

The complaint

Mr R complains that National Westminster Bank Plc (NatWest) defaulted his current account.

What happened

I issued my provisional decision about this complaint on 6 December 2024. I set out the background as follows:

“Mr R held a current account with NatWest that had an agreed overdraft limit of £1,250. On 6 February and 25 March 2023, NatWest wrote to Mr R. The letters say Mr R needed to make regular payments to keep his account active. The information provided by NatWest says Mr R had last made a payment into his account on 9 August 2022 and his account had exceeded the agreed overdraft limit since November 2022.

On 13 April 2023, NatWest issued a demand for repayment of Mr A’s overdraft of £1,423.14. NatWest told Mr A that if he was unable to repay his overdraft or agree an acceptable arrangement by 17 May 2023, he would no longer be able to use his account and it would pursue the outstanding balance. The letter went on to say if Mr R didn’t pay the overdraft in full or set up a repayment plan, it would remove his overdraft limit and may instruct a third party to recover the outstanding amount due. Mr A would need to arrange alternative banking facilities but if Mr A would like to retain basic banking facilities with NatWest, he should call NatWest as soon as possible.

On 15 May 2023, NatWest emailed Mr R to say his overdraft limit would be removed in two days. And on 19 May 2023, NatWest emailed Mr R to say it had now passed his details to a debt collection agency.

In June 2023, Mr R complained to NatWest that it had passed his account to a debt collection agency. NatWest issued a final response to Mr R’s complaint on 3 November 2023. Mr R said NatWest had not previously asked him for a payment and immediately sent his account to a debt collection agency and disputed the outstanding balance of his account was £1,410.12.

In its final response of 3 November 2023, NatWest said it issued a demand for repayment on 13 April 2023, that explained Mr R would no longer be able to use his account if he did not repay the overdraft in full or agree an acceptable repayment arrangement by 17 May 2023. NatWest said that even if the balance is repaid in full, the default will remain. NatWest then said the balance at the time of the account “being blocked” was £14.12. NatWest said it has the right to decide who manages the debt and move it over to a different company without explanation.

NatWest’s contact notes say the debt collection agency managing Mr R’s account told it Mr R had got in touch querying the outstanding balance written in NatWest’s final response of 3 November 2023. The notes say Mr R was also unhappy that between 15 and 19 May 2023, his account was passed to a debt collection agency to manage.

On 22 January 2024, NatWest issued a further final response and said it had reactivated Mr R's complaint. NatWest said it wrote to Mr R in February 2023 to let him know he needed to make regular repayments to keep his account active. It had sent Mr R a demand for repayment of his overdraft on 13 April 2023 and a reminder on 15 May 2023 about the demand it had issued. As NatWest did not receive a reply, the overdraft was removed. NatWest then confirmed the outstanding balance was £1,410.12.

Mr R referred his complaint to our service on 21 July 2024, saying NatWest did not meet its obligations to notify him of his debt and give him a reasonable period to repay it. As a result, Mr R says his credit file has been ruined.

One of our Investigators reviewed Mr R's complaint but didn't uphold it. The Investigator said NatWest wrote to Mr R on 13 April 2023 asking him to make a payment or agree a repayment arrangement by 17 May 2023 and sent him a reminder on 15 May 2023. Our Investigator was satisfied NatWest had followed its process and would not ask it to remove the default recorded on Mr R's account. Mr R disagreed, saying NatWest was unable to establish its letter of 13 April 2023 was sent and delivered – he noted other communications were sent by email. And even if the 13 April 2023 letter had been delivered, Mr R said the letter made it clear that the debt did not become payable until the overdraft facility was withdrawn on 17 May 2023. Mr R added that he felt our Investigator had pre-determined the outcome of his complaint. So, this has come to me for a decision."

I then set out my provisional decision as follows:

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

Having done so, I'm not minded to uphold Mr R's complaint. I realise this is likely to disappoint Mr R but I'll explain my reasons.

Mr R said a creditor must notify a debtor of the amount owed and give them a reasonable time to pay. I've reviewed the terms and conditions of Mr R's account, which say an arranged overdraft is repayable on demand, so NatWest can ask Mr R to repay the full amount at any time. The terms and conditions also say NatWest may also decide to reduce an arranged overdraft limit or end an overdraft agreement if it has a valid reason. The terms say that before NatWest demands repayment, reduces an arranged overdraft limit or ends an agreement, it will usually give at least 30 days' notice.

So, Mr R is not correct when he says the overdraft only became payable once it was removed. The terms and conditions say NatWest can ask Mr R to repay his overdraft at any time. And if NatWest had a valid reason, it could give Mr R at least 30 days' notice of its decision to demand repayment and remove Mr R's overdraft limit.

Here, NatWest has said Mr R has not made a repayment into his overdraft for a significant period of time and his account had been over its agreed overdraft limit for around five months. It was Mr R's responsibility to monitor his account, and he had last made a payment in August 2022, so I think he ought reasonably to have been aware his account was over the agreed overdraft limit. Despite this, Mr R hadn't responded to its letters of 6 February and 25 March 2023, so it had no indication Mr R intended to repay the outstanding balance owed. In the circumstances, I think NatWest had a valid reason to demand repayment of the overdraft.

On 13 April 2023, NatWest wrote to demand Mr R repay his overdraft – and I think it was entitled to do so for the reasons explained above. I think the letter was very clear when it

demanded repayment of the overdraft by 17 May 2023, which was more than the 30 days' notice required by the account's terms and conditions.

Mr R says he didn't receive the letter NatWest sent him on 13 April 2023 and has highlighted that NatWest subsequently emailed him. NatWest's letters were correctly addressed, so I think it's likely the letters were sent to Mr R. There was no requirement to send the letters by recorded delivery or prove the letters were received. So, I think NatWest met its obligations here. And in any event, NatWest did email Mr R in on 15 May 2023. Mr R didn't respond to make repayments towards his overdraft, and NatWest heard from Mr R via the debt collection agency in June 2023, so there's nothing to suggest the outcome would have been different if NatWest had also emailed Mr R on 13 April 2023.

Once the arranged overdraft was removed on 17 May 2023, NatWest defaulted the account. However, I noted the letter of 13 April 2023 was not a valid default notice – it did not include a copy of the current default information sheet. So, I've considered whether this error makes a difference to the outcome of Mr R's complaint.

At this point, I think it would be helpful to explain that the guidance set out by the Information Commissioner's Office (ICO) says that the reporting of arrears can be based on the months of continual unauthorised excess over the agreed overdraft. The guidance goes on to say an account may be defaulted once three to six months of arrears have occurred. Here, Mr R's account had exceeded the authorised overdraft since November 2022, so NatWest would have been expected to have defaulted Mr R's account in May 2023, at the latest.

The ICO also explains on its website that if a bank doesn't send a default notice, it can still list a default on a credit file. The ICO says that "A 'default' on your credit file simply means that the lender considers that the relationship between you has broken down. Therefore, while it may be a requirement of the Consumer Credit Act to issue a default notice, there is no data protection obligation on a lender to issue a default notice to individuals before marking an account as being in default on their credit file."

Given all of the above, I think NatWest would have been entitled to send Mr R a valid default notice along with its notice of the removal of Mr R's overdraft on 13 April 2023. A default notice must give a debtor a time frame (at least 14 days) to repay a debt before an account is defaulted, closed and often passed to a debt collection agency.

I'm not persuaded that NatWest's failure to issue a valid default notice makes a significant difference here. As I said above, Mr R ought reasonably to have been aware of his outstanding balance, but he hadn't repaid it at the time of making his complaint. Mr R did not respond to NatWest's letter of 13 April 2023, so there's nothing to suggest he would have responded if NatWest had issued the letter with the correct default notice format.

Mr R says NatWest acted too soon when defaulting his account. As I've said above, the ICO's guidance sets out that a default should be applied after an account has exceeded the authorised overdraft for six months so NatWest should have recorded a default by the end of May 2023.

Even if I were to accept NatWest should have sent a default notice on 17 May 2023, which would have given Mr R at least 14 days to avoid the default, Mr R hasn't provided evidence to show he would have repaid his debt in time. And if I were to conclude NatWest should have issued a default notice on 17 May 2023, that would have delayed the application of a default by at least 14 days. In this scenario, I could ask NatWest to amend the date it recorded Mr R's account as in default to a later date. But this means the default would stay on his credit file for longer and as this wouldn't be in Mr R's interests, I am not minded to ask

NatWest to amend the date of the default. I don't think any error in defaulting the account slightly sooner than I think it would otherwise warrants any compensation.

As I think NatWest was entitled to record Mr R's account as in default, I do not think it is obliged to remove the default if Mr R now settles the debt. The ICO guidance sets out that the fact that the account was previously in default will remain on his credit file for six years from the date of default. NatWest has since sold on the debt, as it was entitled to do. I note NatWest wrote to inform Mr R about this on 19 May 2023. So, I cannot do as Mr R asks and require NatWest to remove the default from his credit file."

NatWest accepted my provisional decision but Mr R did not. Mr R reiterated his understanding that before referring an unpaid debt to a collection agency, a creditor must notify the debtor of the amount owed and give them a reasonable period of time to pay the debt, typically 30 days. Mr R thought any decision I reach must be in accordance with that rule.

Mr R reiterated he did not receive NatWest's letter of 13 April 2023 and his belief that the balance only became payable on 17 May 2023, when NatWest needed to give him further notice of the amount owed and a reasonable period to pay. Mr R reiterated NatWest did not have the power to refer an unpaid debt to a collection agency without any notice whatsoever. Mr R said he has offered to settle the debt in full and it was inappropriate for me to say there was no evidence he would have repaid the debt in time.

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 have reconsidered Mr R's complaint in light of his response to my provisional decision, but I remain of the view that this complaint should not be upheld for the reasons explained in my provisional decision.

In response to my provisional decision, Mr R reiterated he didn't receive the letter NatWest sent him on 13 April 2023. As I said in my provisional decision, NatWest's letters were correctly addressed, so I think it's likely the letters were sent to Mr R. There was no requirement to send the letters by recorded delivery or prove the letters were received. So, I think NatWest met its obligations here.

Mr R reiterated his understanding that before referring an unpaid debt to a collection agency, a creditor must notify the debtor of the amount owed and give them a reasonable period of time to pay the debt, typically 30 days. Mr R thought any decision I reach must be in accordance with that rule.

It might be helpful to clarify that only the regulator, the Financial Conduct Authority, has the power to punish NatWest for any regulatory failings. Instead, my role here is to consider whether NatWest has made any error that caused Mr R a loss that requires it to put things right. So, even if I were to conclude that NatWest had broken a rule, my role would be to decide whether that had any impact on Mr R that requires further action.

Mr R said the balance only became payable on 17 May 2023, when NatWest needed to give him further notice of the amount owed and a reasonable period to pay. Mr R said he has offered to settle the debt in full and it was inappropriate for me to say there was no evidence he would have repaid the debt in time.

My provisional decision set out that the terms and conditions say NatWest can ask Mr R to repay his overdraft at any time. And if NatWest had a valid reason, it could give Mr R at least 30 days' notice of its decision to demand repayment and remove Mr R's overdraft limit. For the reasons explained in my provisional decision, I think NatWest had a valid reason to demand repayment of the overdraft.

On 13 April 2023, NatWest wrote to demand Mr R repay his overdraft and I think the letter was very clear when it demanded repayment of the overdraft by 17 May 2023, which was more than the 30 days' notice required by the account's terms and conditions.

Once the arranged overdraft was removed on 17 May 2023, NatWest defaulted the account. However, I noted the letter of 13 April 2023 was not a valid default notice – it did not include a copy of the current default information sheet. In my provisional decision, I considered whether this error makes a difference to the outcome of Mr R's complaint.

The ICO guidance says an account may be defaulted once three to six months of arrears have occurred. Here, Mr R's account had exceeded the authorised overdraft since November 2022, so NatWest would have been expected to have defaulted Mr R's account in May 2023, at the latest. As I said in my provisional decision, the ICO also explains on its website that if a bank doesn't send a default notice, it can still list a default on a credit file.

I remain of the view NatWest would have been entitled to send Mr R a valid default notice along with its notice of the removal of Mr R's overdraft on 13 April 2023. I'm not persuaded that NatWest's failure to issue a valid default notice makes a significant difference here for the reasons explained in my provisional decision. Mr R ought reasonably to have been aware of his outstanding balance of his account but took no steps to repay it or agree a reasonable repayment plan with NatWest. So, I still think there's nothing to suggest he would have responded if NatWest had issued the letter with the correct default notice format.

And in any event, even if I were to conclude NatWest should have issued a default notice on 17 May 2023, Mr R ought reasonably to have been aware he owed an outstanding balance to NatWest but he hadn't made a payment towards the account for many months, so I don't think the evidence shows Mr R would have repaid the balance owed if a default notice had been issued on 17 May 2023. As I think NatWest was entitled to record Mr R's account as in default, I don't think it is obliged to remove the default if Mr R now settles the debt.

My final decision

I realise my decision will disappoint Mr R, but I have not upheld his complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 27 January 2025.

Victoria Blackwood
Ombudsman