

complaint

Mrs Z complains that National Westminster Bank Plc pursued her for a debt on her joint account that she was not responsible for. She says, in any event, the bank had promised the other joint account holder it would not pursue her for this debt.

She considers that the bank did not issue the correct documents before it pursued her for the debt. She says that it wrecked her credit file. She considers NatWest breached its data protection obligations to her by selling the debt to a third party. She complains that the third party then harassed her and NatWest is responsible for this. Because of all of this Mrs Z says NatWest breached the Office of Fair Trading's debt collection guidance.

Further, Mrs Z complains NatWest did not provide her with relevant documents about the account when she asked it for them. She says it provided poor customer service and its actions have damaged both her mental and physical health for which she ought to be properly compensated.

our initial conclusions

Our adjudicator did not recommend that the complaint should be upheld.

NatWest did not indicate whether it accepted this recommendation or not. Mrs Z rejected it. She asked that her complaint be reviewed by 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. Where there is a dispute about what happened, I have based my decision on the balance of probabilities - in other words, on what I consider is most likely to have happened in the light of the evidence.

the bank did not make a mistake in pursuing Mrs Z for the debt owned on the joint account

Mrs Z says that the overdraft on the joint account was caused by repayments to a loan which was in the sole name of the other joint account holder. She tells us neither the other joint account holder nor NatWest told her that the repayments towards the loan would come out of the joint account. She says if she had known about it she would have objected.

Further Mrs Z says that in any event NatWest agreed with the other joint account holder that it would not pursue her for the overdraft on the joint account.

However, it is not clear how the overdraft was caused but even if Mrs Z did not run up this debt she is liable for it. This is because NatWest is not pursuing her for the loan debt its records show it is asking her to pay back an overdraft on her joint account.

The bank and the adjudicator have both explained why she is liable because of joint and several liability. It is clear Mrs Z understands this concept so I will not repeat it here.

NatWest may have an agreement with the joint account holder about who it will and will not pursue for the overdraft. But Mrs Z does not tell us she is party to this agreement. So on this basis as she is not a party to any contract that may exist unfortunately she cannot rely on its terms.

If Mrs Z had been unhappy about the repayments coming from the joint account I would reasonably have expected her to have taken this up with the other joint account holder. It seems to me this is a dispute between joint account holders rather than between NatWest and Mrs Z. Further, Mrs Z does not tell us she did not receive statements at the relevant time for this account so she ought to reasonably have been aware of the repayments. She has not demonstrated why NatWest might, in the circumstances, have been obliged to bring these repayments to her attention.

Under the terms and conditions of the account Mrs Z is liable for the debt and I cannot say NatWest is wrong to pursue her for it.

NatWest should have followed the correct debt collection procedures

NatWest accepts it did not ever formally demand repayment or issue a notice of its intention to issue a default. It was in the wrong here; it did not follow relevant guidance as Mrs Z suggests and it should compensate Mrs Z. But I do not consider it should remove any default it may have registered on her credit file. I say this because as Mrs Z's very strong stance is the debt is not hers even if the right documents had been sent I consider it is unlikely on balance that she would have paid and avoided the default.

It appears that Mrs Z considers the third party harassed her when it pursued her for the debt.

At the point that this happened the third party owned the debt. It was not working for NatWest so it is not responsible for the third party's actions. Should Mrs Z wish to continue with this part of her complaint she would need to raise the matter directly with the third party.

I cannot fairly make a finding against NatWest for the third parties actions.

NatWest says it was entitled to sell the debt. Mrs Z has not shown information to demonstrate why it should not have sold the debt. In the circumstances I am not persuaded by Mrs Z's suggestion that NatWest made a mistake or breached its data protection obligations to her when it sold the debt.

did the bank provide adequate customer service?

Mrs Z is right when she says she is entitled to ask for the documents that relate to when she was added to the account. It is less clear that she is entitled to a copy of the documents used when the account was set up as she was not a party to the account at that point. But in any event NatWest says it does not have these documents.

Banks are not required to retain records of transactions indefinitely. The law sets down a period of up to six years for most transactions. So I do not find it surprising that NatWest has been unable to trace these documents. However much Mrs Z may want to see these documents, I cannot fairly ask NatWest to produce something it just does not appear to have. Neither would it be fair for me to award Mrs Z compensation for this in the circumstances.

I am sorry to hear about Mrs Z's health. Some of the things she has told us about her mental state give me grave cause for concern. But it is not clear that NatWest knew about the state of her mental and physical health. So I cannot fairly say it should have taken it into account.

Mrs Z says NatWest made it difficult for her to complain and she had to chase it for responses and to take her seriously. NatWest says it did respond to her and I can see correspondence that it sent to her. But I consider Mrs Z should be compensated for its failure to follow the correct debt collections procedures. NatWest has offered to pay her £234.39 for distress and inconvenience. This payment is intended to compensate her for any distress and inconvenience she experienced as a result of this complaint, although I do realise some of this money is to compensate her for a second related complaint. Mrs Z has asked for compensation that covers the 200 hours she says she has spent on this complaint. I have considered her request.

That said, having regard to the general level of awards this service makes for distress and inconvenience I consider that the bank's offer is fair. This service does not generally make awards for the time consumers spend bringing their complaints. I am not persuaded that there is good reason for me to depart from this general approach in this case. I do not therefore consider that it would be correct for me to require NatWest to pay Mrs Z any more than it has already offered to do. My final decision is that NatWest has made a fair offer.

I simply leave it to Mrs Z to decide whether, on reflection, she might be prepared to accept that offer.

my final decision

My final decision is that I do not uphold the complaint.

Joyce Gordon
ombudsman