest to amend her credit file or refund the interest paid, but I hope she understands my reasons.

Putting things right

In my provisional decision, I said I intend to uphold this complaint in part. I intend to ask National Westminster Bank Plc to refund the £24 annual fee they charged Mrs M. In addition, they should pay Mrs M £75 for distress. I'm still satisfied this is a fair outcome for the reasons given previously.

My final decision

I uphold this complaint in part. National Westminster Bank Plc should settle the complaint in line with the instructions in the *“putting things right”* section above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs M to accept or reject my decision before 28 October 2022.

Gregory Sloanes
Ombudsman