

The complaint

Two related companies, which I'll refer to as W and L, complain about the process by which their borrowing with National Westminster Bank Plc (NatWest) changed from a LIBOR reference rate to a SONIA reference rate, and the additional costs arising. They complain that NatWest applied undue pressure to accept the changed terms, provided incorrect or misleading information and failed to provide W and L with sufficient alternatives.

Mr Z, a director of both W and L, brings the complaint on the companies' behalf.

W and L have been represented by a third party in bringing this complaint, but I refer to any comments from the representative as being from Mr Z or the companies.

What happened

The circumstances of this complaint are familiar to both parties, so I won't repeat them all here. In summary:

- In January 2020, W and L together took out a LIBOR-based loan over a five-year term with NatWest.
- Prior to entering into the loan, NatWest provided W and L with materials explaining the planned move away from LIBOR-based lending.
- In January and October 2020, the bank wrote to W and L to set out at a high-level the changes which would be happening.
- In March 2021, NatWest met Mr Z to explain that, consistent with guidance issued to lenders, NatWest was moving to SONIA as its reference rate to replace sterling LIBOR. The presentation explained that, to ensure a minimal transfer of value between borrower and lender, the new rate would be based on SONIA plus a credit adjustment spread (CAS). The bank set out two methodologies available to W and L for calculating the CAS: the historic approach and the forward approach.
- The rate of CAS under the historic approach was set and published in March 2021, so NatWest could supply Mr Z with worked examples which enabled him to see the effect of determining W and L's new rate with this methodology. From July 2021, NatWest agreed to provide W and L every month with an estimate of the CAS on a forward basis to compare with the historic basis. NatWest offered W and L the option of transitioning their loan to a SONIA-based rate prior to 31 December 2021 using either methodology for the CAS.
- Between July and December 2021, NatWest and W and L continued to engage about the options available. In December 2021, W and L transitioned their loan to a SONIA-based loan.

In July 2021, W and L complained to NatWest. They said NatWest had applied undue pressure to Mr Z to achieve a transition of W and L's loan. They said NatWest had provided incorrect or misleading information about the transition, and had failed to assist W and L to understand the basis for the rates proposed, or offer sufficient alternatives. W and L said that, under the terms and conditions of their agreement with NatWest, in the event of a LIBOR rate being unavailable, the bank was obliged to calculate interest at *'the rate calculated by the bank to reflect its costs of funding of the loan'*, but at no point had NatWest provided any information to demonstrate that the alternatives presented met this condition. W and L said that they would incur a substantial loss from the forced transfer of their loan.

NatWest considered the complaint but, in September 2021, it responded saying that it had done nothing wrong. It said it had followed the best practice guidance issued by the Working Group on Sterling Risk-Free Reference Rates (the Working Group), which was established to help industry participants navigate the transition. It also said that it had provided W and L with significant flexibility by each month giving W and L CAS figures under the forward approach and offering the opportunity to switch under either CAS methodology. It explained that the SONIA+CAS approach had been widely adopted across the industry and was consistent with how NatWest had treated other customers.

Not content with this response, Mr Z brought W and L's complaint to our service. By this time, W and L had transitioned to a SONIA-based rate. Although the rate of CAS secured by W and L was more favourable than the historic rate, and more favourable than some of the previous forward-rates available, Mr Z said that the overall cost of the loan had still increased compared with the previous LIBOR-based cost.

Our investigator considered the complaint but said that, in her view, NatWest had acted reasonably in requiring W and L to transition to a loan based on SONIA plus CAS, and had followed the guidance which had been issued by both the regulator and the Working Group. Although she noted some administrative errors, she did not believe these had resulted in any financial loss to W and L.

Mr Z didn't agree so asked for an ombudsman's 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.

While I have read carefully the full correspondence between W and L and NatWest, and considered all the evidence submitted, I have focussed my decision on the matters which I consider central to this complaint. I've grouped the complaint points raised by W and L under the following four headings:

- Incorrect or misleading information and failure to assist
- Undue pressure and failure to provide alternatives
- Financial detriment
- Other complaint points

I consider each in turn.

Incorrect or misleading information and failure to assist

W and L complain that they were not given sufficient and timely information about the transition timetable, with information drip-fed and the implications not laid out clearly to enable an informed choice sufficiently early.

I've looked through the correspondence between NatWest and W and L and reviewed the information provided. I've also considered the guidance provided by the Working Group or regulators about the transition from LIBOR-based lending. Based on what I've seen, I think the bank provided the information available on a timely basis, initially giving notice at a high level of the changes coming, and later giving more detail. When NatWest met with Mr Z in March 2021, there was still nine months until the cessation of LIBOR and plenty of time to explore options before the window from July 2021 in which to transition. It appears to me that NatWest set out these options clearly. I consider separately below W and L's concern about the timing of rate information being provided by NatWest prior to the July transition window.

From March 2021 onwards, W and L made several requests to NatWest for the calculations underpinning the options presented. W and L wanted NatWest to provide historic comparisons so they could assess the alternatives; and challenged NatWest to demonstrate that the options satisfied the condition in their loan agreement for a rate *'to reflect [the bank's] costs of funding the loan'*. W and L were concerned that the options presented would result in a substantial transfer of value to the bank, so they asked NatWest to evidence that wouldn't be the case.

In July 2021, NatWest provided the requested calculations showing historic comparisons. Although W and L had requested this information earlier, and it would have been possible for NatWest to provide the information earlier using the historic methodology for CAS, it was only in July when NatWest could provide a more complete response. Therefore, I do not believe NatWest did anything wrong in waiting until July to respond with this information.

I have also considered whether NatWest should have demonstrated to W and L how the options available satisfied the terms and conditions of their loan agreement. I discuss this further below in considering the transfer of value from W and L to NatWest.

Overall, while I understand Mr Z wanted more information about the transition, and wanted NatWest to set out the options, evaluate them and justify them, I don't think these demands were reasonable. The timetable of transition was not within NatWest's control and, from what I have seen, it acted reasonably with the information it provided to W and L as the process progressed.

W and L have also said that, given they are an unsophisticated borrower, NatWest should not only have presented the options available but should have advised W and L on which option best satisfied their interests. However, I can understand why NatWest did not do this. The forward CAS rates available to W and L changed every month between July and December 2021, even if the historic CAS rates were fixed. While it was NatWest's obligation to provide W and L with fair options for transition, and explain those options, I do not believe it was obliged to advise W and L on which option to adopt and when.

Undue pressure and failure to provide alternatives

W and L say they were told consistently by NatWest that they would have to transition on either 31 July or 31 December 2021. Therefore, when NatWest only provided them with calculations setting out their alternatives for July 2021 on 16 July, time was very short to make a decision. This position became worse three days later, on 19 July, when NatWest informed them that, to transition on 31 July, they would in fact need to sign by 23 July to allow time for the changes to be processed. Moreover, NatWest said that it would only

provide final rates information on 23 July should W and L wish to go ahead. Mr Z says that this amounted to incredible undue pressure.

I cannot be sure what was said in every conversation between NatWest and Mr Z. However, I can accept that W and L were under the misapprehension that they would have only two opportunities to transition under the forward method for calculating CAS, in July and December 2021. But, on 19 July, NatWest clearly resolved this issue by clarifying that W and L would have the opportunity to review the options available and transition each month through to December 2021. Therefore, although Mr Z might have felt some pressure between 16 and 19 July 2021, I believe this would have been short-lived. Moreover, in earlier correspondence I can see that NatWest had made clear that 31 July 2021 was only the start of the window to transition. I also note that NatWest had clearly signalled to W and L that, under the forward method, the applicable rate of CAS would need to be calculated just before the transition takes place, so any figures prior to that time could only be indicative. So I don't think NatWest acted unfairly in the way it provided information to W and L about the transition options available in July 2021.

W and L also complain that NatWest did not provide information until November 2021 about what would happen if W and L didn't transition to a SONIA-based rate. They say that, even in NatWest's response letter to their complaint, the bank states that, to remain operable, the loan must transition to a SONIA+CAS rate at the first interest rollover date in 2022, which was clearly not correct. This added undue pressure on Mr Z.

While I can see that W and L asked repeatedly what would happen if they didn't transition their loan to a SONIA-based rate, I can also see that there was widespread industry expectation that borrowers and lenders would reach a consensual agreement about this. Through early 2021, there was little guidance available on what the legacy option should be and, even in September 2021, NatWest still wasn't in a position to say what option would be available if W and L didn't consent to transition as it awaited guidance from the regulator. I can see that NatWest could have provided this information to W and L slightly earlier than it did in November, but I don't believe this small timing difference would have made any difference to the outcome.

Overall, while I acknowledge that the evaluation of the options available for W and L would have caused pressure on Mr Z, and the timescales each month between July and December 2021 in which he needed to assess information and decide whether or not to proceed with a transition would have been tight, I do not believe this was unreasonable. It appears to me that the primary cause of the pressure on Mr Z was the cessation of LIBOR and the need to transition W and L's loan to a new rate. This was not something NatWest could alter or for which I can reasonably hold it responsible. Moreover, in the specific circumstances affecting W and L, I cannot see that, as things turned out, they suffered any loss through the pressure set out above. W and L chose not to transition in July 2021 but waited to December 2021 when more favourable rates were available, and thereby did not end up with the legacy option.

Financial detriment

When W and L complained to NatWest in July 2021, it was not clear at what CAS rate W and L would eventually transition. However, in the calculations Mr Z requested from NatWest to show how W and L's loan would have fared in 2020 and the first part of 2021 had a SONIA+CAS rate been applied, it appeared there would have been a substantial increase in cost. Mr Z separately calculated that the proposed SONIA+CAS rate at the time would increase the cost of the loan by 25%, and so result in a substantial transfer of value to the bank.

NatWest explained that the calculations it provided looking back at the first 18 months of W and L's loan had limited value as the Working Group had demonstrated that short-term comparisons were less likely to be reflective of the movements between LIBOR and SONIA over the full term of a loan. This was a key reason for the Working Group's decision to reflect the historic difference between LIBOR and SONIA over a 5-year period. However, the calculations from NatWest and those conducted by Mr Z did indicate that, on the basis of the rates at that time, the transition would result in W and L's loan being more expensive.

Mr Z has said that the CAS rate he ultimately secured for W and L in December 2021 was better value than the rates offered in July. However, he still believes the overall cost of W and L's loan is now materially more expensive with a SONIA+CAS reference rate than under the previous LIBOR-based rate.

Whether or not that is the case will depend over the full term of the loan how the rate of SONIA compares with what LIBOR would have been. As LIBOR has now discontinued, we will never know. However, the question for me is whether through the process of transitioning W and L to a SONIA-based rate, NatWest treated W and L fairly.

Having looked at what NatWest offered W and L, it appears to me that it followed the industry-standard guidance developed by the Working Group. The effect of offering these rates will no doubt result in some winners and losers compared with what would have occurred were LIBOR to have continued; but the Working Group sought to recommend an approach to minimise those transfers of value. In my view, NatWest adopted a reasonable approach in following this guidance.

Mr Z has pointed out that the regulator did not oblige lenders to offer SONIA+CAS as the alternative reference rate to sterling LIBOR, and the overriding objective was to minimise any transfer of value. Mr Z has said that W and L should have been offered a SONIA-only reference rate, without a CAS, which would have resulted in a more similar cost to W and L's LIBOR rate.

However, NatWest has explained that it wasn't offering SONIA-based loans at the time the loan was taken out; and it wouldn't have been fair to transition to a SONIA-only rate given SONIA is typically lower than LIBOR and would commonly result in a transfer of value to the borrower.

In my view, while NatWest's objective was to minimise any transfer of value to or away from W and L, it was reasonable for it to seek to achieve that through following the industry-standard guidance issued by the Working Group rather than by creating a bespoke transition model for W and L. This standard approach was to adopt the SONIA+CAS reference rate. NatWest has acknowledged that, as the CAS measures the economic adjustment at a point in time (ie the transition date), there is no way to tell whether it will accurately reflect the difference between SONIA and what LIBOR would have been over the full term of the loan; but I think NatWest was reasonable in using the two supported methodologies to calculate the CAS at the point of transition, either looking back over 5 years or, for transitions pre-cessation, using the market spread for the two rates to loan maturity. I acknowledge that the recommendations from the Working Group were only guidance so NatWest could have done things differently for W and L, but I don't believe NatWest acted unreasonably in following this guidance and so in transitioning W and L as it did.

Mr Z has also said that NatWest has not complied with the terms of its loan agreement, which obliged NatWest to provide W and L with an alternative rate which meets its costs of funding. NatWest has not sought to respond to this point with any of its own calculations, but it appears to me that, as the Working Group considered SONIA+CAS to replicate, as far as possible, LIBOR, the intention was that, across the industry, transfers of value would be

minimised. Therefore, in following the industry-standard guidance in transitioning W and L's loan, I believe NatWest applied a reasonable approach by which to provide W and L with an alternative rate which meets its costs of funding, as required in the terms and conditions of its loan agreement.

Mr Z has pointed out that, were W and L to have avoided the need to transition by switching away from their existing loan, they would have incurred a 1% charge. I can appreciate why, in the context of being dissatisfied with the options presented by NatWest, this would have felt unfair. However, at the time when W and L took out their loan, a SONIA-based rate wasn't available; and NatWest did explain clearly to W and L in advance that LIBOR was ceasing and that a transition to another reference rate would be required within the life of the loan. In my view, it is reasonable that NatWest would charge an arrangement fee for an early termination of the existing loan and a switch to a new loan product. Moreover, I note that as this W and L didn't choose this option, no arrangement fee was actually incurred, so W and L didn't suffer any loss.

Other complaint points

Mr Z has raised a few other points of complaint which I consider here.

Administrative errors

NatWest has made a few administrative errors as it has engaged with W and L. For example, it has on occasion addressed Mr Z incorrectly. However, the bank has apologised for this and, while frustrating for Mr Z, given no loss has been suffered, I don't believe any further action is required.

In late May 2021, NatWest sent a document by email, which should have gone to Mr Z but went instead to another director of W and L. This director was on the bank mandate for W and L but had not been involved in discussing W and L's loan with NatWest. Had this email been sent to Mr Z, he would have learnt earlier about the options available for W and L to transition their loan at the end of July.

In my view, it would clearly have been better for this email to go directly to Mr Z, who was representing W and L with regard to the loan. However, it was sent to another director on the mandate; and while I can appreciate that not being aware of this letter until July amplified the feeling of pressure on Mr Z, I don't believe it resulted in any financial loss to W and L. Therefore, I don't believe NatWest need take any further action about this.

Mr Z has pointed out that, in July 2021, when NatWest amended the agreement to identify both borrowers (W and L), it also made several other material changes to the agreement, which it didn't bring to the attention of W and L. This was a clear oversight which, in the context of the tight deadlines being given for responses, caused Mr Z to lose confidence in the bank. However, again, while I can appreciate the frustration this caused Mr Z at the time, I don't believe there was any financial loss to W and L, and the changes were identified before any agreement was reached later in the year. Therefore, again, I do not believe NatWest need take any further action.

Distress to Mr Z

Mr Z has said that the events described in this complaint caused him to suffer considerable stress. However, the complainants in this case are W and L which are companies and, as companies, they are unable to feel distress. Therefore, I cannot award anything to W and L for this.

Inconvenience and cost of professional fees for W and L

Mr Z has also complained about the inconvenience caused to W and L by NatWest's actions and the costs they incurred in solicitor's fees, not least to address the concerns about NatWest. However, NatWest made it clear to W and L that transition was going to happen before they took out the loan in January 2020, and the process was always going to involve a significant investment in time from them. Given this was an industry-wide regulator-led initiative, I do not believe I can reasonably hold NatWest responsible for this. Having reviewed all the correspondence, I believe NatWest provided W and L with regular updates based on the information available at the time, and I do not believe that the administrative mistakes made by NatWest caused W and L any financial loss or caused W and L to be required to invest significantly more time in the process. Therefore, I do not believe NatWest need take any further action. I also note that W and L chose to appoint professional advisers to help them through the transition of their loan, and to pursue their concerns about NatWest, but this was their choice. Given my findings above about the mistakes made by NatWest, I do not believe there is any basis for requiring it to cover professional costs incurred by W and L.

I am very much aware that Mr Z will be disappointed with this decision given the time, effort and cost which has been required of W and L and their advisers to transition their loan, and to pursue this complaint. However, for the reasons set out, I do not believe there is a fair basis for requiring NatWest to take any further action.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask W and L to accept or reject my decision before 17 March 2023.

Andy Wright
Ombudsman