

complaint

Mr and Mrs L make a number of complaints against National Westminster Bank Plc (“the bank”) in respect of its conduct concerning a repayment plan and collections activities.

background

Mr and Mrs L had a repayment plan with the bank. This was a 12-month agreement, and on its expiry the bank needed up-to-date financial information from them to allow a new repayment plan to be considered and agreed. Mr and Mrs L were not willing to provide this information.

Their debt was referred to collections, and steps were taken to recover it. Mr and Mrs L appealed to the bank to ask it to stop contacting them by telephone, and the bank agreed. However, they continued to receive calls. They found this distressing, and were upset that the bank had allowed it to happen in spite of its agreement to only correspond in writing.

In one of the calls between the bank and Mr and Mrs L, a staff member suggested that the unsecured debts might become recoverable as secured debts against their home. This was not correct, and this error was rectified within minutes when a manager came onto the call. An apology and assurance was given to Mr and Mrs L at that time that the debt would not be secured against their home.

Mr and Mrs L complained to the bank. The bank apologised for its errors and offered £200 and £100 to reflect the worry and upset caused by them. Mr and Mrs L did not cash these cheques as they did not accept that the complaint had been properly resolved. They sought a formal undertaking from the bank that the debt would remain low priority and unsecured for so long as it existed, and for a continuation of the original repayment plan that had expired. The bank maintained its position that in order for a new repayment plan to be agreed it would need the financial information it had requested from Mr and Mrs L, and that its assurance to them that the debt was not secured was genuine and sufficient.

The complaint was brought to this service. Our adjudicator conducted an investigation, and on full consideration of the evidence, including all of Mr and Mrs L’s submissions, concluded that the bank had done everything it could reasonably have been expected to do to resolve the complaint. He was of the view that the existing offer of £300 was a fair in all of the circumstances, and that he could not recommend that the complaint be upheld.

Mr and Mrs L did not accept this opinion and sought referral to an ombudsman.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

Having done so, I see no reason to depart from the adjudicator’s view that the bank has already done enough to try resolve Mr and Mrs L’s complaint.

I know that this will come as a great disappointment to Mr and Mrs L, who have provided very detailed submissions and requests for investigation. In issuing my decision I can assure them that each and every one of their submissions has been read and considered, and that

the length of this decision in comparison to these submissions should not be taken as any indication that any detail has been overlooked.

I also wish to add that this service is not here to investigate banking practices beyond the specific detail of each complaint. We are not a regulator. In terms of the scope of the investigation of this specific complaint, I am satisfied that our adjudicator fully considered all such issues that were relevant to the parts of the complaint that we are able to consider, and that I have again reviewed these when reaching my own decision.

I am satisfied that this complaint, while appearing initially complex, can be broken down to the following grounds:-

1. The bank failing to continue with the original payment plan agreed in 2012
2. The bank failing to adhere to its agreement not to contact Mr and Mrs L by telephone
3. The bank staff member suggesting in a call that the bank might seek to hold the Mr and Mrs L's debts as secured against their home
4. The bank's existing offer of compensation

the bank failing to continue with the payment plan agreed in 2012

The repayment plan was initially agreed for a defined 12 month period. This is fairly normal practice, and I would expect a responsible lender to review a repayment plan at least annually in order to ensure its continuing affordability and suitability. I have considered the agreement, and am satisfied that it was never to be held on a continuing basis. It would always be renewable at intervals, subject to the appropriate affordability and suitability checks being carried out, and the parties agreeing.

Mr and Mrs L have continually declined to provide the income and expenditure information that the bank needs in order for it to determine a suitable repayment plan to either extend or replace the original one. They seek to rely on a data protection related argument in doing so, but I do not accept that this is a reasonable position to take.

The bank is not obliged to offer a plan, and is entitled to recover the money due to it by other methods in the event that a mutually acceptable plan can't be agreed. If Mr and Mrs L are genuine in their wish to agree a plan with the bank, they must provide it with the information it requires, and I do not believe that their current position on this point is tenable. The bank is entitled to ask for this information regardless of the fact that Mr and Mrs L are no longer account holders. While that might be the case, they still owe a debt to the bank, and to that extent there remains a relationship between them. The bank needs the up-to-date financial information to assess how it is able to help Mr and Mrs L. Whether this happens in writing, or in the form of a face-to-face meeting is not for me to decide, but in the event that no repayment plan is agreed Mr and Mrs L must accept that the bank is legally entitled to seek recovery of its monies by other methods. It is entirely fair and reasonable, as well as legal, for it to do so.

the bank failing to adhere to its agreement not to contact Mr and Mrs L by telephone

This issue is clear. The bank agreed, at Mr and Mrs L's request, to stop contacting them by telephone and to continue with written correspondence only. The bank failed to adhere to this agreement. It accepts this failure, and has apologised and offered compensation.

I don't think that this issue requires any further investigation, either pertinent to this specific complaint, or to the issue generally of how banks choose to contact their customers. As I have already stated, we are not a regulator, and such an investigation does not fall within our remit.

I am satisfied that the bank's apology and existing offer of compensation is fair and reasonable, reflecting the stress and upset caused by the continued telephone contact, and I do not propose that the bank increases it.

the bank staff member suggesting in a call that the bank might seek to hold the Mr and Mrs L's debts as secured against their home

Again, this matter can be summarised simply. The staff member was wrong to make this suggestion, and the mis-statement was corrected within minutes by a manager during the same telephone call.

No further investigation into this point is required. It isn't necessary as matters were resolved at the time, and I am satisfied that any genuine worry and stress should have been put at rest when the manager made it clear that the wrong advice had been given, and that Mr and Mrs L's home would not be at risk. I think this was sufficient resolution of the error, and I don't propose that anything else be done in this respect. If Mr and Mrs L are not willing to accept this assurance, that is not the responsibility of the bank.

the bank's existing offer of compensation

The bank has offered £300 compensation cumulatively. I believe this to be a fair offer, reflective of the continued worry and nuisance caused by the telephone contact, and the mis-advice on the telephone. I note that the two cheques issued by the bank, for £200 and £100 respectively, have now expired without being banked. In the event that Mr and Mrs L wish to reconsider the bank's offer, the bank should re-issue these.

summary

In summary, I believe that the bank has already responded appropriately and sufficiently to Mr and Mrs L's complaint. If a new repayment plan is to be agreed between the parties then Mr and Mrs L will need to reconsider their position on the provision of financial information to the bank. The bank has apologised for its errors, and an offer of compensation remains on the table. I think the offer is fair, and I am not minded to direct the bank to increase it.

Any remaining concerns that Mr and Mrs L have cannot be considered in this complaint, and I reiterate that all of the evidence and submissions have been fully and properly considered in the course of me reaching my decision.

my final decision

My final decision is that I do not uphold the complaint. Mr and Mrs L should now consider the bank's existing offer of compensation, and whether they are willing to provide the information it requires to consider whether to enter in to a new repayment plan.

Ashley L B More
ombudsman