

complaint

Mr K complains that Nationwide Building Society has used money from his savings account to pay off an old credit card debt. Mr K is represented by his daughter, Mrs T.

background

Mrs T told us that Nationwide wrote to her father at the end of November 2017 to say it had frozen three of his accounts. It told him that he owed just under £7,000 on a credit card. Mr K thought that debt had been settled in 2012. Mrs T said that Mr K hadn't received any email, letter or call from Nationwide about this debt in the last five years.

Mr K had over £10,000 in a savings account. Mrs T said that Nationwide was advised by letter in early December that Mr K was suffering critical ill health. Nationwide was asked to write to Mrs T instead. Nationwide replied on 13 December, acknowledging Mr K's ill health but not acting on his instructions. And on 14 December Nationwide wrote to Mr K to tell him that the debt on his credit card had been paid with money from his savings.

Mrs T told us that Mr K needed that money for a tax bill, and to cover the cost of private medical care to improve his health. She said that Mr K was now experiencing severe financial hardship. And this issue had also badly affected Mr K's health. He wasn't able to pay for private treatment, and the stress of the issue was making him worse.

Mrs T said that Nationwide had acted inappropriately, given Mr K's health, when it asked Mr K to go into a branch. And she said it intimidated him. Mr K also thought that there had been a data protection breach, because he hadn't consented to having his personal details handed to third party agents.

Mrs T said that Mr K wanted all of the money back, plus compensation for how Nationwide had treated him.

Nationwide said that it had applied a right of set-off against Mr K's account, using the savings he had been building up in the last couple of years to pay off this old debt. It didn't think it had done anything wrong when it did that. Nationwide said that it appreciated that it took some time to progress the complaint that Mrs T made on her father's behalf, and it apologised for that.

Nationwide said that it didn't agree that Mr K would've thought that this debt was paid off. It thought that there was nothing to suggest that the debt had been cleared between when debt collection agents last spoke to Mrs T about the debt in 2014, and now. Nationwide said that it did think it should've mentioned to Mr K that he could provide authorisation for Mrs T to discuss his accounts with Nationwide over the phone, so the building society apologised for not doing that.

Nationwide said that it thought that the service it had provided hadn't been as good as it would've liked, and it paid Mr K £200 to say sorry for that.

Nationwide also said that Mr K hadn't told it what the money was going to be used for before the building society completed the offset action. Although it didn't think that it had made any mistakes when it took the money to pay off his debt, because of the difficult situation he was in, Nationwide said that it had decided to pay Mr K back 50% of the amount recovered. It would pay £3,500 into his account. It said it was doing that as a gesture of goodwill, but

reassured Mr K that it wouldn't try to enforce the rest of the debt in future. It wouldn't try to take that money back.

Our investigator didn't uphold this complaint. She said that she couldn't see anything to suggest that the credit card account was closed in 2012. She thought that someone had spoken to Mrs T about the debt from that account in 2014, but that Nationwide hadn't been actively pursuing the debt since then.

Our investigator said she'd checked the terms and conditions of Mr K's savings account, and those said that Nationwide could take money from there to pay off other debts owed to it. And our investigator said that Nationwide had given the required notice when it did that. She realised how frustrating and distressing it must've been for Mr K when he found out what Nationwide was going to do, but she didn't think that it had done anything wrong when it used the money to pay off an outstanding debt.

Our investigator said she had to bear in mind that Nationwide didn't know about Mr K's health when it first contacted him. And although she would expect it to support him once it did know about that, she didn't think she could reasonably say that Nationwide should've stopped the transfer going ahead because of that.

Our investigator noted that she was aware of the full circumstances of the complaint, including that Mrs T had told us Mr K was now in financial difficulties. But he hadn't sent any evidence of that. Our investigator said she'd consider that if Mrs T wanted to send some evidence in. She was also aware of the administrative errors that Mrs T had raised when she was trying to sort this issue out for Mr K.

Our investigator said that Mrs T wanted the default removed from Mr K's credit record. But there was an outstanding balance which wasn't being paid at the time that this default was recorded. So our investigator didn't think Nationwide did anything wrong when it recorded a default on Mr K's credit file, and said she wouldn't ask it to remove it.

Overall, our investigator said that she didn't think Nationwide had acted unfairly. It did something that it was entitled to do, and it followed the right procedures when it did it. She knew that this had happened at a stressful time for Mr K, but she noted that Nationwide didn't know about that when it started this process. And she thought that compensation of £200 and giving back half the money taken as a goodwill gesture was a fair outcome for this case.

Mrs T, on behalf of Mr K, didn't agree with that. She said she wanted this issue to be considered by an ombudsman, so it was passed to me for a final decision.

Mrs T sent a letter for me to consider. She said she wanted me to reconsider the entire complaint.

Mrs T said that our investigator referred to a debit, but the issue was a credit card debt. And she said that the summary of the issues undermined the seriousness of Mr K's complaint because it did not appreciate the mitigating circumstances with which Mr K was forced to repay the alleged debt in November 2017. Mr K didn't think that Nationwide should've forced him to pay an alleged debt knowing that he was severely unwell and knowing that he hadn't received any prior warning since January 2014. Mr K blames Nationwide for the financial hardship that he is currently facing as a result of its actions.

Mrs T said that Nationwide had failed to provide Mr K with any correspondence detailing a full breakdown of costs relating to the alleged debt, which she said was resold three times since 2014. Mrs T said that our investigator thought it was fair that Nationwide gave 14 days notice of a debt dating back to 2014. Mrs T thought that it was unlawful for Nationwide to demand monies from Mr K without sending him sufficient and applicable evidence of exactly what (if anything) was owing. She thought that Nationwide failed to act lawfully and with integrity.

Mrs T said that financial firms are obligated to deal fairly with customers in arrears and default. She thought that Nationwide had acted unfairly because Mr K hadn't received timely and effective communications regarding monies, lending and other account activities. She wanted me to provide my view on whether it was fair for Nationwide to summon an alleged debt from Mr K (knowing his mitigation) without any prior warning or any breakdown of costs.

Mrs T also wanted me to consider whether the immediate repayment of £3,500 was fair given that the relevant rules state that customers shouldn't be pressurised into paying a debt in one single or very few repayments, where that would have an adverse impact on the customer's financial circumstances, or to pay a debt in an unreasonably short amount of time.

Mrs T wanted us to bear in mind that Mr K wasn't an ordinary customer, but he was, and still is, a very vulnerable and critically ill person. She drew our attention to a letter from his doctor, saying he shouldn't be stressed. And she pointed out that he was retired, and owed a tax bill which was due to be paid using the money in his savings account. Mrs T thought that, considering all of this, the award of compensation should be much higher.

Mrs T initially said that she wanted to send further evidence to show Mr K's financial hardship, but then she wrote again to say that Mr K was finding it too stressful to produce further information. She wanted an ombudsman to consider all of the information she had supplied to date. The case was passed to me for 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. I've reached the same overall conclusion on this case as our investigator, and for broadly the same reasons.

Nationwide has shown us statements from Mr K's credit card account. Those say that at the start of 2013, Mr K owed Nationwide just under £7,000. He had owed roughly that amount for some time. This was over his credit card limit. I'm satisfied that Mr K owed Nationwide this money.

Nationwide has also shown this service its internal notes, which record attempts to recover the money that Mr K owed. Those notes say that Mrs T told Nationwide that she had run up the debt, and that she considered this to be her debt. They also show that Nationwide had said to her that this debt is in Mr K's name, and it remains his responsibility to pay it off.

Nationwide seems to have liaised with Mrs T, rather than Mr K, about payment of this debt until 2014. I understand that Mr K had given Mrs T authority to discuss this account when he also gave her a card on the account, so I don't think that Nationwide did anything wrong when it liaised with Mrs T about this debt.

In 2012, Nationwide issued a default notice on the account, and a repayment plan was agreed at that time. This plan failed, and Nationwide tells us that it registered a default on Mr K's credit file. Mrs T has also challenged that default. But I think that the account was in arrears at that time, and I think that Mrs T and Mr K were aware of that. And I don't think that steps had been taken to clear the arrears. So I don't think that Nationwide did anything wrong if it placed a default on Mr K's credit file.

Nationwide's notes show that it was in communication with Mrs T in the second half of 2012. She explained that she couldn't pay at the time, but she was hoping to recover a sizeable amount of money soon. The hoped-for funds didn't arrive, and at the end of 2012, Mrs T offered to pay Nationwide £1,780 to settle the debt. That letter states that Nationwide had carried out an income and expenditure assessment for Mr K, and it had decided that he couldn't afford to repay this debt.

No payment was received from either Mrs T or Mr K after this offer was made. Two separate debt collection agencies then tried to recover money, but the first only recovered £100, which was paid in August 2013, and the second didn't recover anything. Mr K has said that this was a data protection breach because he didn't consent to information about his debt being passed to a third party. But I wouldn't expect Nationwide to require Mr K's express permission to have agents act on its behalf to collect a debt. I don't think that Nationwide did anything wrong by asking agents to attempt to collect this debt for it.

Early in 2014, Mrs T got in touch again about this debt, and she said that an offer to accept £1,000 as a partial settlement had previously been made to Mr K. Nationwide said then that it had offered to settle this debt for £1,780. Again, Nationwide didn't receive any payment towards the debt.

I'm satisfied that Mr K owed Nationwide around £7,000, and that Mrs T, who was acting on his behalf, discussed this debt with Nationwide in 2014. It seems most likely that, at this time, Nationwide didn't think that Mr K could pay this debt himself.

During 2016, Mr K paid some money into a Nationwide savings account. He then started making regular deposits of just under £500 per month. Mr K's statements suggest to me that this deposit may have been a regular payment of state pension. By November 2017, he had over £10,000 in the account.

In late 2017, Mr K held savings with the building society which were greater than the debt he owed it. Nationwide froze Mr K's accounts, and wrote to Mr K at the end of November to tell him that. It asked him to make a payment towards this debt, and said that once the balance was cleared that it would unfreeze the account. It said that he owed it £6,854.98. It asked him to contact it if he couldn't make the payment, for any reason. And it said that if a suitable repayment plan wasn't agreed within 14 days, it would transfer money from his savings to repay his debt.

The timing of this letter was unfortunate, as Mr K had recently had surgery.

Mr K did get this letter. And he didn't contact Nationwide to discuss payment. He did visit a branch of Nationwide on 7 December. He asked the staff then to transfer the money in his savings account to his wife. He said it was a debt owed to her. Mr K hasn't sought to pursue this argument with our service. I think it is more likely than not that this was Mr K's own money.

Nationwide's branch staff said that the account was frozen, and the money couldn't be moved.

Mr K then wrote to Nationwide, in a letter dated 7 December. He said that he was critically unwell. And he said that he had included medical evidence to that effect. He also said that he wanted Mrs T to be given access to his accounts. Nationwide said it got this letter on 11 December.

Mr K has shown us a page from a letter which states that earlier in November he had been discharged from hospital following surgery. That letter notes that "*the patient felt well and pain free*" when examined before discharge. Mr K has also shown us a letter from his GP which states that recovery may take up to a year, and asks the reader to ensure that Mr K is not stressed. This letter is dated 12 December, so it seems unlikely that this would've been included with the letter Mr K sent on 7 December to Nationwide.

Nationwide replied on 13 December. It said it couldn't give Mrs T full access to Mr K's accounts. It said Mr K would need to go into a branch to set up this arrangement, because it couldn't validate his signature. I think that, if Mrs T did need full access to Mr K's accounts, then that couldn't have been done as a result of this letter. But Nationwide now says that it should've told Mr K that, as an alternative, he could've rung it to give Mrs T authority just to discuss his accounts. Nationwide has paid £200 to say sorry for that, and for delays in registering his complaint. I think this is a reasonable amount to make up for that mistake.

On 14 December, Nationwide wrote to Mr K to say it had transferred money from his savings account on 13 December, to pay off his debt.

I've checked the terms and conditions of Mr K's account, and Nationwide is entitled to freeze funds, then to apply them against a debt that Mr K owed it. I would expect Nationwide to consider the evidence that Mr K put forward before doing that. Nationwide's internal notes say that it had considered the letter that Mr K sent, and the medical evidence which accompanied it. Those notes show that Nationwide noted his letter said he was critically unwell, but it also noted the accompanying medical evidence. The hospital letter showed that Mr K had been poorly but had since been discharged and was now well. I think that it was reasonable for Nationwide to proceed to use the money in Mr K's savings account to repay this debt, on the evidence it had at that time. I don't think that Nationwide did anything wrong when it did that.

Mrs T has stressed that there had been a long gap between the last contact that Nationwide or its agents had made with her about this debt, and the action to set off Mr K's savings against the debt. And she said that Nationwide hadn't given Mr K a breakdown of what he owed, and why. I've said that I think that Mrs T discussed this debt in early 2014. I appreciate that it would be upsetting and disappointing to be contacted again about an outstanding debt after so long. But I don't think that Mrs T or Mr K could reasonably have considered that the debt was settled. And I don't think that it would be fair and reasonable for me to say that Nationwide shouldn't be able to enforce this debt now, just because it hasn't been actively pursuing it over the last three years. I also think that if Mrs T or Mr K had asked Nationwide to explain the amount that Mr K owed, then Nationwide would've done that. I don't think that it's unfair for Nationwide to enforce the debt because it didn't do that, proactively, when it wrote to Mr K to say it was freezing his account.

Mrs T also wanted me to consider whether the immediate repayment of £3,500 was fair given that debt repayment rules state that customers shouldn't be pressurised "*to pay a debt*"

in one single or very few repayments or in unreasonably large amounts, when to do so would have an adverse impact on the customer's financial circumstances" or "to pay a debt within an unreasonably short period of time". Firstly, it's not clear to me that these rules would apply directly to set-off action. But even if they do, I don't think that Nationwide had any reason to suspect that by applying its right of set-off, it would cause financial hardship to Mr K. And I don't think it pressured Mr K to paying his debt within an unreasonably short period of time. It gave him fourteen days to contact it, and stated that it would apply the right of set-off after this period if he didn't do so. Mr K had the option to contact Nationwide and make alternative payment arrangements during that period, and Nationwide's letter referred to the possibility of a payment plan for the debt. So I don't think that his only option was to pay the debt within fourteen days. I need to bear in mind that, although Mr K did ask Nationwide to talk to Mrs T about this debt, he didn't explain his circumstances to the building society, or find out what else he could do.

Mr K complained to Nationwide. He said that this had all had a significant adverse impact on his health. Nationwide wrote in response to Mr K's complaint in January. That letter says that it understood that Mr K was intending to use the money that was in his savings to pay a tax bill, and he had received a quotation for a private healthcare operation, and that this would total a little over £4,000. Nationwide pointed out that it hadn't known about this at the time. And in the light of this, it decided to return £3,500 of the recovered money, which was a little over half what it had taken to pay Mr K's debt.

Mr K has shown us his tax bill from the time, which was a little under £2,500. This service has not seen a written quotation for a private healthcare operation. I understand that Mr K didn't proceed with any private healthcare treatment options. Mrs T has suggested that this is because he no longer feels that he can afford these.

Mrs T has told us that Mr K is now in financial difficulties. She says that he has only his state pension and the remainder of his savings to live off. And she says that because of what Nationwide has done, he has been unable to afford to pay for private healthcare options which he was considering to aid his recovery from heart problems.

We asked Mrs T for further evidence of both of these points, but after initially asking for some clarification about the sorts of further evidence that would be helpful, she then contacted us to say that due to the stress that this complaint has had on Mr K, she isn't able to provide further evidence of his financial position or of the healthcare options that he hasn't been able to pursue. Mrs T has asked this service to consider this case on the basis of the available evidence.

I've looked carefully at the evidence we do have. Mrs T told us that Mr K has now retired, and the tax bill he shared with us is consistent with him having done that at some point during the 2017/18 financial year. But I think it's relevant that his bank statements suggest that he appeared to be saving, not spending, all of his state pension until December 2017. I've also considered everything that Mrs T has said to us. But, because it doesn't seem to me that this sort of saving pattern is what I might expect to see from someone whose only income is their state pension, and who is now in financial difficulties, I don't think that I can simply accept what Mrs T has said about this now. I realise that there might be a different explanation for this, and I understand the reasons why Mrs T feels she isn't able to send more information about Mr K's current position, but on the basis of what we do have, I don't think I can safely conclude that Mr K is currently experiencing financial difficulties.

In summary, I'm satisfied that Mr K did owe this money, and I think that he couldn't reasonably have thought otherwise. I realise how disappointing it must have been suddenly to be pursued for this debt after such a long time. And I also realise that this happened at what was already a stressful time for Mr K. But I think that the action that Nationwide took when it used Mr K's savings to offset his debt was neither unfair nor unreasonable, on the basis of the information it had at the time.

Nationwide was then given more information, and it accepted that the position was different than it had previously understood. It paid Mr K back half of the money that it had used to clear his debt, as a gesture of goodwill, and it told him that it wouldn't seek to recover this amount in future. On the basis of Mr K's current position, as I've explained I understand it to be, I think this was a reasonable step for Nationwide to take. I don't think that Nationwide has to do more than this now.

I appreciate how disappointed Mr K will be by this, but I don't think this complaint should be upheld.

my final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 7 July 2018.

Esther Absalom-Gough
ombudsman