

complaint

Mr R complains that National Westminster Bank Plc (NatWest) failed to apply a payment he made to his loan accounts, and wrongly treated the accounts as in arrears. He says NatWest took action against him which involved offsetting the balance of his current and savings accounts against the loan and closing those accounts. Mr R complains that NatWest failed to give him notice of the action they were taking, and that they reported a default to credit reference agencies.

background

Mr R had a current account and a savings account with NatWest. In March 2017 he took out a loan with them for £8,000 (I'll call this Loan A). In December 2017 he took out a further loan for £4,000 (I'll call this Loan B). He made the repayments towards both loans from his current account.

In April 2018 he missed a repayment to Loan A but brought the account up to date in May, before NatWest took any action. But on 4 June the repayment to Loan A was missed. On 1 July the repayment to Loan B was also missed.

On 24 July 2018 NatWest's debt management team called Mr R and asked him when he'd be able to bring both loans up to date. Mr R said he was unaware of any arrears but that he could clear them. It was agreed that Mr R would transfer some money into his current account and that NatWest's agent would then transfer what was required to each loan account. The agent told him that once the arrears were cleared, she'd monitor his accounts for three clear repayments and then return his account to "*mainstream banking*".

During this call Mr R explained that he'd be interested in reducing his monthly outgoings. The agent said she'd need to complete an affordability assessment and emailed Mr R an income and expenditure form to start that process.

At the end of the call Mr R indicated he'd like to raise a complaint about the fact he'd not been made aware of the arrears prior to 24 July 2018. An attempt to pass his call over to the complaints team resulted in the call terminating; no complaint was logged.

Mr R deposited £800 into his current account on 25 July 2018. But NatWest didn't transfer this to the loan accounts and the arrears remained. Mr R made the monthly repayments towards both loans on time between August 2018 and January 2019. He didn't return the income and expenditure form, and there was no further conversation with Mr R about affordability.

Because the arrears from June and July 2018 weren't cleared, NatWest made several attempts to contact Mr R by telephone and text message in September 2018. NatWest have provided a call recording of the message they left with a third party who answered Mr R's phone on 13 September. NatWest also wrote to Mr R on 17 September asking him to make contact about his loans. Mr R says he received no messages or letters.

On 1 October 2018 two default notices were issued. NatWest sent a further letter on this date saying they intended to close his current and savings accounts and use any credit balances towards his loans.

As Mr R didn't contact NatWest, a formal demand for the outstanding loan amounts was sent on 5 November 2018. These letters included a reminder about the bank's right of set-off.

On 5 March 2019 NatWest transferred £859.35 from Mr R's current account to pay off Loan A. The remaining balance of the current account (£88.99) was applied to Loan B and the accounts were closed. The outstanding balance on Loan B at that time was £3,183.85.

The following day, Mr R found that he couldn't use his NatWest debit card. He checked his accounts online and discovered they'd been closed.

Mr R raised a complaint asking for his current and savings accounts to be re-opened and the funds returned. NatWest didn't issue a final response to Mr R's complaint because he referred his concerns to our service on the same day.

Our investigator shared his initial thoughts with NatWest; he said Mr R's account wouldn't have been in arrears if NatWest's agent had transferred his current account deposit to the loan accounts on 25 July 2018 as she'd said she'd do. So, it was the bank's error that had led to this position.

NatWest agreed there'd been an error but said their decision to take recovery action was still correct. They said Mr R would still have ended up in the same position, defaulting and with his accounts closed, because he missed the repayments on both loans in February 2019 – demonstrating that he was still *"failing to adhere to his loan agreement and contractual repayments"*. NatWest said that as Mr R hadn't engaged with them about the June/July 2018 arrears, it's unlikely he'd have engaged with them about the February 2019 arrears.

Mr R said he wouldn't have ended up with his accounts closed because he had the means to settle his loans (funds from regular employment paid to a bank account not held with NatWest). He explained he had no idea the money he'd deposited on 25 July 2018 hadn't cleared his arrears because none of the letters he'd received from NatWest related to missed payments or the possibility of account closure.

Our investigator's view

Our investigator issued several assessments which considered the responses he received from both parties.

He noted that Mr R had deposited over £2,500 into his current account on 28 February 2019, so he wasn't persuaded by NatWest's suggestion that the missed payments in February 2019 would've resulted in recovery action. He said it was principally NatWest's error that had led to the recovery action. So, he said NatWest should: re-open the Loan B account waiving the interest accumulated whilst the account was with collections; remove any adverse information recorded with credit reference agencies about the loan accounts; and pay Mr R £300 for the trouble and upset caused by the negative impact on his credit score.

NatWest said that if Mr R could clear the Loan B arrears it would: re-open the Loan B account; refund the arrears interest (not the contractual interest that would have accumulated if the account had remained open and Mr R had continued to meet his re-payments); remove the default in respect of the loan from Mr R's credit file; and credit £300 compensation for trouble and upset to the loan account to assist in repaying the outstanding debt. They said this offer was dependent on Mr R first clearing the arrears on the account,

and if he couldn't do that an arrangement would need to be agreed based on affordability. Any such arrangement would then be reported as such on his credit file.

Mr R broadly accepted NatWest's offer. He said he was, "*not adverse (sic) to making a single large payment to clear the arrears*" but said if he had to enter a repayment arrangement, he didn't want a third-party debt collector involved. He also said he wanted NatWest to return all that was taken from his current and savings accounts.

He added that a reported default in relation to his credit card account (also with NatWest) was a "*direct consequence*" of what happened with his loan, current and savings accounts and should be reflected in the outcome.

Our investigator explained that Mr R's complaint relating to his credit card would be dealt with separately. He also clarified what had happened to the balances of Mr R's current and savings account before they were closed and explained that NatWest wouldn't be able to guarantee that any future debt wouldn't be passed to a third party.

Mr R said he was inclined to accept NatWest's offer but didn't want to do so until he knew the outcome of his separate complaint against NatWest about his credit card account.

Because Mr R didn't agree with the outcome of that complaint both complaints have been passed to me for decision. I'll issue my findings in relation to what happened with Mr R's NatWest credit card separately.

my findings

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've reached the same outcome as our investigator and for broadly the same reasons. I'm upholding Mr R's complaint.

NatWest pursued recovery action and closed Mr R's current and savings accounts based on one month's arrears on Loan A and one month's arrears on Loan B. But those arrears could have been resolved in full if NatWest had taken Mr R's payment and applied it to his loan accounts in July 2018 as they said they would. So, I find the recovery action could have been avoided. The arrears would have been cleared, and after three clear repayments Mr R's loan accounts would have been moved out of the debt management team.

And even in the circumstances as they were, created by NatWest's error, I think the recovery action was premature. When the accounts were closed, neither loan account had a level of arrears that warranted such action.

Although I appreciate that NatWest were finding Mr R unresponsive to their communication attempts, his current account was still receiving enough funds to meet the loan repayments from August 2018 to January 2019. This was a clear indication he wasn't ignoring his repayment obligations on Loan A or Loan B. With that in mind, I think NatWest should have made more effort to phone or email him before closing his current and savings accounts.

I also think it's unfair of NatWest to admit their mistake and yet argue that the recovery action was justifiable because Mr R might have defaulted again in the future beyond February 2019. Between October 2018 and January 2019 when the default notices and related letters were sent to Mr R, his accounts were only in arrears because of NatWest's

error, and so they shouldn't have been sent. It follows that no recovery action should have been taken and his current and savings accounts shouldn't have closed on 5 March 2019.

Following our investigator's assessment of the situation NatWest have made an offer to put things right. If Mr R is in a position to clear the arrears on the account NatWest have agreed to:

- re-open the Loan B account;
- waive/refund the arrears interest;
- remove the default in respect of the loan from Mr R's credit file; and
- credit £300 compensation for trouble and upset to the loan account to assist in repaying the outstanding debt.

If Mr R isn't able to clear the arrears NatWest have said they'll agree a re-payment plan based on affordability, but that any such arrangement will be reported on his credit file. (I note that Mr R has recently confirmed to us that he's able to clear the arrears and resume repayments to Loan B).

Overall, I think this is a fair and reasonable way of resolving what's happened here. Mr R remains obligated to repay the principle sum he borrowed plus the contractual interest that would have accrued even if he'd made all his repayments on time. He's not being asked to pay any arrears interest and so owes no more than he would have done if the account had remained open in March 2019 and he'd continued to make the repayments as they became due.

For the trouble and upset caused by what happened NatWest are paying £300 compensation which will reduce the balance of Loan B. I think this is a fair amount. I realise Mr R says he's been caused great difficulty through the reduction of his credit rating, but from what I've seen I can't say what happened in relation to these personal loans is wholly responsible for Mr R's credit rating.

my final decision

My final decision is that I uphold Mr R's complaint. I direct National Westminster Bank Plc to:

- re-open the Loan B account;
- waive/refund the arrears interest that accrued on both loan accounts after 25 July 2018 calculating the contractual interest as if payments had continued; and
- remove any adverse information reported to Mr R's credit file in respect of either Loan A or Loan B since 25 July 2018 (excluding any factual information that might have been recorded about the missed repayments in February 2019).

The above arrangement assumes that Mr R will, as he's told us he can, clear the arrears on the account. If Mr R does not, however, clear the arrears on the account and bring the account up to date, I'd expect NatWest to agree with Mr R an affordable re-payment plan as they've indicated they will.

NatWest should also pay Mr R £300 compensation for trouble and upset (this can be credited to the Loan B account to assist in repaying the outstanding debt).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 12 April 2021.

Beth Wilcox
Ombudsman