

complaint

Mr R complains that Nationwide Building Society used their right of set off to take all the money he had in his bank account to reduce a loan he had with them.

background

Mr R had a loan from Nationwide and, due to missed payments, a default notice was sent on 29 September 2016. He made a few reduced payments after that date, the last one of which was in April 2017. At that time, the balance outstanding was just over £20,000.

After going through a divorce, Mr R had approximately £30,000 paid into his current account with Nationwide in May 2018. Mr R made no contact with Nationwide about his loan. On 27 June 2018, Nationwide wrote to Mr R at the address they held for him at the time, to say that they wanted to discuss a suitable repayment plan for the loan. They said they had 'set aside' the amount of £6,197.32 and that if no suitable repayment plan had been agreed, it would use that to reduce the loan on 11 July 2018.

Mr R contacted Nationwide the following day to complain that the amount had been set aside. He said he'd not been told in advance that Nationwide planned to do this and he needed the money to help him to begin a 'new life' following his divorce. Mr R asked that the money be returned to him. He made an offer to pay £500 per month to the loan.

Nationwide looked into his complaint. They said their right of set off is included in the terms and conditions for both Mr R's loan and current account. They had written to him at the address they had on file to explain that the money was to be used to reduce the loan. They didn't agree to return the money to him.

Mr R didn't agree and referred his complaint to us. One of our investigators looked into it. He said that Nationwide had given Mr R the opportunity to reach an agreement before using their right of set off, and had written to him about their intention to do so. He felt it was reasonable for them to set off the money against the loan.

Mr R acknowledged that 'legally' Nationwide could use their right of set off, but said he felt it was 'morally' wrong for them to do so as the money was for him to start a new life. He said Nationwide knew in July that he wasn't at the address they held for him as they'd contacted him via secure message to ask him to update his address.

As there was no agreement, Mr R's complaint was passed to me for a final decision.

my findings

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

There is no dispute that Mr R had a debt with Nationwide that was in default. Mr R was aware that he owed the money to Nationwide. When Mr R received a large sum of money into his account, I think it's reasonable for Nationwide to have expected some contact from Mr R to agree a way forward regarding the debt.

But Mr R didn't contact Nationwide. They could see that while some of the £30,000 paid into his account had been used to pay rent and buy furniture, a significant proportion had been

spent on gambling and a holiday. In order to protect their position, Nationwide took the decision to set off the remaining balance to reduce the loan. They wrote to him at the address they held on 27 June 2018 to let him know.

I understand what Mr R says about Nationwide knew in July that he was no longer living at the address they had on record, so he didn't receive the letter they sent. But they only knew that as a result of their letter of 27 June 2018 being returned to them. I think it was reasonable for Nationwide to write to Mr R at the address they held for him at the time.

As things turned out, Mr R contacted Nationwide the day after the letter they sent him. So he was aware then, that they planned to use the money to reduce the loan if he was unable to reach agreement with them.

Nationwide do have a duty to deal with customers in financial difficulty positively and sympathetically. I understand that Mr R now finds himself short of a large sum of money that he had been planning to use elsewhere. But when he spoke with Nationwide after the money was set aside, he told them was expecting £4,500 from a gambling website and a further £2,000 in wages. Having been told this and with no agreement about regular payments being reached, I think it was reasonable for Nationwide to continue with their plans to use their right of set off.

If Mr R feels he's now in financial difficulties, I'd encourage him to talk to Nationwide about those difficulties and I'd remind Nationwide of their duty to treat him positively and sympathetically.

my final decision

My final decision is that I don't uphold Mr R's complaint about Nationwide Building Society.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 18 November 2018.

Richard Hale
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